

## CHAPTER 10:28

# ADMINISTRATIVE JUSTICE ACT

Act 12/2004

### ARRANGEMENT OF SECTIONS

#### Section

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### SCHEDULE

Administrative Actions in Respect of which Application of Sections 3(1)(c), 3(2) and 6 Excluded or Qualified.

**AN ACT to provide for the right to administrative action and decisions that are lawful, reasonable and procedurally fair; to provide for the entitlement to written reasons for administrative action or decisions; to provide for relief by a competent court against administrative action or decisions contrary to the provisions of this Act; and to provide for matters connected with or incidental to the foregoing.**

[Date of commencement: 3rd September, 2004.]

#### **1 Short title**

This Act may be cited as the Administrative Justice Act [*Chapter 10:28*].

#### **2 Interpretation and application**

(1) In this Act—

“administrative action” means any action taken or decision made by an administrative authority and the words “act”, “acting” and “actions” shall be construed and applied accordingly;

“administrative authority” means any person who is—

- (a) an officer, employee, member, committee, council, or board of the State or a local authority or parastatal; or
- (b) an committee, or board appointed by or in terms of any enactment; or
- (c) a Minister or Deputy Minister of the State; or
- (d) any other person or body authorised by any enactment to exercise or perform any administrative power or duty;

and who has the lawful authority to carry out the administrative action concerned;

“empowering provision” means a written law or rule of common law, or an agreement, instrument or other document in terms of which any administrative action is taken;

“Minister” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may from time to time assign the administration of the Act;

“parastatal” means a body established under an enactment for special purposes specified in the enactment;

“uniformed force” means—

- (a) the Defence Forces as defined in subsection (1) of section 2 of the Defence Act [*Chapter 11:02*];
- (b) the Police Force as defined in section 2 of the Police Act [*Chapter 11:10*]; or
- (c) the Prison Service as defined in section 2 of the Prisons Act [*Chapter 7:11*].

(2) The provisions of this Act shall be construed as being in addition to, and not as limiting, any other right to appeal against, bring on review or apply for any other form of relief in respect of any administrative action to which this Act applies.

#### **3 Duty of administrative authority**

(1) An administrative authority which has the responsibility or power to take any administrative action which may affect the rights, interests or legitimate expectations of any person shall—

- (a) act lawfully, reasonably and in a fair manner; and
- (b) act within the relevant period specified by law or, if there is no such specified period, within a reasonable period after being requested to take the action by the person concerned; and
- (c) where it has taken the action, supply written reasons therefor within the relevant period specified by law or, if there is no such specified period, within a reasonable period after being requested to supply reasons by the person concerned.

(2) In order for an administrative action to be taken in a fair manner as required by paragraph (a) of subsection (1), an administrative authority shall give a person referred to in subsection (1)—

- (a) adequate notice of the nature and purpose of the proposed action; and
- (b) a reasonable opportunity to make adequate representations; and
- (c) adequate notice of any right of review or appeal where applicable.

(3) An administrative authority may depart from any of the requirements referred to in subsection (1) or (2) if—

- (a) the enactment under which the decision is made expressly provides for any of the matters referred to in those subsections so as to vary or exclude any of their requirements; or
- (b) the departure is, under the circumstances, reasonable and justifiable, in which case the administrative authority shall take into account all relevant matters, including—
  - (i) the objects of the applicable enactment or rule of common law;
  - (ii) the likely effect of its action;
  - (iii) the urgency of the matter or the urgency of acting thereon;
  - (iv) the need to promote efficient administration and good governance;
  - (v) the need to promote the public interest.

#### 4 Relief against administrative authorities

(1) Subject to this Act and any other law, any person who is aggrieved by the failure of an administrative authority to comply with section *three* may apply to the High Court for relief.

(2) Upon an application being made to it in terms of subsection (1), the High Court may, as may be appropriate—

- (a) confirm or set aside the decision concerned;
- (b) refer the matter back to the administrative authority concerned for consideration or reconsideration;
- (c) direct the administrative authority to take administrative action within the relevant period specified by law or, if no such period is specified, within a period fixed by the High Court;
- (d) direct the administrative authority to supply reasons for its administrative action within the relevant period specified by law or, if no such period is specified, within a period fixed by the High Court;
- (e) give such directions as the High Court may consider necessary or desirable to achieve compliance by the administrative authority with section *three*.

(3) Directions given in terms of subsection (2) may include directions as to the manner or procedure which the administrative authority should adopt in arriving at its decision and directions to ensure compliance by the administrative authority with the relevant law or empowering provision.

(4) The High Court may at any time vary or revoke any order or direction given in terms of subsection (2).

#### 5 Determining factors

For the purposes of determining whether or not an administrative authority has failed to comply with section *three* the High Court may have regard to whether or not—

- (a) the administrative authority has jurisdiction in the matter;
- (b) the enactment under which the action has been taken authorises the action;
- (c) a material error of law or fact has occurred;
- (d) a power has been exercised for a purpose other than that for which the power was conferred;
- (e) fraud, corruption or favour or disfavour was shown to any person on irrational grounds;
- (f) bad faith has been exercised;
- (g) a discretionary power has been improperly exercised at the direction, behest or request of another person;
- (h) a discretionary power has been exercised in accordance with a direction as to policy without regard to the merits of the case in question;
- (i) a power has been exercised in a manner which constitutes an abuse of that power;
- (j) the action taken is so unreasonable that no reasonable person would have taken it;
- (k) there is any evidence or other material which provides a reasonable or rational foundation to justify the action taken;
- (l) an irrelevant matter has been taken into account;
- (m) a relevant matter has not been taken into account;
- (n) a breach of the rules of natural justice, where applicable, has occurred;

- (o) the procedures specified by law have been followed;
- (p) any departure from the requirements of section *three* is in the circumstances reasonable and justifiable.

## **6 Application for and issue of order to supply reasons**

- (1) Subject to this Act and any other enactment, any person—
  - (a) whose rights, interests or legitimate expectations are materially and adversely affected by any administrative action; or
  - (b) who is entitled to apply for relief in terms of section *four*;and who is aggrieved by the failure of an administrative authority to supply written reasons for the action concerned within—
  - (i) the period specified in the relevant enactment; or
  - (ii) in the absence of any such specified period, a reasonable period after a request for such reasons has been made;

may apply to the High Court for an order compelling the administrative authority to supply reasons.

(2) Upon an application being made to it in terms of subsection (1) the High Court may, if it is satisfied that there has been a failure by the administrative authority concerned to supply any or adequate reasons for an administrative action, issue an order directing the administrative authority to supply written reasons to the applicant within such period as may be specified by the High Court.

(3) Where an administrative authority fails to comply with an order in terms of subsection (2), it shall be presumed, in the absence of proof to the contrary, that the administrative action concerned constituted an improper exercise of the power conferred by the relevant law or empowering provision.

(4) The High Court may at any time vary or revoke an order made in terms of subsection (2).

## **7 Discretion to entertain applications**

Without limitation to its discretion, the High Court may decline to entertain an application made under section *four*, if the applicant is entitled to seek relief under any other law, whether by way of appeal or review or otherwise, and the High Court considers that any such remedy should first be exhausted.

## **8 Discretion to refuse or to restrict supply of reasons**

- (1) Without limitation to its discretion, the High Court may decline to issue an order in terms of section *six*, or may direct that disclosure of any reasons shall be limited or restricted, if it considers that—
  - (a) it would be contrary to the public interest for such reasons to be disclosed; or
  - (b) the failure to supply reasons by the administrative authority was reasonable and justifiable in the circumstances.
- (2) For the purposes of determining any matter referred to in subsection (1) the High Court may—
  - (a) direct that the reasons concerned be disclosed privately to the High Court for its consideration; or
  - (b) after examination of reasons which have been privately disclosed to it, edit the reasons in such manner or to such extent as the High Court considers best suited to preserve the public interest and to serve the interests of the applicant concerned; or
  - (c) consider whether disclosure should be limited or restricted in terms of the Courts and Adjudicating Authorities (Publicity Restriction) Act [*Chapter 7:04*] or otherwise.
- (3) For the purpose of subsection (1) but without limiting its meaning, “public interest” includes matters that relate to—
  - (a) the security or defence of the State; or
  - (b) the proper functioning of the Government; or
  - (c) the maintenance of international relations; or
  - (d) confidential sources of information pertaining to the enforcement or administration of the law; or
  - (e) the prevention or detection of offences or contraventions of the law.

## **9 Intervention by Attorney-General**

In any proceedings brought under this Act the Attorney-General shall be entitled to be heard by the court and, whether or not he has exercised such right, the Attorney-General shall have the same right of appeal relating to such proceedings as if he or she had been a party to the proceedings.

## **10 Minister may make regulations**

- (1) The Minister may make regulations providing for any matter which he or she considers necessary or desirable for giving effect to the provisions of this Act.
- (2) Regulations made in terms of subsection (1) may provide for—
  - (a) the form and manner in which applications in terms of this Act shall be made;
  - (b) the period within which applications in terms of this Act shall be made.

## **11 Application of Act to certain administrative authorities or actions limited or excluded**

- (1) The following provisions—
  - (a) paragraph (c) of subsection (1) of section *three*; and

(b) subsection (2) of section *three*; and

(c) section *six*;

shall not apply to any of the administrative actions specified in Part I of the Schedule.

(2) The following provisions—

(a) paragraph (c) of subsection (1) of section *three*; and

(b) section *six*;

shall not apply to any of the administrative actions specified in Part II of the Schedule.

(3) An application may be made to the High Court in terms of subsection (1) of section *six* for an order compelling the administrative authority concerned to supply reasons for any administrative action referred to in subsection (2) on the basis that no apparent public interest is served by withholding from the applicant the reasons for the action, but the Court shall not make any order on the application before directing that the reasons be disclosed privately to the Court for its consideration.

(4) After examination of the reasons which have been privately disclosed to it under subsection (3), the High Court may, subject to subsection (5)—

(a) issue an order directing the administrative authority to supply written reasons to the applicant within such period as may be specified by the Court; or

(b) edit the reasons in such manner or to such extent as the Court considers best suited to preserve public interest and to serve the interests of the applicant concerned and issue an order directing the administrative authority to supply such edited reasons to the applicant within such period as may be specified by the Court; or

(c) decline to issue the order sought by the applicant.

(5) The High Court shall not make an order in terms of subsection (1) of section *six* compelling the supply of reasons for any administrative action referred to in subsection (2) if a Minister responsible in respect of the exercise of such action produces to the Court a certificate to the effect that such supply of reasons is contrary to the public interest on any of the grounds specified in subsection (3) of section *eight* or on any other grounds related to the public interest as the Minister shall specify in the certificate.

(6) The Minister may by notice in a statutory instrument amend the Schedule by adding or deleting any item in Part I of Part II of that Schedule or by altering any item when he or she deems it necessary or desirable to do so in the public interest.

(7) The Minister shall, on the next sitting day of Parliament after he or she makes a statutory instrument in terms of subsection (6), lay it before Parliament, and the statutory instrument shall come into effect on the thirtieth day after the date on which it was laid before it unless Parliament earlier resolves to annul the statutory instrument.

## SCHEDULE (Section 11 (1), (2) and (6))

ADMINISTRATIVE ACTIONS IN RESPECT OF WHICH APPLICATION OF SECTIONS 3(1)(C), 3(2) AND 6 EXCLUDED OR QUALIFIED

### PART I

ACTIONS TO WHICH SECTIONS 3(1)(C), 3(2) AND 6 DO NOT APPLY

1. Any exercise or performance of the executive powers or functions of the President or Cabinet.
2. Decisions to institute or continue or discontinue criminal proceedings and prosecutions.
3. Decisions relating to the appointment of judicial officers.

### PART II

ACTIONS IN RESPECT OF WHICH APPLICATION OF SECTION 3(1)(C) MAY BE QUALIFIED

Any disciplinary action taken in terms of the following Acts:

(a) Defence Act [*Chapter 11:02*];

(b) Police Act [*Chapter 11:10*];

(c) Prisons Act [*Chapter 7:11*].