

SOUTH AFRICAN SHORE ANGLING ASSOCIATION

BYLAW (J) TO THE 2020 CONSTITUTION Version 18



PROMOTION OF ADMINISTRATIVE JUSTICE ACT POLICY

Contents

| | |
|--|---|
| 1. INTRODUCTION | 3 |
| 2. INTERPRETATION | 3 |
| 3. SCOPE OF THE POLICY | 4 |
| 4. POLICY IMPLEMENTATION | 4 |
| 5. POLICY REVIEW | 4 |
| 6. ADMINISTRATIVE ACTION | 4 |
| 7. EMPOWERING PROVISION | 4 |
| 8. A DECISION MUST BE | 5 |
| 9. DISCRETIONARY POWERS | 5 |
| 10. GROUNDS FOR REVIEW APPEAL | 5 |
| 11. HOW DO A MEMBER REQUEST REASONS | 5 |
| 12. WHAT REASONS CAN BE GIVEN | 6 |
| 13. WHAT CAN BE EXPECTED FROM THE ADMINISTRATION | 6 |
| 14. INTERNAL APPEAL PROCEDURE | 6 |
| 15. CONTRAVENTIONS OF THIS POLICY | 6 |

1. INTRODUCTION

- 1.1. As a National Sport Confederation recognized by the South African Sport and Olympic Committee (SASCOC) as the supreme governing body for the sport of Angling and Casting in South Africa are regulated by the National Sport and Recreational Act.
- 1.2. To give effect to the right to administrative action that is lawful, reasonable and procedurally fair and to the right to written reasons for administrative action as contemplated in section 33 of the Constitution of the Republic of South Africa, 1996; and to provide for matters incidental thereto.
- 1.3. WHEREAS section 33 (1) and (2) of the Constitution provides that everyone has the right to administrative action that is lawful, reasonable and procedurally fair and that everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.
- 1.4. What is the Promotion of Administrative Justice Act (PAJA). The PAJA is the law passed to "give effect" to the right to just administrative action in the Bill of Rights. This says everyone has the right: To fair, lawful and reasonable administrative action; and to reasons for administrative action that affects them negatively.

2. INTERPRETATION

2.1. General.

2.1.1. The PAJA gives effect to the right to administrative action that is lawful, reasonable and procedurally fair as well as to the right to written reasons for administrative action as contemplated in section 33 of the Constitution of the Republic of South Africa, 1996.

2.1.2. It seeks to make the administration effective and accountable to people for its actions.

2.2. Administrative justice.

It concerns how we interact as individuals when the Confederation/NF/NA, or those working on its behalf, act in ways that appear wrong, unfair or unjust.

2.3. Purpose of PAJA.

The PAJA aims to make the administration effective and accountable to people for its actions and promotes members' right to just administration.

2.4. Administrators.

Administrators are in charge of administrative duties which is part of the duties of office-bearers and executive members. Administration refers to activities that deal with organizing and managing the work of SASACC/NF/NA.

3. SCOPE OF POLICY

This policy applies to all Executive, Sub Committee members, Member's Executives and all affiliated members of SASACC. This policy covers all the administrative actions and excludes actions taken as procedures according to the SASACC Procedure for Avoidance and Resolution of Disputes and Disciplinary Codes.

4. POLICY IMPLEMENTATION

- 4.1. All the affiliated members of SASACC or chosen to represent SASACC or South Africa shall have a responsibility to adhere to this policy and to ensure that the integrity and image of the angling sport and SASACC are protected, promoted and maintained.
- 4.2. The policy will be effective as from 1 July 2018 and considered as implemented on all the organizational structure on all the levels within SASACC.

5. POLICY REVIEW

This policy will be reviewed as and when it is required to be revisited.

6. ADMINISTRATIVE ACTION

Administrative action consists out of the following elements:

- 6.1. Decisions that administrators make as part of their daily tasks are usually administrative nature and based on an empowering provision to ensure that decisions are constitutional and within the scope of the administrators' powers.
- 6.2. Policy decisions of the executive excluded decisions.
- 6.3. All decisions of an administrative nature taken based on applicable prescripts will be affected.
- 6.4. A decision will adversely affect the rights of a member or a group when it has a negative effect – this will include decisions that:
 - 6.4.1. Require someone to do something or not to do something.
 - 6.4.2. Limit or remove someone's rights.
 - 6.4.3. Lead to the conclusion that someone does not have a right to something.
 - 6.4.4. A beneficial decision would therefore not constitute administrative action.
- 6.5. There are three components:
 - 6.5.1. Legal effect: The decision must be legally binding based on the Constitution & By-Laws & Regulations.
 - 6.5.2. Direct effect: The decision must be the final one – if the making of a decision requires an administrator to take several steps or decisions, and only the last steps effects a member, then only the last step will constitute as an administrative action.
 - 6.5.3. External effect: The decision must affect someone who is not a member of the SASACC.

7. EMPOWERING PROVISION

An empowering provision is a provision in the Constitution & By-Laws that allows an administrator to make a decision (discretionary).

8. A DECISION MUST BE

- 8.1. The decision made must be justifiable by providing good reasons and the process of decision-making should be thorough.
- 8.2. The administrator must make a decision in terms of an empowering provision and must be authorised by the Constitution & By-Laws & Regulations.
- 8.3. The decision should not be arbitrary, and a rational connection should exist between a legitimate governance purpose and the measures adopted – all relevant factors should be taken into account and the decision should thus be based upon findings of the Constitution & By-Laws & Regulations.

9. DISCRETIONARY POWERS

- 9.1. Discretionary powers must be used only by the person/s given these powers.
- 9.2. Discretionary powers must be used within the Constitution & By-Laws & Regulations for the purposes that they are given.
- 9.3. Decisions can only be taken for reasons allowed by the Constitution & By-Laws & Regulations.
- 9.4. When an administrator is using discretion, he or she can only take relevant factors into account – if the relevant factors are not considered or irrelevant factors are taken into account, the decision is not taken in good faith.

10. GROUNDS FOR REVIEW APPEAL

A member may lodge an appeal related to an administrative action based on the following reasons:

- 10.1. Lack of authority.
- 10.2. Biasness.
- 10.3. Failure to comply with mandatory and material procedure.
- 10.4. Procedural unfairness.
- 10.5. An error of law based on the Constitution, By-Laws & Regulations.
- 10.6. Rationality & Reasonableness.

11. HOW DOES A MEMBER REQUEST REASONS

- 11.1. The requests must:
 - 11.1.1. Be in writing.
 - 11.1.2. Say what decision you are requesting reasons for.
 - 11.1.3. Say why you think the decision is wrong.
 - 11.1.4. Include your name, postal address, email address, fax and telephone numbers; and
 - 11.1.5. Be sent by email.
- 11.2. A member can request reasons for any decision that negatively affects their rights. Sometimes, these reasons will be given without having to request them. If not, the member must request them within 90 days of finding out the decision.

12. WHAT REASONS CAN BE GIVEN

- 12.1. The administrators must inform the member of how they reached their decision.
- 12.2. If the member asked questions, these must be answered by the administrators. This does not mean that the administrators have to convince the member that their decision was correct.
- 12.3. The administrators must give the answers or reasons in written format to the member.
- 12.4. The administrators must be given the reasons within 90 days of the administrator receiving the request from the member.
- 12.5. Should the administrator not provide the reasons within 90 days without valid reasons, the matter may be referred to the SASCOG.

13. WHAT CAN BE EXPECTED FROM THE ADMINISTRATION

When a member applies for information regarding an administrative action, the member can expect the following from the administrator:

- 13.1. To be told what decision is being planned before it is taken.
- 13.2. Allowed to tell their side of the story before a decision is made.
- 13.3. To be told what the decision is and of their right to internal appeal or review.
- 13.4. Told that you have the right to request reasons; and
- 13.5. To be given proper written reasons for the decision.

14. INTERNAL APPEAL PROCEDURE

Should the member not accept the information or answers given, the following process must be followed:

- 14.1. The members must lodge a dispute as stipulated in the SASACC Procedure for Avoidance and Resolution of Disputes and Disciplinary Codes.
- 14.2. Should the member not accept the outcome of the dispute procedure, the member may refer the matter to the SASCOG for final consideration and judgement.
- 14.3. The referral to the SASCOG must be done within 6 months of any internal appeal having been decided on.

15. CONTRAVENTIONS OF THIS POLICY

Should anyone in any manner whatsoever, whether intentionally or negligently, cause conflict due to non-compliance with the application of this policy, they will be deemed to be in breach of an official policy of SASACC as part of the Constitution and the Code of Conduct. The member or affiliated individual will be subjected to appropriate disciplinary action.