UPDATE FROM THE OFFICE OF THE PENSION FUNDS ADJUDICATOR

Lebogang Mogashoa, Pension Funds Adjudicator

Pension Lawyers Association Annual Conference

March 2026

Contents

INTRODUCTION

Setting the Scene: Operating Environment

Economic

- Weak economic environment
- S13A crisis – R7,2bn
- Withdrawal claims
- Two-Pot withdrawals

Legal

- COFI – Jurisdiction & new types of complaints
- Conduct Standards – Potential new complaints
- Two-Pot – direct & indirect
- Financial Ombud System Reform – Twin Ombud
- Ombud Council Rules

Technology

- Efficiency vs Cost & Risk
- Cybersecurity risk

Social

- Increased rights awareness
- Increased awareness of Ombud system
- More sophisticated complaints

Strategic Priorities

Complaints Resolution

- 80% of complaints finalised within 6 months (FY2027)
- Internal processes reform to further enhance efficiency

Awareness & Visibility

- Walk-ins remain popular
- 2 physical access points within 5 years

Talent

- Talent attraction
- Development - Upskilling
- Retention

Regulatory Adaptation

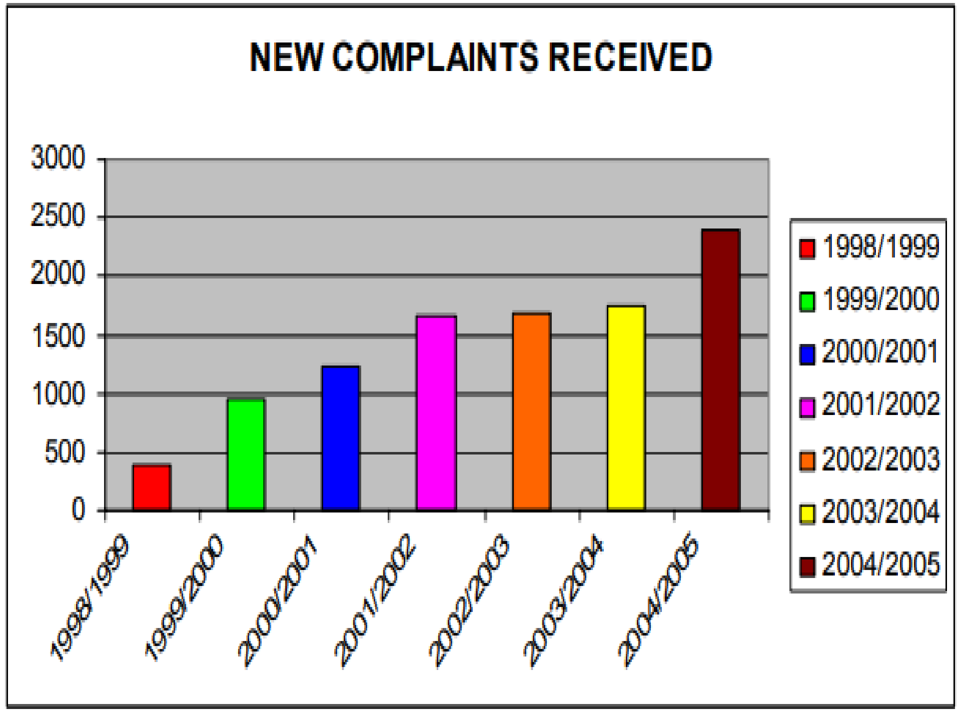
- **COFI** – Volumes and Complexity
- **Ombud System Reforms** – Rebranding, upskilling
- **OC Rules** – Conciliation Product

Governance and Administration

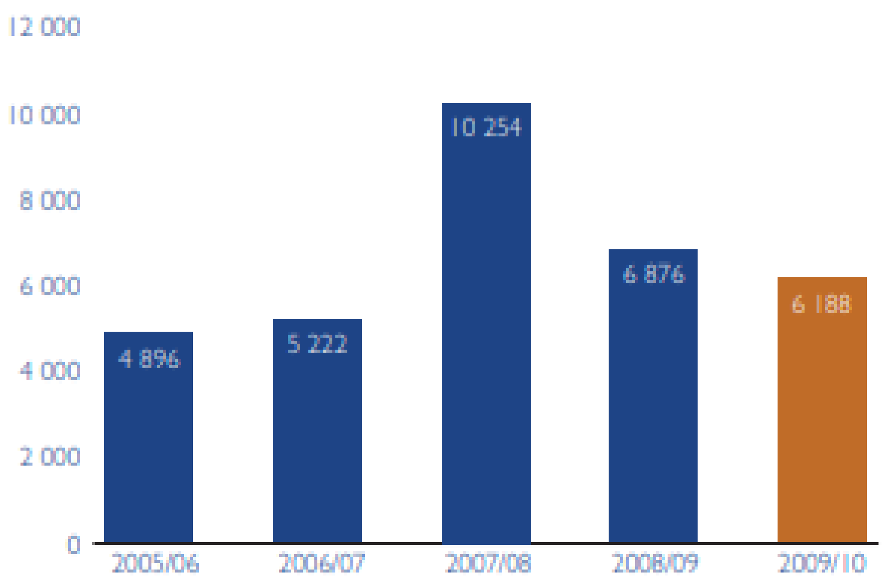
- Unqualified audit opinion

Organisational Performance

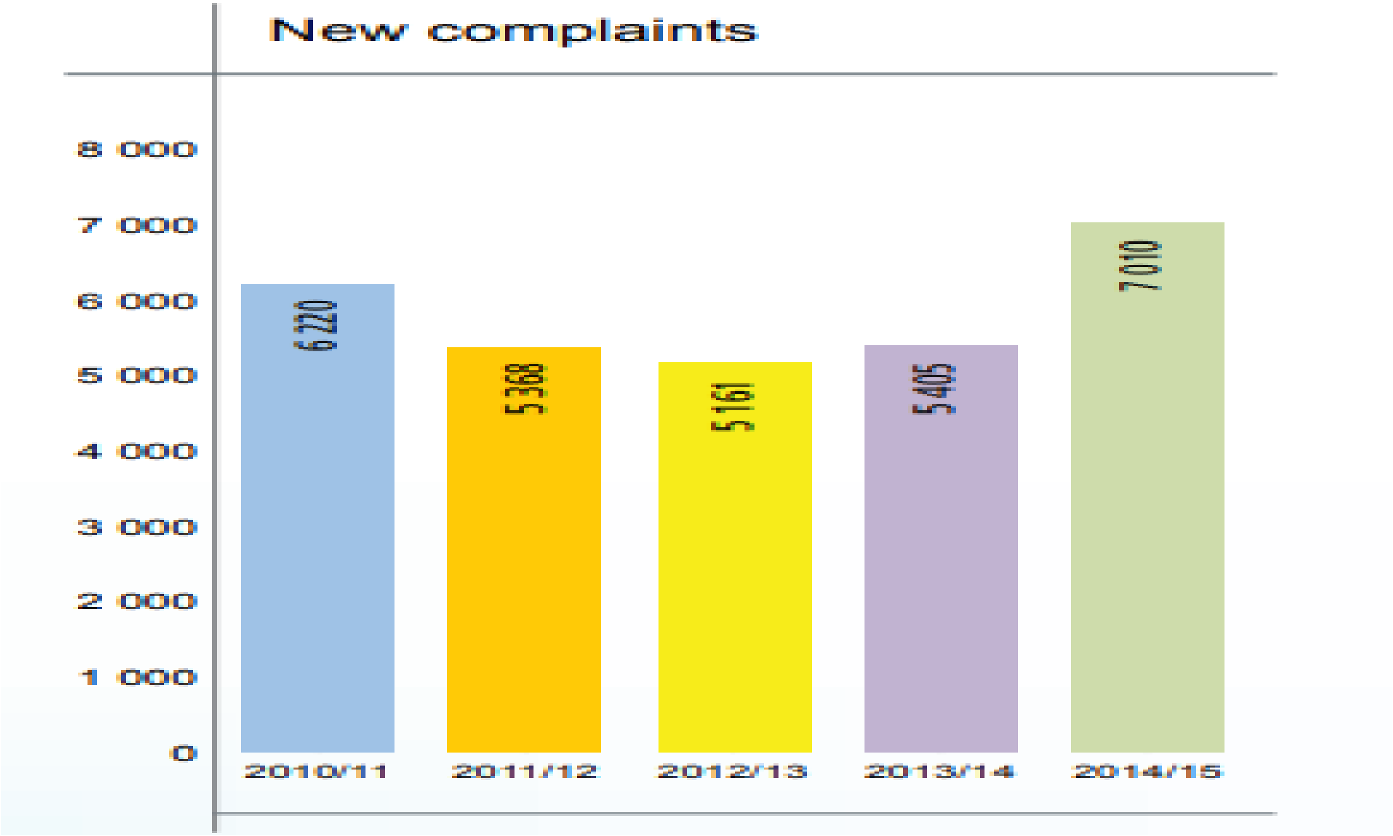
- **Historical complaints data:**



Overview of new complaints received per year

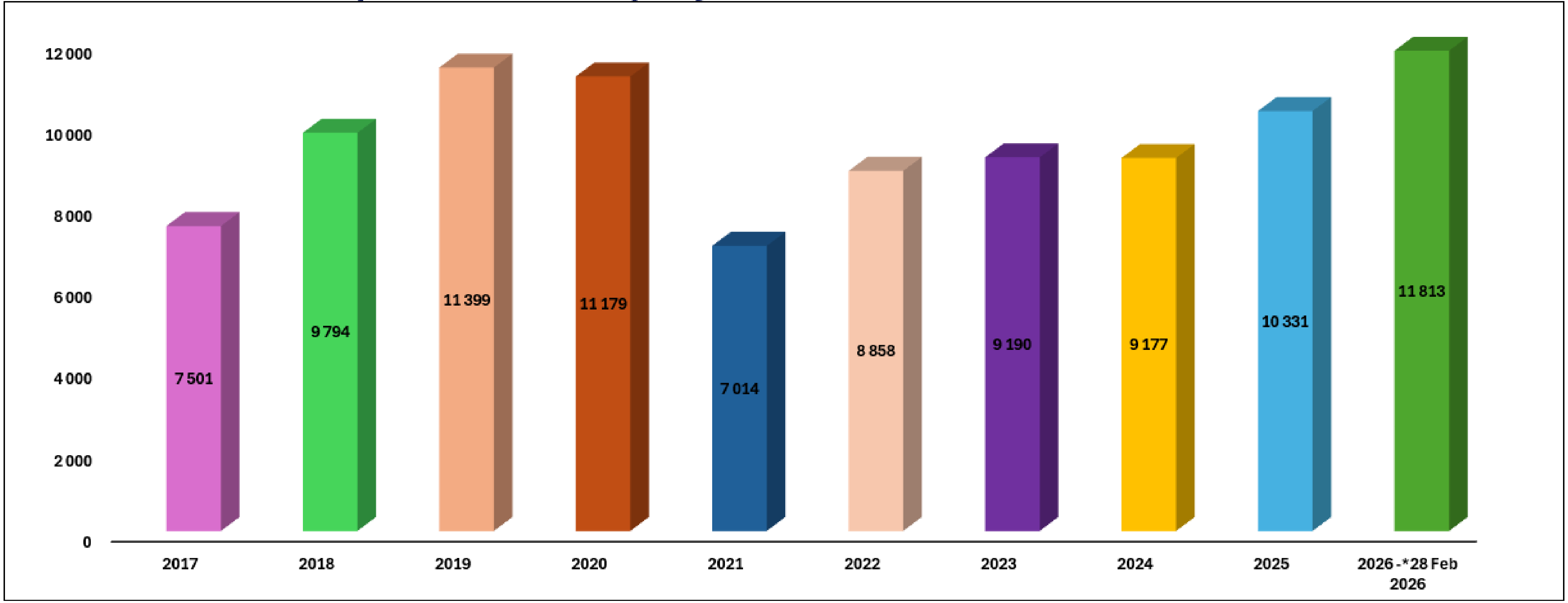


Organisational Performance



Organisational Performance

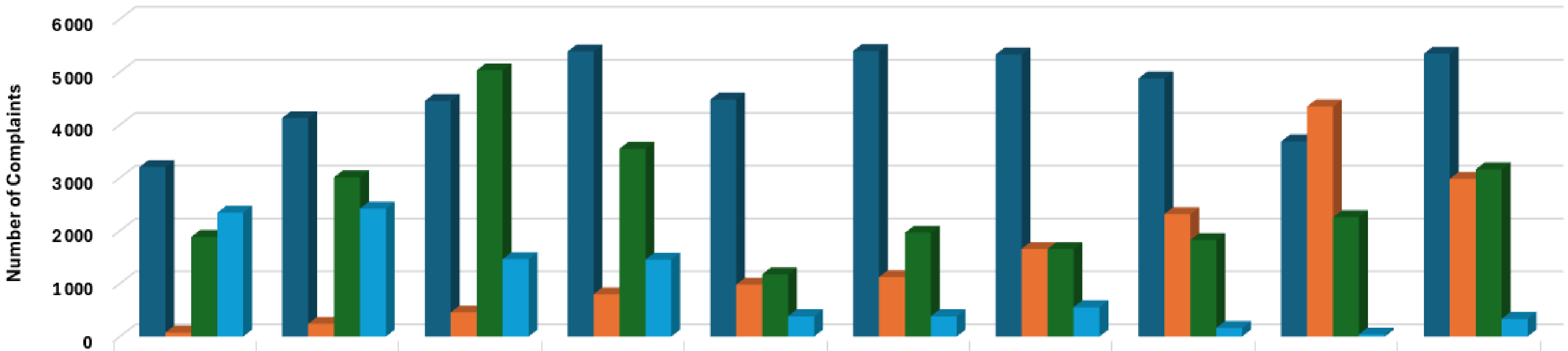
Overview of new complaints received per year



Organisational Performance

How we receive complaints

Complaints receipt methods

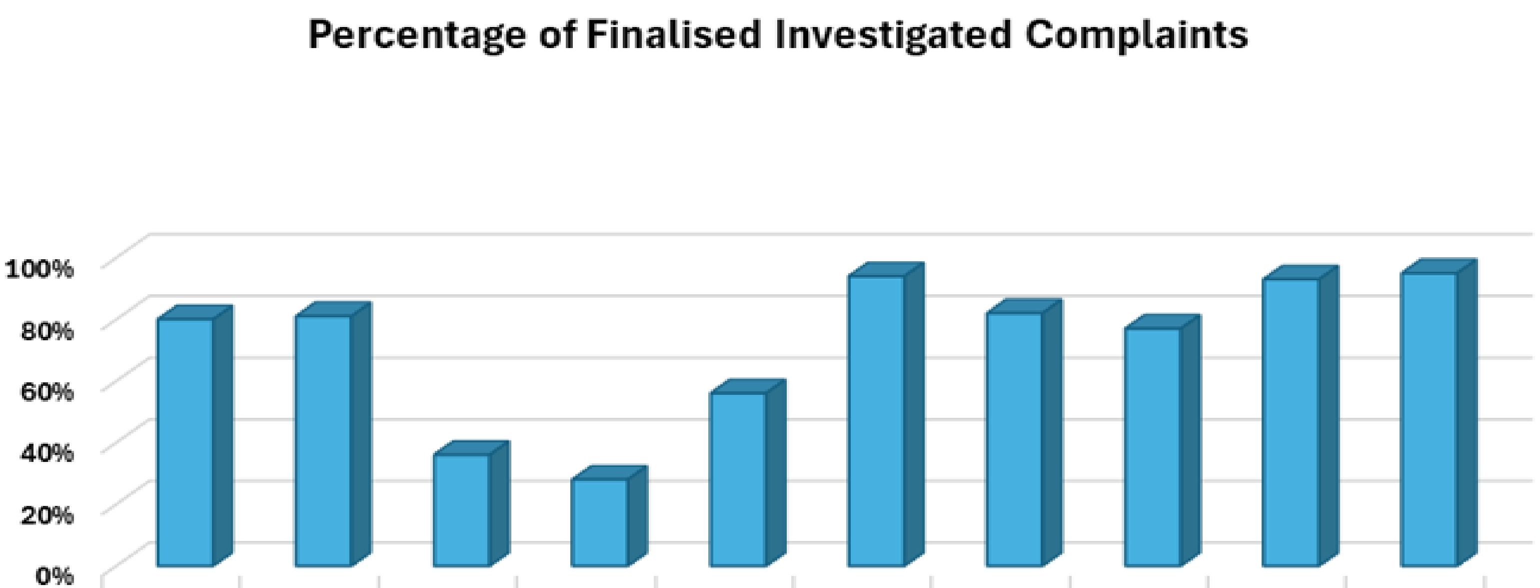


	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026 -*28 February 2026
Email	3 202	4 129	4 454	5 386	4 479	5 395	5 330	4 877	3 686	5 344
Website	73	238	454	796	978	1 121	1 654	2 313	4 350	2 978
Walk-in	1 885	3 009	5 032	3 547	1 175	1 960	1 654	1 825	2 256	3 158
letter/Fax	2 341	2 418	1 459	1 450	382	382	552	162	39	333

Method to Receive Complaints

Email Website Walk-in letter/Fax

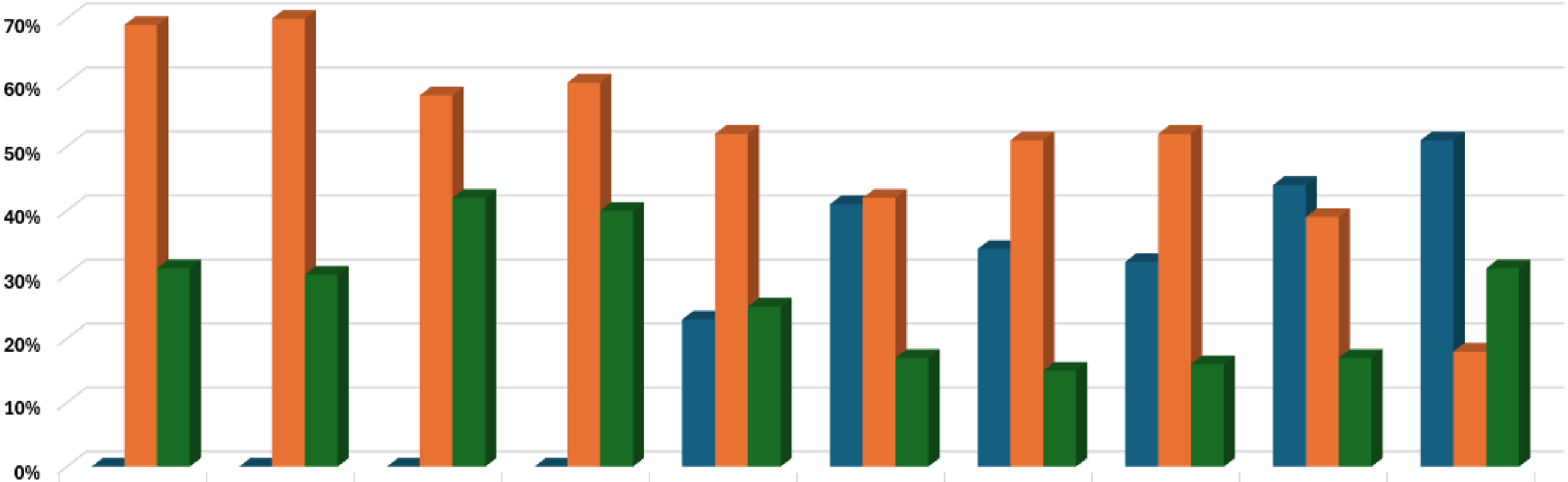
Organisational Performance



	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026 - *28 Feb 2026
Percentage	80%	81%	36%	28%	56%	94%	82%	77%	93%	95%

Organisational Performance

Categories of Complaints Finalised



	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026 -*28 Feb 2026
Section 13A Compliance	0%	0%	0%	0%	23%	41%	34%	32%	44%	51%
Withdrawal Benefits	69%	70%	58%	60%	52%	42%	51%	52%	39%	18%
Others	31%	30%	42%	40%	25%	17%	15%	16%	17%	31%

Section 13A Compliance   Withdrawal Benefits   Others

Organisational Performance

- **Notable Trends on the statistics:**
  - Excluding outliers, complaints generally around 5 200 and 7000 in earlier years of the OPFA (i.e. up to FY2014)
  - Big increase from FY 2018 – (9700+) generally sustained except 2021
  - Previous record: 11 399 in 2018/19 – started seeing S13A issues surfacing in municipal funds
  - Unchartered territory: **12500** - **13 000** by end of FY2026
  - Disproportional increase of complaints relative to staff complement, e.g. 2010
    - 2010 – staff complement was 56 and complaints received were c.6200
    - 2026 – staff complement 78 and complaints anticipated is 12500+
    - Staff increase (2010 to 2026): 39% vs Complaints increase (2010 to 2026): 100%+
  - Email / Website leading, but walk-ins still very popular
  - **51%** of matters finalised are S13A

Specific Matters

- **Cooperation to sustain performance:**
  - Shared objectives: **secure** retirement & **confidence** in retirement fund system
  - Value co-creation: **fairness** of products, **redress** and **feedback** loop
  - Cooperation – champion OPFA, support our work, file responses on time, comply with orders

- **Non-cooperative funds / administrators**:
  - Not filing responses (at all or on time), ignoring OPFA correspondence, asking for unjustified / numerous extensions, etc
  - Commissioned a legal opinion from SC
  - S30J of the PFA

"*(1) The Adjudicator may follow any procedure which he or she may consider appropriate in conducting an investigation, including procedures in an inquisitorial manner*

…

(3) Sections 1,2,3,4 and 6 of the Commissions Act, 1947 (Act 8 of 1947), shall apply mutatis mutandis to the Adjudicator."

Specific Matters

- **Opinion centred on**:
  - Whether and how the PFA can leverage the Commissions Act to issue summons and subpoenas against un-cooperative funds / administrators
  - What the consequences of a fund / administrator failing to comply with the summons / subpoena issued by the Adjudicator would be
- **SC's opinion**:
  - *Mutatis mutandis* – means "with the necessary changes" to make them applicable in the new context (*Chevron v Nkambule*, *S v Mhlungu)*
  - PFA possesses statutory powers equivalent in substance to those exercised by a Commission of Inquiry, including:
    - Power to sit anywhere in RSA (s2)
    - Power a provincial division of the HC has in relation to witnesses including power to summon witnesses, administer an oath, examine witnesses, subpoena the production of books, documents and objects (s3)
    - Power to hold hearings in public (s4)

Specific Matters

- **SC's opinion**:
  - PFA can issue summons if a fund fails to file a response
  - Served by authorised official or the Sheriff
  - An offence (punishable by fine or imprisonment or both) to:
    - Defy / wilfully fail to comply with summons / subpoena
    - Fail to attend at time and place specified in summons
    - Remain in attendance until excused
    - Refuse to be sworn in
    - Fail to answer fully or satisfactorily any question asked
    - Lie under oath
    - Fail to produce any book, document or object required in the summons
  - Adjudicator cannot conduct contempt proceedings *mero motu* – can lay a criminal charge of contempt or institute civil contempt proceedings against the contemnor
- Summons / subpoena will be directed at Principal Officer and Chairperson of the Board

Specific Matters

- **Ombud Council Rules**:
  - Effective dates: 4 March 2026, 1 October 2026 and 1 April 2027
  - **4 March 2026** – already effective and implemented – codifies current practices
  - **1 October 2026 – Most important Rules:**
    - Award of costs – developing an approach (e.g. when, how they will be quantified and included in the determination)
    - Determination + explanation of next steps and how to enforce determination
  - **1 April 2027 – Most important rule is on Conciliation**
    - Design of conciliation product focusing on **effectiveness**, **seamless integration** and **cost efficiency**

Notable Trends

- **Section 13A** crisis greatest contributor to case load:
  - Some people using our anonymous tip-off line to anonymously report their employers – some ask to not be identified for fear of reprisals
  - S13A now surfacing in **non-traditional areas** (e.g. large commercial umbrella funds and municipal funds)
  - Increasing number of **funds directly lodging S13A complaints** with the PFA on behalf of affected members
  - Funds **delay in lodging complaints**, and thus we have to time-bar some of the contributions they want to recover in those proceedings – section 30I – **potential legal claim by a complainant against the board for failing to act**
  - Some funds lodge complaints but they **do not request a section 13A(8)** order against the responsible person – often due to not wanting to upset employers who are their clients – **conflicts of interest** – fiduciary duty to members and the fund
  - Employers raising S30I time-barring

Notable Trends

- Some funds allege outstanding contributions only for employer to provide proof that money was paid but not properly allocated by the Fund
- Funds failing to provide us with a **computation of outstanding contributions in order to secure an order sounding in money** for ease of enforcement
- Exploring partnerships with other strategic partners to stem S13A non-compliance
  - **MOU with Auditor General** to assist AG tackle S13A non-compliance in state institutions (e.g. municipalities)

Notable Trends

- **Withholding**:
  - Funds withholding at request of employer without giving the complainant a hearing – then suddenly rushing to give the complainant a hearing once they receive notice of a complaint from the OPFA – Attempt to **cure procedural defect**
  - Acquiescence to employer **withholding requests without objectively interrogating** request – especially standalone funds
- **Claim Fraud:**
  - Unclaimed benefits – member coming back many years later to claim, only for the Fund to claim that it received and paid a claim some years back

Notable Trends

- **Two Pot**:
  - **Poor understanding of two-pot rules**, leading to complaints, e.g. complainant wanting to be paid full benefits (including retirement component)
  - Funds **not communicating about the remaining retirement component** when paying withdrawal benefits – potential to create unclaimed benefits because complainant thinks s/he does not have any further benefits in the Fund once paid a withdrawal benefit
- **Withdrawals:**
  - S13A causing payment delays
  - Lack of effective communication of calculations continues to be an issue

Notable Trends

- **Benefit payments generally**:
  - Delays in payment leading to complaints about financial loss suffered as a result the delay
- **Transfers**:
  - Delays in transfer leading to complaints about financial loss suffered as a result the delay
- **Section 37C**:
  - Delays in completing investigations because some funds simply sit back and wait (e.g. one with member who died in 2020)
  - Payments to beneficiaries in instalments – payments to guardians beyond the age of majority – complainant accused the Fund of being grossly negligent by continuing to pay to his father without regularly monitoring if he is using the money for the right purposes, but also why they continued paying to the guardian past the age of majority – warning to trustees
  - Blind reliance on affidavits – Makgopa determination – claimant admitting they lied in affidavits

Thank you for listening!

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Pension Funds Adjudicator

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