



A SIMPLER, STRONGER FINANCIAL SECTOR OMBUD SYSTEM

FEEDBACK STATEMENT

February 2024



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA



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ABOUT THIS FEEDBACK STATEMENT

National Treasury has published a policy statement which outlines some key decisions of principle that National Treasury has taken about the future shape of the reformed financial ombud system.

This feedback statement, published alongside the policy statement, describes in greater detail the process by which these decisions have been reached.

- Chapter 1 provides an overview.
- Chapter 2 explains the context and consultation process.
- Chapters 3 to 10 explain in greater detail some of the policy decisions made by National Treasury.
- The annex gives National Treasury responses to all the individual recommendations in the report from the World Bank Group (WBG).

Various acronyms used throughout this statement have been spelled out in a list preceding the first chapter, for ease of reference.

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ABBREVIATIONS AND ACRONYMS

Absa	Absa Bank
ADR	Alternative dispute resolution (out-of-court redress)
Banking Ombud	Ombudsman for Banking Services
BASA	Banking Association South Africa
COFI Bill	Conduct of Financial Institutions Bill
Credit Ombud	Office of the Credit Ombud
DTIC	Department of Trade, Industry and Competition
FAIS Ombud	Office of the Ombud for Financial Services Providers
FIA	Financial Intermediaries Association
FSCA	Financial Sector Conduct Authority
FSR Act	Financial Sector Regulation Act (Act 9 of 2017)
FST	Financial Services Tribunal
IRFA	Institute of Retirement Funds Africa
JSE	Johannesburg Stock Exchange
JSE Ombud	Johannesburg Stock Exchange Ombud
LTI Ombud	Ombudsman for Long-Term Insurance
NC Act	National Credit Act (Act 34 of 2005)
NCR	National Credit Regulator
NCRF	National Clothing Retail Federation of South Africa
NFO	National Financial Ombud
NFO1	NFO stage 1—Amalgamation of existing Banking, Credit, LTI, and STI Ombuds
NFO2	NFO stage 2—Underpinned by amended FSR Act plus Ombud Council recognition, and incorporating FAIS Ombud
OC	Ombud Council
PA	Prudential Authority
PAJA	Promotion of Administrative Justice Act (Act 3 of 2000)
PFA	Pension Funds Adjudicator
PFMA	Public Finance Management Act
RFO	Retirement Funds Ombud
SAIA	South African Insurance Association
STI Ombud	Ombudsman for Short-Term Insurance
WBG	World Bank Group

OVERVIEW

An effective financial ombud system helps to underpin consumer confidence in financial services and to enhance financial inclusion for vulnerable and disadvantaged customers. The financial ombud system in South Africa currently comprises a patchwork of eight bodies: five industry ombud schemes, two statutory ombud schemes, and a statutory oversight body.

A 2017 consultation by National Treasury described three possible alternative models for reform, but the responses produced no consensus on the appropriate way forward. National Treasury and the Financial Sector Conduct Authority (FSCA) asked the World Bank Group (WBG) to examine the ombud system and make recommendations.

The resulting WBG report

- Involved widespread research and consultation and took into account the key attributes of international good practice and the particular circumstances in South Africa;
- Concluded that the overall system and its components will need significant changes to make it fit for purpose now and in coming years;
- Recognised the importance of keeping the ombud system operational (retaining existing personnel, expertise, and stakeholder support) through the transition to a reformed system;
- Recommended a new structure that builds on existing strengths, addresses the complexity and weaknesses identified, and minimises risks and disadvantages in implementation;
- Noted that its recommendations were interrelated and should be considered as a whole, to ensure a coherent approach or the reformed system would be unbalanced; and
- Highlighted the importance of a smoothly planned transition to the new ombud system.

National Treasury consulted publicly about the WBG report and its recommendations. Respondents generally accepted the WBG's detailed analysis of the current system and its weaknesses. The WBG's recommendations for reform commanded widespread support. Unlike in 2017, there was a high degree of consensus.

As described in the accompanying policy statement—*The New Financial Ombud System for All: Policy Statement*—National Treasury has accepted most of the recommendations in the WBG report, and the reformed financial ombud system will comprise

- A new National Financial Ombud (NFO);
- A reformed Retirement Funds Ombud (RFO); and
- A modified Ombud Council (OC).

The accompanying policy statement also includes a comprehensive implementation plan prepared by National Treasury in consultation with the FSCA, OC, and current ombud schemes and with technical support from the WBG.

CONTEXT AND CONSULTATION

CURRENT FINANCIAL OMBUD SYSTEM

The current structure of the financial ombud system in South Africa is extremely complex, comprising the following:

- Two ombud schemes established by statute:
 - FAIS Ombud:¹ Office of the Ombud for Financial Services Providers
 - PFA: Pension Funds Adjudicator
- Five industry ombud schemes recognised by the OC:
 - Banking Ombud: Ombudsman for Banking Services
 - Credit Ombud: Office of the Credit Ombud
 - LTI Ombud: Ombudsman for Long-Term Insurance
 - STI Ombud: Ombudsman for Short-Term Insurance
 - JSE Ombud: Johannesburg Stock Exchange Ombud (not a separate legal entity)
- And a statutory oversight body:
 - OC: Ombud Council

2017 NATIONAL TREASURY CONSULTATION

The financial ombud system has been under review since a 2017 National Treasury consultation policy document—*A Known and Trusted Ombuds System for All: Consultation Policy Document*²—was released, describing three possible alternative models. The responses to that consultation produced no consensus on the appropriate way forward.

In order to progress the review, National Treasury and the FSCA asked the WBG to undertake a diagnostic report into South Africa's financial ombud system and to make recommendations.

2020 WBG CONSULTATION AND EVALUATION

The WBG team considered

- The prior research;
- The responses to National Treasury's 2017 consultation policy document;
- Published documentation relating to the ombud system;
- Responses from the ombud schemes to a detailed questionnaire and many follow-up questions;
- Unpublished scheme documentation and process manuals supplied by the ombud schemes;
- Two rounds of detailed video discussions with ombud schemes;

¹ The FAIS Ombud also has a statutory 'catch-all' mandate to deal with most complaints not covered by the other ombud schemes.

² See the *Consulting Policy Document* at www.gov.za/sites/default/files/gcis_document/201709/known-and-trusted-ombuds-system-allseptember2017a.pdf.

- Responses from industry and consumer stakeholders to an issues paper;
- A round of detailed video discussions with relevant stakeholders; and
- Regular discussions with National Treasury and the FSCA.

The existing ombud system was evaluated against key attributes distilled from international good practice guidance, comprising the following:

- Effectiveness: Consistent redress in all appropriate sectors of financial services
- Independence: Visibly objective, impartial, and unbiased
- Accessibility: Well known, easy to use, and free for consumers
- Fairness: Processes and decisions visibly fair and equitable
- Efficiency: Good quality of service and value for money
- Openness: Clear and open to scrutiny about its work and the lessons that can be drawn from it.

In considering those criteria, the WBG team took into account the specific context in which the ombud system operates in South Africa, including the challenges faced in relation to financial inclusion.

2021 WBG REPORT

WBG CONCLUSIONS

The WBG report³ concluded that the current financial ombud system in South Africa

- Constitutes an important alternative dispute resolution service in a complex environment;
- Provides free access to out-of-court dispute resolution for many consumers;
- Is generally seen by stakeholders as independent, professional, expertise-based, and engaged; and
- Has rules and processes that incorporate fair and equitable principles.

However, the current arrangements, based on sector-specific schemes plus piecemeal statutory reforms, have resulted in an ombud system that is fragmented and lacks overall coherence. Issues include

- Unclear jurisdictional boundaries;
- Overlaps in jurisdiction, including between industry and statutory ombud schemes;
- Gaps in coverage and mismatch with new products;
- Significantly differing rules, eligibility, processes, powers, and appeal mechanisms across schemes;
- Differing governance arrangements;
- Differing funding, with some duplication of fees and charges; and
- Outreach and accessibility activities that, because they are uncoordinated, are less effective in supporting financial inclusion.

The fragmentation in the existing system—with gaps, overlaps, and inconsistencies—creates

- Confusion and delay for consumers and consumer advisers;
- Limited visibility and accessibility, especially for rural and disadvantaged consumers;
- Serious risk that some consumers may not pursue legitimate complaints;
- Additional work and inefficiencies for financial institutions and for ombud schemes themselves; and
- Barriers to development of staff-training and operational systems.

³ See the World Bank Group's report at <https://openknowledge.worldbank.org/handle/10986/36211?locale-attribute=en>.

The WBG report

- Concluded that the overall system and its components will need significant changes to make it fit for purpose now and in coming years;
- Recognised the importance of keeping the ombud system operational (retaining existing personnel, expertise, and stakeholder support) through the transition to a reformed system;
- Did not support any of the three options set out in the 2017 Treasury Consultation, including the statutory model as the basis of a reformed system.
- Recommended a new structure that builds on existing strengths, addresses the complexity and weaknesses identified, and minimises risks and disadvantages in implementing the reforms;
- Noted that its recommendations were interrelated and should be considered as a whole, to ensure a coherent approach or the reformed system would be unbalanced; and
- Emphasised that the reforms would only create an effective system if there are clear policy decisions at the outset about the end point, avoiding the piecemeal approach of the past.

WBG REPORT RECOMMENDATIONS

The WBG report contained 62 detailed recommendations,⁴ including a reformed and simplified structure comprising a new NFO a reformed RFO), and a modified OC.

NEW NFO

The WBG report recommended that a new, nonstatutory NFO—independent of the industry and the government—should handle all complaints that seek redress from financial institutions, apart from retirement funds. This would enable the National Credit Regulator (NCR) to focus on dealing with regulatory enforcement, systemic sector-wide issues, and broader financial literacy efforts.

The NFO should absorb the work of all the industry ombud schemes (the Banking, Credit, JSE, LTI, and STI ombuds) plus that of the statutory FAIS Ombud. The NFO should have a flexible jurisdiction that can be extended over time to cover other sectors (apart from retirement funds).

The consolidation should be managed by the new NFO board—which would be appointed at the earliest possible opportunity. The NFO—independent of both industry and government—would not be statutory, obtaining its legal standing through recognition and oversight by the statutory OC.

REFORMED RFO

The WBG report recommended that the Pension Funds Adjudicator should be renamed the Retirement Funds Ombud. It should remain a statutory body but its governance should be enhanced in order to underpin its independence (in accordance with international good practice). The RFO should handle all complaints that seek redress from providers of retirement funds, including about advice they provide.

Keeping the RFO separate from the NFO would avoid adding further complexity to an already complex transition. This could be reviewed five years after full implementation of the NFO.

⁴ See pages 164 to 182 of the World Bank Group's report at <https://openknowledge.worldbank.org/handle/10986/36211?locale-attribute=en>.

MODIFIED OC

The WBG report recommended that the existing statutory provisions should be modified to give the OC increased independence (in accordance with international good practice), and give its chief executive a name more appropriate than Chief Ombud. The OC's statutory powers should be modified in order to facilitate (and then adapt to) the recommended and simplified new structure for the ombud system.

2021 NATIONAL TREASURY CONSULTATION ON WBG REPORT

National Treasury consulted publicly about the WBG report and recommendations.⁵ Written responses were received from 19 stakeholders, listed in table 1 below. The OC also provided a helpful technical paper, and the PFA and FAIS Ombud gave oral comments.

Respondents generally accepted the WBG's detailed analysis of the current system and its conclusions about the current system's weaknesses. The WBG's recommendations for reform commanded widespread support. Unlike in 2017, there was a high degree of consensus on the proposals for reform of the current ombud system.

Table 1: Stakeholders That Submitted Written Responses to the Consultation

Absa Bank Ltd (Absa)
Affinity Enterprises Holdings
Brightrock
Consumer Goods and Services Ombud
Credit Ombud
Financial Intermediaries Association (FIA)
Hollard
Ian Middup
Institute of Retirement Funds Africa (IRFA)
Johannesburg Stock Exchange (JSE)
National Credit Regulator
Ombudsman for Banking Services (Banking Ombud)
Ombudsman for Long-term Insurance (LTI Ombud)
Pension Funds Adjudicator (PFA)
PinnAfrica Insurance Underwriting Manager (Pty) Limited
Standard Bank South Africa
The Banking Association South Africa (BASA)
The National Clothing Retail Federation of South Africa (NCRF)
The South African Insurance Association (SAIA)

⁵ See the related media statement at www.treasury.gov.za/comm_media/press/2021/2021072901%20Media%20statement%20-%20WB%20Financial%20Ombud%20System%20Report.pdf.

NATIONAL TREASURY DECISIONS

The following chapters of this feedback statement discuss some decisions of principle that National Treasury has taken, after discussions with the OC and FSCA, concerning:

- Chapter 3: Overall structure of the ombud system
- Chapter 4: Scope of the NFO and RFO
- Chapter 5: Independent governance
- Chapter 6: Composition of the NFO and RFO boards
- Chapter 7: Complaints and language issues
- Chapter 8: Complaint-handling by financial institutions
- Chapter 9: Processes, procedures and forms of redress
- Chapter 10: Reconsideration mechanism.

The annex to this document sets out National Treasury responses to all the individual WBG recommendations.

LEGISLATION

So far as implementation requires legislation, the following applies:

- Some facilitating changes will be incorporated into the Conduct of Financial Institutions (COFI) Bill and the consequential amendments it will make to the Financial Sector Regulation (FSR) Act.
 - The COFI Bill will contain a new definition of ‘complaint’.
 - It will also amend the FSR Act provisions on the FAIS Ombud. This is necessary because of the repeal of the FAIS Act and the new definition of financial services.
 - Pending creation of the NFO, the Ombud for Financial Services Providers (currently known as the FAIS Ombud) will cover any complaints that are not covered by any other statutory scheme (in future, only the RFO) or by any industry scheme recognised by the OC.
 - Unless or until the OC makes any rules or designations changing this, the effect will be that the FAIS Ombud continues to deal with all complaints regarding advice and intermediation, as it does now.
 - Implementing the principle behind the WBG report’s recommendation regarding future flexibility in the treatment of complaints about advice or intermediation, this will enable their transfer into the broader ombud system.
 - The OC will only implement this (by designating any other scheme to deal with these complaints) when it is comfortable that the scheme(s) concerned have the requisite capacity.
- More structural changes will be incorporated in a new Omnibus Bill, which will, amongst other things, further amend Chapter 14 of the FSR Act to address ombud system reforms.

National Treasury is in discussion with the OC about which details of the new ombud system are best dealt with in primary legislation and which are best left to the rule-making (subordinate legislation) and designation powers of the OC.

In advance of the new primary legislation, the OC’s existing rule-making and designation powers may be used to address jurisdictional gaps and overlaps in the current system. The OC has begun a process of identifying such gaps and overlaps.

Legislation will necessarily take time. National Treasury will facilitate the tabling of the COFI Bill in Parliament as soon as practicable, and hopes that a draft of the Omnibus Bill will be published for consultation during 2024.

INTERIM PROGRESS

The four largest industry ombud schemes (the Banking, Credit, LTI, and STI Ombuds) are already working on a voluntary amalgamation, under the oversight of the OC. The amalgamated ombud scheme is being designed broadly along the lines recommended by the WBG report for the wider NFO.

Significant work has been done by the four schemes on developing the governance model, funding, and a single case management system. Three of the schemes moved into shared premises from April 1, 2023. The four schemes are aiming for January 1, 2024 as the start date for the consolidated scheme.

National Treasury welcomes these initiatives by the OC and the industry ombud schemes, which will help smooth the transition to the new reformed ombud system. The amalgamated scheme will be able to provide the core of the new NFO, which will absorb the JSE Ombud and, once the necessary legislation has been enacted, the FAIS Ombud.

OVERALL STRUCTURE OF THE OMBUD SYSTEM

RECOMMENDED IN THE WBG REPORT

The WBG report recommended a reformed and simplified structure for the ombud system, which should comprise

- A new NFO—independent of the industry and the government—that should absorb the work of all the industry ombud schemes plus that of the statutory FAIS Ombud);
- A reformed RFO that should be created by renaming the statutory PFA and enhancing its governance in order to underpin its independence; and
- A modified statutory OC with enhanced governance in order to underpin its independence and modified powers to oversee the reformed ombud system.

CONSULTATION RESPONSES

None of those who submitted written responses opposed the proposed simplified structure although the Banking Association South Africa (BASA) and Absa Bank (Absa) questioned whether the NFO should include the JSE Ombud because of the nature of its cases (though the small number of cases mitigated their concerns) and whether it would not be simpler for the RFO to be merely be a division of the NFO from the outset.

NATIONAL TREASURY CONCLUSIONS

The widespread acceptance of the WBG report's recommendations for the overall structure is welcome, and contrasts with the lack of consensus in 2017. National Treasury agrees that the overall structure for a reformed ombud system will comprise a new NFO, a reformed RFO, and a modified OC.

NFO

The new NFO will

- Be independent of the industry and the government; and
- Absorb the work of all the industry ombud schemes (the Banking, Credit, JSE, LTI, and STI Ombuds) plus that of the statutory FAIS Ombud.

Incorporating the JSE Ombud within the NFO is consistent with the overall simplification of the system as well as increasing independence in JSE cases, enhancing processes, and improving accessibility. The continuing role of the JSE's Market Regulation Division will assist with the nature of its cases. Adding complaints in relation to other market infrastructures to the NFO's jurisdiction in due course is also being considered.

National Treasury accepts that incorporating the RFO within the NFO now would add further complexity to what will already be a complex transition, and would cause delay. National Treasury's medium-term intent is for the NFO to take over the work of the RFO as a future step.

RFO

The reformed RFO will

- Be created by renaming the statutory PFA and enhancing its governance in order to underpin its independence and accountability (in accordance with international good practice); and
- Continue the existing jurisdiction of the PFA over all complaints that seek redress from providers of retirement funds, including administrators and employers.

The COFI Bill will rename the PFA and clarify the RFO's jurisdiction. Reforms to the governance structure of the RFO will be proposed and consulted on through a subsequent Omnibus Bill.

OC

National Treasury agrees in principle that the OC's governance should be enhanced in order to underpin its independence (in accordance with international good practice).

Further consideration is being given to the extent to which the OC's powers and functions need to be adapted in light of the new ombud system structure once the NFO has been up and running for sufficient time.

SCOPE OF THE NFO AND RFO

RECOMMENDED IN THE WBG REPORT

The WBG report recommended that

- The NFO should handle all complaints that seek redress from financial institutions, apart from retirement funds; and
- The RFO should handle all complaints that seek redress from providers of retirement funds, including about advice they provide.

This means that the RFO's jurisdiction should

- Continue the existing statutory jurisdiction of the PFA under the Pension Funds Act 1956 (as amended); and
- Add advice and intermediary services in respect of retirement funds where that advice or intermediary service is provided by any person/entity that is otherwise within its jurisdiction.

The WBG considered that this would address one of the key shortcomings of the existing ombud system, which is that (in most cases) complaints about a product go to one ombud scheme and complaints about advice or intermediation concerning that product go to another ombud scheme.

The report said that the recommendation should not prevent the NFO arranging with the RFO for the NFO to deal with the whole of a complaint that includes advice or intermediary services relating to a retirement fund, where that is part of a wider complaint against a financial institution that is otherwise within the NFO's jurisdiction.

The WBG also recommended that all complaints that seek redress in relation to credit should go to the NFO, which would regularly exchange information with the NCR. If the NCR gave up handling redress for complaints in credit—so that all such complaints would go to NFO, which would regularly exchange information with the NCR—this should

- Be clearer for consumers;
- Be simpler for the financial industry; and
- Enable the NCR to focus its resources on its regulatory role.

CONSULTATION RESPONSES

Whilst the distribution of functions between the NFO and the RFO was broadly supported, both the BASA and Absa said that advice or intermediation on retirement funds should go to the NFO. The Credit Ombud agreed with the WBG view that it would be clearer for consumers and simpler for the industry if the NFO handled all redress complaints in the credit sector. The BASA and Hollard asked for clarity on whether or not the NCR would continue to handle such complaints.

NATIONAL TREASURY CONCLUSIONS

National Treasury agrees that

- The NFO should aim to be able to handle all complaints that seek redress from financial institutions⁶, apart from retirement funds; and

⁶ Subject, in the case of credit, to any complaint-handling role of the NCR.

- The RFO should continue the existing statutory jurisdiction of PFA under the Pension Funds Act 1956 (as amended, including by the COFI Bill).

The aim is for the NFO's jurisdiction to be flexible, to allow for phased expansion of the NFO beyond sectors covered by the existing ombud system (for example, payments), to include all regulated financial institutions—in line with broader reshaping of the market conduct regulatory framework through the COFI Bill.

Though the RFO will continue the existing statutory jurisdiction of the PFA, National Treasury has decided that complaints about advice or intermediary services in relation to retirement funds will go to the NFO (as successor to the FAIS Ombud) and not to the RFO.

National Treasury is concerned that adding advice- or intermediation-related complaints to the RFO's jurisdiction would have unintended consequences including

- Jurisdictional overlaps where intermediaries provide services on both retirement funds and other types of financial product;
- Jurisdictional inconsistency between intermediaries who are representatives of retirement fund-related entities and those who are not; and
- Duplication of skills and resources across the RFO and the NFO.

PFA statistics show they have few cases about advice or intermediation, but the OC will review coordination between schemes and make appropriate rules to improve coordination, if necessary, to minimise any risks of retirement fund complainants being passed from pillar to post where their complaint relates wholly or partially to advice or intermediary services.

As with the current Credit Ombud and the Banking Ombud (for credit-related complaints against banks), the NFO's jurisdiction over credit providers will stand alongside the statutory role of the NCR, which is also able to receive complaints in this sector as part of its statutory oversight.

The NFO, like the Credit Ombud and Banking Ombud, will coordinate with the NCR. National Treasury and the Department of Trade, Industry and Competition (DTIC) will keep the effectiveness and efficiency of such complaint-handling arrangements in the credit sector under review, in light of experience.

INDEPENDENT GOVERNANCE

RECOMMENDED IN THE WBG REPORT

In relation to the NFO, the WBG reviewed the three models referred to in the 2017 consultation, but did not consider them to be an appropriate solution. It noted that the statutory model hitherto used in South Africa lacked the independence from government found in, for example, the United Kingdom.

The WBG report recommended that the NFO—*independent of industry and government*—should be established as a not-for-profit company without members, obtaining its legal standing through recognition and oversight by the OC. It emphasised the importance of a structure that protects the independence of the NFO from government, industry, and regulators, taking into account

- International good practice on independence;
- Flexibility to adapt to changing circumstances and new products;
- Stakeholder views;
- The need for a smooth transition from existing industry schemes; and
- Concern that imposition of a statutory scheme risks creating a system that would have shortcomings, including
 - Lacking critical stakeholder support;
 - Posing material risks for a smooth transition to a new reformed ombud system; and
 - Not being consistent with international good practice on independence having regard to the South African context.

In relation to the RFO, the WBG report recommended that this should continue to be a statutory body, but that it should have its own governing body (the RFO board) in order to enhance and safeguard its independence and to appoint and support the RFO ombuds.

CONSULTATION RESPONSES

The proposal that the NFO should be a nonstatutory body was strongly supported by most respondents, but the PFA and the FAIS Ombud considered that the NFO should be a statutory body—for reasons of principle and to ensure its decisions would be legally binding and enforceable. The PFA was concerned that amendments to its governance might have implications for its budget.

NATIONAL TREASURY CONCLUSIONS

In relation to the NFO, National Treasury agrees that it would not be appropriate to apply the current statutory model hitherto used in South Africa, but it considers that the NFO will need some appropriate statutory underpinning to protect its status, mandatory jurisdiction, and powers—and the legal enforceability of its decisions.

The NFO will be fully independent not only from the financial industry but also from the government. Its board will not be appointed by ministers and the board will appoint the NFO ombuds. The NFO will not be a public entity for the purposes of the Public Finance Management Act (PFMA).

National Treasury and the OC have discussed with the WBG ways to ensure that statutory underpinning will enhance, rather than detract from, the NFO's independence. An outline of the overall regime for the NFO, including the arrangements for its governance, is set out in annex A to National Treasury's policy statement.

In relation to the RFO, National Treasury agrees that this should continue to be a statutory body, but that it should have its own governing body (the RFO board), initially appointed by the Minister of Finance on terms that secure its independence, in order to enhance and safeguard its independence, and to appoint and support the RFO ombuds.

Detailed provisions on the NFO and the RFO will be consulted on through the Omnibus Bill.

COMPOSITION OF THE NFO AND RFO BOARDS

RECOMMENDED IN THE WBG REPORT

The WBG report recommended the following:

- The first NFO board should be appointed by consensus amongst a selection panel comprising members nominated by
 - The FSCA;
 - The NCR;
 - Each of the governing bodies of the Banking, Credit, LTI, and STI Ombuds; and
 - the OC.
- The first RFO board should be appointed by the Minister of Finance on the recommendation of a selection panel comprising
 - A representative from the FSCA;
 - A representative from the OC; and
 - The current Pension Funds Adjudicator.
- Subsequent members of the NFO and RFO boards should be appointed by the boards themselves through a transparent process and following a public advertisement.
- The chair and at least half of the other members of the NFO and RFO boards should not be people who
 - Work in a financial institution or an association of financial institutions, or have done so in the previous three years; or
 - Have (or have a close family member with) a beneficial interest of more than 5 percent in a financial institution.
- None of the members of the NFO or RFO boards should be
 - Someone who works in an association of financial institutions (because they will owe a duty to the members of their association);
 - A serving financial regulator (to avoid any confusion between the differing roles of regulation and dispute resolution); nor
 - A politician who holds an elected national or provincial office, or has done so in the previous three years (to avoid any possible link with political controversy).

CONSULTATION RESPONSES

Respondents recognised the importance of the early appointment of the NFO board to manage the transition. The following points of detail were raised by respondents:

- The IRFA said that the electoral college for the initial NFO board should include representatives from the FAIS Ombud and the JSE.

- The IRFA also said that the initial NFO board should include someone from each of the existing ombud schemes.
- The FIA said that the Prudential Authority (PA) should have a representative on the NFO Board.
- The Credit Ombud said the NFO board should comprise
 - Three consumer representatives;
 - One industry representative from the banking sector;
 - One industry representative from the insurance sector;
 - One industry representative from the nonbanking sector; and
 - Three independents.
- The Credit Ombud also said that, if there were no industry representatives on the board, there should be an all-sector industry liaison committee.
- The Banking Ombud favoured NFO and RFO boards comprising
 - Three industry members; and
 - The rest as independents (who should not be restricted to consumer representatives).
- The BASA proposed the Companies Act independence principles instead of those set out in recommendation D7.

NATIONAL TREASURY CONCLUSIONS

In relation to the NFO board, National Treasury agrees with the principle of the selection panel proposed in the WBG report.

In practice, as indicated by the implementation plan in annex B to the policy statement, the voluntarily amalgamated scheme formed by the Banking, Credit, LTI, and STI Ombuds is likely to form the core of the new NFO. Therefore, its board is likely to become the initial board of the NFO, provided it complies with the specified criteria. That board is being appointed by a selection panel in the form recommended by the WBG.

In relation to the comments by consultees on the composition of the selection panel for the NFO board, National Treasury agrees that:

- The panel needs to be broadly based, but including everyone who might have an interest would create a body that would be too unwieldy.
- The FSCA is a member to ensure that the advice and intermediation sector is covered. The FAIS Ombud is not directly represented because it does not have an independent board.
- The FAIS Ombud personally would have a conflict of interest, as a potential candidate for a senior ombud role to be chosen by the initial NFO board.

National Treasury also agrees in principle to the recommended arrangements for appointment of subsequent board members, subject to refinement through the Omnibus Bill's provisions and/or OC rules.

The RFO will be given its own board, the initial board appointed by the Minister of Finance on terms that secure its independence, to enhance and safeguard its independence and accountability. The RFO board will appoint the RFO ombuds.

On membership of the boards, National Treasury agrees that:

- Board members should act in the public interest. They should not be, or be seen to be, appointed as 'representatives' of particular interests or organisations.
- It will be for those making the appointments to nominate a board that will command all-round respect.
- None of the directors can be: a person falling within (b) to (k) of the definition of a 'disqualified person' in section 1 of the FSR Act, or a serving financial regulator.
- National Treasury does not consider there should be a bar on someone who works in an association of financial institutions serving as part of a minority on the board.

- The chair and at least half of the other members of the NFO and RFO boards should not be people who
 - Are engaged in the business of a financial institution or a body representing financial institutions, or have been in the previous three years;
 - Have a direct material financial interest in a financial institution, except as a financial customer or have had in the previous three years; or
 - Have a close family member who has a direct material financial interest in a financial institution, except as a financial customer.
- Concerning the comment from the Credit Ombud, the role of the board will include ensuring effective relationships with stakeholders, but its hands should not be tied about format.
- Concerning the comment from the BASA, the Companies Act independence principles alone would not be enough because the NFO and the RFO will exercise impartial quasi-judicial roles.

Further consideration is being given to the extent of OC involvement in the appointment criteria for board members. The OC currently has rule-making powers on these matters under s.201(2)(b) and (c) of the FSR Act.

COMPLAINTS AND LANGUAGE ISSUES

RECOMMENDED IN THE WBG REPORT

The WBG report recommended the following:

- There should be a consistent definition of what constitutes a complaint—to be used by ombud schemes, financial institutions, and regulators.
- The definition should include an oral expression of dissatisfaction and not require a complaint to be in writing.
- It should be made clear that a complaint can be made in any of South Africa's official languages.

CONSULTATION RESPONSES

There was general acceptance amongst respondents that there should be a standard definition of what constitutes a complaint, but some concerns about oral complaints and language issues.

On oral complaints, the following applies:

- The PFA said it was not practicable to deal with oral complaints and questioned the necessity.
- Affinity Enterprises said they will cause difficulties of recording.
- The BASA said they should be transcribed and a record kept.
- Hollard said that they should be transcribed and translated into English.
- IRFA said that oral complaints would increase administrative costs for retirement funds.

On use of all the official languages, the following applies:

- The Credit Ombud said that the arrangements must be cost-effective.
- The Banking Ombud said it would not be feasible to handle complaints in all languages.
- IRFA said it would not be practicable to have subject specialists in all languages.
- The BASA pointed out the approach in section 63 of the National Credit Act (NC Act).⁷

NATIONAL TREASURY CONCLUSIONS

National Treasury agrees with the WBG report's recommendations in principle.

⁷ "A consumer has a right to receive any document that is required in terms of this Act in an official language that the consumer reads or understands, to the extent that is reasonable having regard to usage, practicality, expense, regional circumstances and the balance of the needs and preferences of the population ordinarily served by the person required to deliver that document."

DEFINITION OF “COMPLAINT”

The COFI Bill will provide consistent definitions of "complaint" and "complainant" to apply to both financial institutions and (through consequential amendments to the FSR Act) to all ombud schemes.

Until the COFI definitions come into effect, the OC is considering the feasibility of greater alignment of these definitions across existing ombud schemes, through OC rules.

ORAL COMPLAINTS

The COFI Bill's definition of "complaint" does include oral complaints.

Many respondents appear to have proceeded on the basis that the recommendation referred only to the presentation of complaints to an ombud scheme. In fact, it referred also to the presentation of complaints to financial institutions—which should be the first port of call in putting things right for unhappy financial customers. Therefore, the issues of recording, transcribing, and (where necessary) translation are issues for financial institutions as well as for ombud schemes. Accepting complaints orally does raise some practical issues, but these have already been tackled by the six existing financial ombud schemes in South Africa that do accept oral complaints.

In view of the poor levels of literacy in areas of South Africa, requiring all complaints to be made in writing would make the complaint-handling systems of financial institutions and the ombud system inaccessible to significant numbers of consumers who would be left without redress.

Pending the COFI Bill amendments, the OC is considering introducing this requirement through OC rules, while recognising the need to deal with the practical implications for ombud schemes and financial institutions, including appropriate mechanisms for reducing orally submitted complaints to a written or other retrievable form.

LANGUAGE ISSUES

The WBG report indicated the following:

- The multiplicity of official languages in South Africa presents challenges for all agencies that deal with the public, including the ombud system.
- English is the principal language used in financial products, but they are also promoted in local languages.
- It would be wrong in principle for a financial institution to promote its products in a particular local language and then refuse to consider a complaint made in that language.
- Only 8.1 percent of the population of South Africa speaks English at home and only 16.6 percent speak English outside the home.
- Not allowing consumers to submit a complaint in the official language with which they are familiar would make the complaint-handling systems of financial institutions and the ombud system inaccessible to significant numbers of consumers who would be left without redress.

National Treasury agrees in principle, but notes that practical implications for schemes and financial institutions will need to be considered in phasing in such a requirement. Other legislative approaches to language use, including s.63 of the NC Act will be considered, as well as the position of sign language, which has recently been recognised as a 12th official language.

COMPLAINT-HANDLING BY FINANCIAL INSTITUTIONS

RECOMMENDED IN THE WBG REPORT

The WBG report recommended that there should be consistent requirements (set and enforced by legislation or the relevant regulators) about how financial institutions should

- Resolve complaints fairly;
- Give a clear written final decision on complaints within a specified maximum time; and
- Give complainants information about the ombud system.

There should be consistency across all sectors. An all-sector code from the relevant regulators would suffice, provided it has statutory backing. The all-sector rules on complaint-handling should say what information about the ombud system the financial institution has to give the complainant and when.

CONSULTATION RESPONSES

There was no opposition to cross-sector harmonisation on how financial institutions should handle complaints. The BASA suggested consideration of an all-sector code of conduct rather than statute and asked for clarification on giving complainants information about the ombud system.

NATIONAL TREASURY CONCLUSIONS

National Treasury agrees with the recommendation in principle.

Requirements to resolve complaints fairly are already largely in place through various existing FSCA-enforced sectoral regulatory instruments, aligned to the *Treating Customers Fairly* regulatory approach. Requirements to provide information about the ombud system are also already in place through various FSCA-enforced sectoral regulatory instruments and for members of industry ombud schemes

Sectoral provisions will be harmonised and expanded to all applicable financial institutions through COFI conduct standards, the FSCA conduct standard harmonisation process currently underway, and engagement with the NCR on how best to apply the requirements to credit providers (so as to ensure that the institutional arrangements for resolving credit-related complaints in South Africa are ultimately fully consistent with international good practice and the most appropriate for consumers).

Subject to conduct standards to be made by the FSCA, financial institutions should be required to have policies in place with specific time frames, which should then be monitored by regulators.

Ombud schemes will be able to make rules on how they handle complaints that are referred to them by complainants who are dissatisfied with the time the financial institution is taking to issue a final response. Depending on how long has elapsed since the complaint was submitted to the financial institution and irrespective of the time limits in its complaints process, the ombud scheme may notify the financial institution that it will consider the complaint immediately or after a specified time.

PROCESSES, PROCEDURES, AND FORMS OF REDRESS

RECOMMENDED IN THE WBG REPORT

On processes and procedures, the WBG report recommended the following:

- The NFO and the RFO should have consistent processes and procedures (applicable across all sectors) to apply the principles of fairness in resolving complaints, including
 - Making the process easy to use and efficient for complainants and institutions;
 - The terminology used for the stages in the process and the staff involved in them;
 - The level of informal engagement with the parties throughout the process;
 - The timeframes required for responses by the parties at each stage of the process;
 - Triage and prioritisation of complaints;
 - Use of confidential information;
 - Exchange of information and documents;
 - Approach to dismissal of complaints with no merit or no reasonable prospects of success;
 - Use of mediation;
 - Use of recommendations;
 - Use of provisional decisions;
 - Ombuds making and publishing final decisions on cases;
 - The information provided to the parties when a complaint is closed;
 - The process to ensure final decisions have the status of a civil court judgment; and
 - How far parties can use information from the NFO in any subsequent legal proceedings.
- Where relevant facts of a case are disputed, the ombud should decide (in light of the available evidence) what is most likely to have happened, without imposing an onus of proof on the complainant.

On redress, the WBG report recommended that an NFO or RFO ombud who upholds a complaint should have power to award any one or more of the following:

- Compensation for
 - Loss caused directly by the financial institution's unfair act or omission;
 - Consequential loss that would not have arisen but for the institution's unfair act or omission;
 - Distress or inconvenience caused to the complainant by the institution's unfair act or omission;
- Interest on compensation in appropriate circumstances; or

- A direction—which requires the financial institution to put things right by doing, or not doing, something (specified by the ombud) in relation to the particular complainant.

(In the case of the RFO, the reference to ‘financial institution’ includes any person or entity that is within the RFO’s jurisdiction—even if it is not an authorised financial institution.)

CONSULTATION RESPONSES

On processes and procedures, respondents raised the following points:

- Hollard said that the NFO should not deal with cases where there is a dispute of fact; these should go to court.
- The BASA said that the NFO should not deal with cases where there is a dispute of fact or law; these should go to court.
- Hollard and the National Clothing Retail Federation of South Africa (NCRF) both said that the onus of proof should be on the complainant.
- The BASA said that the onus of proof should be on whoever was making the assertion, but that reasonable inferences should be allowed.
- The BASA said that it should be possible to use information (save rejected settlement offers) in court proceedings.

On redress for consequential loss, respondents raised the following points:

- The BASA asked how consequential loss would be determined.
- The BASA and Standard Bank asked:
 - What the burden of proof would be.
 - What would happen if the contract excluded consequential loss.
- Absa said consequential loss should be excluded, as it needs expert evidence.
- The IRFA said it is too onerous for institutions and too complex (legally or factually) for an ombud.

On redress for distress or inconvenience, respondents raised the following points:

- The BASA said distress or inconvenience should be defined.
- The BASA asked how it would be determined.
- The IRFA and the NCRF said there should be a cap on the amount that can be awarded.

NATIONAL TREASURY CONCLUSIONS

National Treasury agrees with the WBG report’s recommendations, with the following qualifications:

The COFI Bill’s definition of “complaint,” which will apply to all ombud schemes, (and the current definition in the Pension Funds Act in relation to PFA) includes an allegation that a dispute of fact or law has arisen. Internationally, other ombud schemes regularly resolve disputes of fact or law. In many cases, disputes of fact can be resolved by reference to contemporaneous documentation or other independent reports or materials. If necessary, ombud schemes can hold oral hearings.

It would not align with the COFI Bill’s definition of “complaint” if the ombud schemes in South Africa could not deal with

- Disputes of fact (for example, what advice was given by the financial institution or what insured loss was suffered by a consumer); or
- Disputes of law (bearing in mind that if an ombud’s decision applies the law incorrectly, it can be subject to reconsideration by the Financial Services Tribunal (FST), whose decision is ultimately subject to judicial review in the High Court).

Excluding such cases from the financial ombud system, would leave consumers with only the option of going to court, and an unscrupulous financial institution could frustrate a consumer's access to the ombud system simply by raising some alleged dispute of fact or law.

Nevertheless, appropriate provisions will be required, potentially through rules made or approved by the OC, to allow an ombud to decline to deal with particularly complex matters that the ombud considers are better suited to the courts. This may include where there is

- A material dispute of fact that cannot be resolved without sworn evidence;
- A material dispute of law where the legal position is genuinely in doubt; or
- Genuine uncertainty about causation in relation to consequential loss.

However, this should not be allowed to compromise access to the ombud system in cases where an ombud could reasonably be expected to make a decision on the available information. Ombuds should not seek to avoid difficult cases that they can and should deal with. There should also be measures in place to ensure that the ombud's decision to decline to deal with a matter is communicated to a complainant promptly, to allow them reasonable time to consider other recourse options.

The concept of *onus of proof* is a legal one. It may be apt for a court hearing conducted on adversarial terms, where the court relies on parties of broadly equal resources to provide their own evidence and arguments. It is not apt for the ombud process, where the financial institution is likely to have the relevant records and superior resources, and the ombud actively investigates the case.

Where relevant facts are disputed, the ombud should decide on the balance of probabilities (in light of the available evidence) what is most likely to have happened. This does not mean simply accepting the complainant's assertions. The ombud must remain impartial between the parties.

In considering redress for consequential loss, the following applies:

- The ombud would need to be satisfied, in light of the available evidence, that the loss would not have arisen but for the financial institution's unfair act or omission.
- Deciding this might sometimes require expert evidence. Where it did, the ombud would be able to seek expert evidence before making a decision.
- If the consequential loss would not have arisen but for the financial institution's unfair act or omission, it would be too onerous for the innocent complainant to have to bear it.
- If the contract between the customer and financial institution sought to exclude liability for consequential loss, the ombud would have to decide whether it had been validly and fairly excluded.

Pending establishment of the reformed ombud system, the OC is considering making rules requiring all existing ombud schemes to grant redress for distress or inconvenience. National Treasury does not object to there being a maximum amount (approved by the OC) that can be awarded for distress or inconvenience.

RECONSIDERATION MECHANISM

RECOMMENDED IN THE WBG REPORT

For the NFO, the WBG report recommended the following:

- The NFO board should establish a single independent appeal mechanism of its own with
 - An informal procedure (so as not to disadvantage consumers); and
 - Specialised knowledge of the work of ombuds, as well as of financial services and credit.
- If the appeal is upheld, the appeal body should have discretion whether to
 - Remit the case to the NFO for redetermination; or
 - Reach its own decision on the merits if it considers that it would benefit both parties.

For the RFO, the WBG report recommended that the appeal body should continue to be the statutory FST.

For both the NFO and RFO, the WBG report recommended that the availability of an appeal should depend on whether the proposed appellant first satisfies the appeal body that

- The case raises general or systemic implications for the sector or a significant part of it; and
- There is *prima facie* evidence that the ombud
 - Misunderstood the law;
 - Misunderstood the scope of the NFO's or RFO's jurisdiction; or
 - Did not follow a fair process.

The WBG report said the following:

- Appeals about the merits of individual decisions should not form a routine part of the ombud process or financial institutions, with their comparatively greater resources, could wear consumers down.
- Achieving finality in decisions, as far as practicable, is central to the role of an ombud as an informal, efficient, cost-effective, and timely alternative to the courts.
- To ensure an effective ADR mechanism, the parties to a dispute should not treat the ombud system as just one stepping stone in a protracted legal process but as a safety valve for the industry.
- The WBG had allowed for appeals where the decision in the individual case raises wider implications for the financial industry.
- In any event, both the NFO and RFO will be subject to oversight by the High Court by way of judicial review if they exceed their powers or fail to follow a fair process.

CONSULTATION RESPONSES

Concerning NFO appeals, the following applies:

- The NCRF questioned whether it was consistent with ‘fair and reasonable.’
- The BASA said that appeals
 - Should not be informal;
 - Should not be limited to the stated grounds; and
 - Should go to an external body or the courts.
- The FAIS Ombud, PFA, IRFA, and NCRF thought appeals should go to the FST.
- Absa said the appeal body should make the final decision, not remit the case to the ombud.

Concerning RFO appeals, the following applies:

- The BASA and IRFA said appeals should not be limited to the stated grounds.
- The IRFA said that the FST should make the final decision, not remit the case to the ombud.

NATIONAL TREASURY CONCLUSIONS

National Treasury considers that certain decisions of both the NFO and the RFO should be subject to the FST. While National Treasury supports the need for finality to be reached on ombud matters as frequently as possible, it considers that applications to the FST should not be unduly restrained.

So, subject to further consultation on the details through an Omnibus Bill, the following applies:

- Either party should be able to apply to the FST for reconsideration, limited to the following NFO and RFO decisions:
 - An ombud’s ruling that a case is out of jurisdiction;
 - An ombud’s dismissal of a complaint without further consideration; or
 - An ombud’s determination.
- On receiving an application for reconsideration, the FST may
 - Dismiss the application summarily;
 - Hear and dismiss the application;
 - Hear the application and set aside the decision, sending the matter back to the ombud scheme for reconsideration (with or without directions); or
 - Hear the application and, in exceptional cases, substitute or vary the decision or correct a defect resulting from the decision.⁸
- In considering summary dismissal, the FST will take into account whether
 - The matter is within the FST’s jurisdiction;
 - The FST is likely to reach a different conclusion from the ombud;
 - There is *prima facie* evidence of a material legal or procedural error;
 - It is in the interest of justice to do so; or
 - The case has wider implications for financial consumers or financial institutions generally.

The FST’s rules should be amended in order to streamline or simplify current FST processes—at least in respect of NFO or RFO matters—to minimise potential consumer disadvantages caused by formalities.

⁸ By analogy with PAJA section 8 on remedies in proceedings for judicial review.

Annex

NATIONAL TREASURY RESPONSES TO ALL THE INDIVIDUAL WBG RECOMMENDATIONS

	RECOMMENDATION	NATIONAL TREASURY RESPONSE	NEXT STEPS OR ADDITIONAL CONSIDERATIONS
A	General		
A1	There should be a consistent definition of what constitutes a complaint—to be used by ombud schemes, financial providers, and regulators.	Agree. The COFI Bill will provide consistent definitions of "complaint" and "complainant" to apply in respect of both financial institutions and (through consequential amendments to the FSR Act) in respect of all ombud schemes.	Pending the COFI amendments, the OC is considering the feasibility of greater alignment of these definitions across existing ombud schemes, through OC rules.
	The definition should include an oral expression of dissatisfaction and not require a complaint to be in writing.	Agree. The COFI definition of "complaint" includes oral complaints.	Pending the COFI amendments, the OC is considering introducing this requirement through OC rules, recognising the need to deal with practical implications for schemes and financial institutions.
	It should be made clear that a complaint can be made in any of South Africa's official languages.	Agree.	Practical implications for schemes and financial institutions will need to be considered. Other legislative approaches to language use, including s.63 of the National Credit Act (Act 34 of 2005), will be considered.

	RECOMMENDATION	NATIONAL TREASURY RESPONSE	NEXT STEPS OR ADDITIONAL CONSIDERATIONS
A2	<p>There should be consistent requirements for financial providers (set and enforced by legislation or the relevant regulators) about how providers should:</p> <ul style="list-style-type: none"> • Resolve complaints fairly; • Give a clear, written final decision on complaints within a specified maximum time; and • Give complainants information about the ombud system. 	<p>Agree.</p> <p>Requirements to resolve complaints fairly are already largely in place through various existing FSCA-enforced sectoral regulatory instruments, aligned to the Treating Customers Fairly regulatory approach.</p> <p>Further consideration will be given to whether a maximum time period for financial institutions to finalise complaints should be "hard coded" in legislation, or whether a more flexible approach should be adopted. financial institutions should, however, at least be required to have policies in place with specific time frames, which should then be monitored by regulators.</p> <p>Requirements to provide information about the ombud system are also already in place through various FSCA-enforced sectoral regulatory instruments and, for members of industry ombud schemes, supported by sections 196(3)(b)(ii) and 210(2) of the FSR Act.</p> <p>Contravention of s.210 by a financial institution is an offence (see s.270(6) of the FSR Act.)</p> <p>The COFI Bill will ensure that the sectoral instruments are aligned and contain requirements applicable to all financial institutions. (clause 27).</p>	<p>Sectoral provisions addressing the elements of this recommendation will be harmonised and expanded to all applicable financial institutions through COFI conduct standards, through the FSCA conduct standard harmonisation process currently underway.</p> <p>Engagement will take place with the NCR on how best to apply these requirements to credit providers.</p> <p>The NFO will be able to make rules on how it handles complaints that are referred to it by complainants who are dissatisfied with the time the financial institution is taking to issue a final response.</p> <p>Depending on how long has elapsed since the complaint was submitted to the financial institution, and irrespective of the time limits in the financial institution's own complaints process, the NFO may notify the financial institution that the ombud scheme will consider the complaint immediately or after a specified time.</p>
A3	<p>There should be explicit adverse consequences (that can be implemented by the OC or the FSCA) if financial institutions (as defined in the Financial Sector Regulation Act 9 of 2017) fail to:</p> <ul style="list-style-type: none"> • Join relevant ombud schemes; • Cooperate with the ombud schemes; or • Comply with ombud scheme decisions. 	<p>Agree.</p> <p>However, note that the OC is not the appropriate authority to enforce compliance by financial institutions. This is the role of industry-facing conduct regulators (FSCA and NCR).</p> <p>Consequences for a financial institution's failure to join a relevant industry ombud scheme, or to comply with the governing rules of a scheme that it is a member of, are already in place. This would constitute a contravention of s.211(3) or 215(1) of the FSR Act, enforceable by the FSCA through its range of FSR Act enforcement powers.</p> <p>In addition, contravention of s.215(1) by a financial institution is an offence (see s.207(7) of the FSR Act.</p>	<p>Technical discussions are in progress between the FSCA, the NCR, and the OC on an enforcement approach in respect of section 211(3) and other financial institution-facing provisions of the current FSR Act applicable to ombud scheme matters.</p> <p>National Treasury engagement with the Department of Trade, Industry and Competition (DTIC) may be necessary to confirm the approach to enforcing compliance by providers in the credit sector.</p>

	RECOMMENDATION	NATIONAL TREASURY RESPONSE	NEXT STEPS OR ADDITIONAL CONSIDERATIONS
B	National Financial Ombud (NFO)		
B1	A new NFO, independent of both industry and government, should be established to cover the entire financial sector (including credit)—apart from retirement funds—and absorb the work of the Banking, Credit, FAIS, JSE, LTI, and STI Ombuds.	Agree.	Provisions to establish the NFO and its jurisdiction will be consulted on through an Omnibus Bill. See annex A to National Treasury’s Policy Statement for an outline of the overall NFO regime.
B2	The NFO’s jurisdiction should cover all financial providers that: <ul style="list-style-type: none"> • Are authorised by the Prudential Authority (PA) or FSCA to provide financial services, or authorised by the NCR to provide credit services; or • Were so authorised by the FSCA, the NCR, or the PA (or their predecessors) at the time of the act or omission complained about. 	Agree.	<p>Jurisdictional provisions for the NFO are intended to be flexible, to allow for the phased expansion of the NFO beyond sectors covered by the existing ombud system, to include all regulated financial institutions, in line with broader reshaping of the market conduct regulatory framework through the COFI Bill.</p> <p>Engagement is in progress between the OC, NCR, and FSCA to confirm the intended scope of credit-related services currently covered by the ombud system in terms of Chapter 14 of the FSR Act, read with the NC Act.</p> <p>As with the current Credit Ombud (and the Banking Ombud in relation to banks), the NFO’s jurisdiction over credit providers will stand alongside the statutory role of the NCR, which is also able to receive complaints in this sector as part of its statutory oversight.</p> <p>The NFO, like the Credit Ombud and Banking Ombud, will coordinate with the NCR. National Treasury and the DTIC will keep complaint-handling arrangements in the credit sector under review, in light of experience.</p>
B3	The NFO’s jurisdiction should cover complaints about acts or omissions in the provision (or ancillary to the provision) of regulated financial services (including regulated credit services)—with the exception of complaints about retirement funds.	Agree. This is largely provided for in the COFI definition of “complaint,” which includes complaints about “service providers” to financial institutions. Service providers are defined to include representatives or other agents of the financial institution, and also to “refer to services “connected with” the provision of financial products.	
	A financial provider should be liable for the acts or omissions of its agents, and the acts or omissions of any predecessor provider that it took over (or whose customer relationships it acquired).	Agree. Concerning acts or omissions of agents, see comment in the preceding paragraph. Concerning acts or omissions of predecessors, this will be addressed in the context of the Omnibus Bill.	The definition of “complaint” will be reviewed to ensure that it adequately addresses the acts or omissions of predecessor institutions. Pending the COFI amendments, the OC is considering making OC rules requiring schemes to deal with complaints in relation to representatives or agents and predecessors of financial institutions.

	RECOMMENDATION	NATIONAL TREASURY RESPONSE	NEXT STEPS OR ADDITIONAL CONSIDERATIONS
B4	The NFO should accept complaints from consumers.	Agree.	
	The NFO board, after publicly consulting stakeholders, should specify whether the NFO will accept complaints from all businesses or only businesses up to a specified size.	The NFO's jurisdiction in respect of nonnatural person complainants should align with the COFI Bill approach, which is to provide special protection to retail customers (natural persons) and small enterprise financial customers and at least include complainants defined in the COFI Bill as "small enterprise financial customers."	The OC currently has rule-making powers on these matters under s.201(2)(d) of the FSR Act. Proposals will be consulted on through an Omnibus Bill. See annex A to National Treasury's Policy Statement for an outline of the overall NFO regime.
	The same eligibility for businesses should apply across all financial sectors. If it is to be businesses of a specified size, the test should: <ul style="list-style-type: none"> • Be a clear and simple one (for example, turnover or number of staff); • Apply equally to sole traders, partnerships, incorporated entities, and unincorporated entities; and • Apply at the date the complaint is referred to the NFO. 	See comment in the preceding paragraph.	It may be necessary to provide for flexibility in setting these eligibility requirements by the NFO and/or the OC.
B5	The NFO should accept complaints not only from customers but also from noncustomers likely to be adversely affected by acts or omissions of a financial provider.	Agree. The COFI Bill's definition of "complainant" includes various noncustomers, including potential customers and customers' successors in title, and beneficiaries.	Pending the COFI amendments, the OC is considering making OC rules requiring ombud schemes to handle complaints from certain noncustomers (particularly potential customers).
	The NFO board, after public consultation with stakeholders, should settle either: <ul style="list-style-type: none"> • A test to be applied by an ombud; or • A list of noncustomers eligible to complain. 	Agree, to the extent not already addressed through the COFI definitions.	The OC currently has rule-making powers on these matters under s.201(2)(d) of the FSR Act. The proposed definition of "complaint" for purposes of chapter 14 is also subject to OC rules. Proposals will be consulted on through an Omnibus Bill. See annex A to National Treasury's policy statement for an outline of the overall NFO regime.
B6	The minister should speedily review the maximum compensation limit for the FAIS Ombud, which was set in 2004 at R 800,000. Indexed to the South African Consumer Prices Index, that would be equivalent to well in excess of R 2 million in 2020.	The FSCA has already consulted on an amendment increasing the limit to R 3.5 million. The OC will complete the processing of the compensation limit amendment, which has the status of an OC rule (See s.301(2) of the FSR Act). Draft OC rules, including this limit increase, were published for comment in September 2023.	In respect of the various other elements of recommendation B6, the OC currently has rule-making powers on these matters under s.201(2)(d) of the FSR Act. Proposals will be consulted on through an Omnibus Bill. See annex A to National Treasury's policy statement for an outline of the overall NFO regime.

	RECOMMENDATION	NATIONAL TREASURY RESPONSE	NEXT STEPS OR ADDITIONAL CONSIDERATIONS
	<p>By the time of the formal handover to the NFO (indicative timescale is two years), the NFO board, after publicly consulting stakeholders, should settle more generally:</p> <ul style="list-style-type: none"> • Whether to set a maximum that can be awarded for loss; • Whether to set a maximum that can be awarded for distress or inconvenience; and • If there are to be maximums, what they should be. 	<p>Agree, but without committing to the indicative timescale.</p>	<p>Further consideration will be given to the respective roles of the NFO board and the OC in relation to prescribing these.</p>
	<p>If the NFO board considers there should be different provisions for loss in different sectors, for clarity and simplicity:</p> <ul style="list-style-type: none"> • There should be the smallest possible number of alternatives; and • They should be clearly linked to types of product or provider in a way that will be clear and logical to complainants. 	<p>Agree.</p>	<p>Further consideration will be given to the respective roles of the NFO board and the OC in relation to prescribing these.</p>
	<p>If the NFO board considers there should be a limit for distress or inconvenience, for clarity and simplicity, there should be one limit across all sectors.</p>	<p>It may be preferable to allow flexibility in this regard.</p>	<p>See preceding comment regarding the respective rule-making roles of the NFO board and the OC.</p>
	<p>The NFO board should review the adequacy of any maximum limit (in light of inflation and any other relevant factors) at least every two years.</p>	<p>Agree.</p>	<p>See preceding comment regarding the respective rule-making roles of the NFO board and the OC.</p>
B7	<p>The governing body of the NFO (the NFO board) should be established at the earliest possible opportunity, so that it can oversee the consolidation process and make any necessary design decisions.</p>	<p>Agree.</p>	<p>See annexes A and B to National Treasury’s policy statement for an outline of the overall NFO regime and the implementation plan.</p>

	RECOMMENDATION	NATIONAL TREASURY RESPONSE	NEXT STEPS OR ADDITIONAL CONSIDERATIONS
B8	The NFO should be a nonstatutory corporate body, preferably established in the form of a not-for-profit company without members.	<p>Partially agree.</p> <p>Key features of the NFO will be:</p> <ul style="list-style-type: none"> • A nonprofit company without members; • Not a public entity for Public Finance Management Act (PFMA) purposes; • Independence from the government, regulators, and the financial industry; • Appropriate flexibility in scope of jurisdiction, process, powers, and financing; • Not funded through the Financial Sector and Deposit Insurance Levies Act (No.11 of 2022); • Compulsory jurisdiction; • Ensuring that the process ultimately guarantees that decisions are binding (subject to appeal, reconsideration, and judicial review processes as specified) and enforceable. <p>But National Treasury considers that aspects of NFO's jurisdiction and powers should be underpinned by statute.</p>	Draft Omnibus Bill provisions will be consulted on, setting out more detailed proposals for the legal status of the NFO, including an appropriate statutory underpin. See annex A to National Treasury's policy statement for an outline of the overall NFO regime.
B9	<p>The functions of the NFO board should include the following:</p> <ul style="list-style-type: none"> • Appointing the NFO chief ombud and other ombuds • Safeguarding the ombuds' independence • Ensuring that the NFO has adequate resources to handle its work • Adopting the budget and a funding structure • Amending the NFO's rules and scope (subject to approval by the OC) • Overseeing the efficiency and effectiveness of the NFO • Advising on the strategic direction of the NFO • Ensuring effective relationships with stakeholders. 	Agree in principle, subject to refinement through Omnibus Bill provisions and or OC rules.	<p>Further consideration is required of the respective roles of the NFO board and the OC in relation to prescribing governance requirements for ombud schemes. The OC currently has rule-making powers on these matters under s.201(2)(b) of the FSR Act.</p> <p>Proposals will be consulted on through an Omnibus Bill. See annex A to National Treasury's policy statement for an outline of the overall NFO regime.</p>
	<p>The NFO board should be:</p> <ul style="list-style-type: none"> • Prohibited from being involved in individual complaints against financial providers; and • Required to delegate executive management of the NFO (including staff recruitment) to its chief ombud. 	<p>Agree.</p> <p>Although the NFO chief ombud should be chief executive of the NFO, the board should ensure effective executive level operational leadership support.</p>	See preceding comment regarding the respective rule-making roles of the NFO board and the OC.
B10	The NFO should be free for consumers and directly funded by the financial industry.	<p>Agree.</p> <p>The NFO will not be funded by the fiscus nor through the Financial Sector Levies Act or similar levy legislation.</p>	Draft Omnibus Bill provisions will be consulted on, setting out appropriate (high-level) proposals regarding the NFO's funding model and confirming that it will be industry-funded. See annex A to National Treasury's policy statement for an outline of the overall NFO regime.

	RECOMMENDATION	NATIONAL TREASURY RESPONSE	NEXT STEPS OR ADDITIONAL CONSIDERATIONS
	<p>The NFO board should adopt a funding arrangement that is sufficiently flexible to:</p> <ul style="list-style-type: none"> Accommodate fluctuations in volumes; Reflect the size and volume of complaints by industry participants; and Avoid overburdening small financial institutions. 	<p>Agree.</p> <p>The NFO's funding model and budget will be subject to initial and ongoing OC approval.</p>	<p>Further consideration is required on the extent of OC involvement in the NFO's funding model and budget and making OC rules in relation to funding model requirements. See annex A to National Treasury's policy statement for an outline of the overall NFO regime.</p>
B11	<p>The NFO board should have an odd number of members—not fewer than five and not more than nine—including the chair.</p>	<p>Agree in principle, subject to refinement through Omnibus Bill provisions and/or OC rules.</p>	<p>See previous comment regarding the respective rule-making roles of the NFO board and the OC.</p>
B12	<p>The first members of the NFO board should be appointed by consensus amongst a nonstatutory electoral college comprising one representative each from the following:</p> <ul style="list-style-type: none"> The FSCA The NCR The governing body of the Banking Ombud The governing body of the Credit Ombud The governing body of the LTI Ombud The governing body of the STI Ombud The OC. 	<p>See implementation plan in annex B to National Treasury's policy statement.</p>	
B13	<p>Subsequent members of the NFO board should be appointed by the NFO board itself, by a transparent process, following a public advertisement.</p>	<p>Agree in principle, subject to refinement through Omnibus Bill provisions and/or OC rules.</p>	<p>See annex A to National Treasury's policy statement for an outline of the overall NFO regime.</p> <p>The OC currently has rule-making powers on these matters under s.201(2)(b) and (c) of the FSR Act.</p>
B14	<p>Collectively, the membership of the NFO board should provide a balance of understanding in respect of the following:</p> <ul style="list-style-type: none"> Effective corporate governance Alternative dispute resolution Regulation of financial providers The legitimate concerns of financial consumers The legitimate concerns of the financial industry. 	<p>Agree in principle, subject to refinement through Omnibus Bill provisions and/or OC rules.</p>	<p>See preceding comment .</p>
B15	<p>The NFO should create a consistent set of rules and criteria (applicable across all sectors) for resolving complaints in a manner that is fair (equitable) in all the circumstances, taking into account the law, regulatory standards, industry codes, and industry good practice.</p>	<p>Agree.</p> <p>Section 196(3)(b)(vii) already requires the governing rules of industry ombud schemes to require ombuds to apply principles of equity when dealing with complaints. The founding provisions of the existing FAIS Ombud contain corresponding requirements (see s.20(3) of the FAIS Act.) COFI Bill consequential amendments to the FSR Act will apply similar provisions to both current statutory schemes.</p>	<p>See annex A to National Treasury's policy statement for an outline of the overall NFO regime.</p>

	RECOMMENDATION	NATIONAL TREASURY RESPONSE	NEXT STEPS OR ADDITIONAL CONSIDERATIONS
B16	<p>The NFO should have consistent processes and procedures (applicable across all sectors) to apply the principles of fairness in resolving complaints, including the following:</p> <ul style="list-style-type: none"> • Making the process easy to use and efficient for complainants and providers • The terminology used for the stages in the process and the staff involved in them • The level of informal engagement with the parties throughout the process • The time frames required for responses by the parties at each stage of the process • Triage and prioritisation of complaints • Use of confidential information • Exchange of information and documents • Approach to dismissal of complaints with no merit or no reasonable prospects of success • Use of mediation • Use of nonbinding recommendations and provisional determinations • Use of provisional decisions before a final binding decision on more complex matters • Ombuds regularly making and publishing final decisions on cases • The information provided to the parties when a complaint is closed • How far parties can use information from the NFO in any subsequent legal proceedings. 	Agree.	<p>See annex A to National Treasury's policy statement for an outline of the overall NFO regime. Pending the establishment of the NFO, the OC is considering making OC rules regarding some elements of recommendation B16, to promote interim alignment of ombud scheme processes and procedures.</p> <p>Details of the current voluntary amalgamation exercise being undertaken by industry ombud schemes will also be assessed by the OC, to consider process alignment opportunities.</p>
	Where relevant facts of a case are disputed, the ombud should decide (in light of the available evidence) what is most likely to have happened, without imposing an onus of proof on the complainant.	<p>Agreed in principle.</p> <p>Note that the current definition of "complaint" in the Pension Funds Act in relation to the Pension Funds Adjudicator (PFA) includes an allegation that a dispute of fact or law has arisen. The COFI definition of "complaint" (and the current definition in the Pension Funds Act, which will apply to all ombud schemes, also includes an allegation that a dispute of fact or law has arisen.)</p>	Commentators have raised concerns that matters entailing complex factual disputes may be more appropriately dealt with in a court of law than by an ombud scheme. Appropriate provisions will be required to allow the NFO to decline to deal with particularly complex matters better suited to the courts, but without compromising access to the ombud system in cases where an ombud could indeed reasonably be expected to make a decision on the information at hand.
B17	<p>The NFO board should establish a single independent appeal mechanism of its own with:</p> <ul style="list-style-type: none"> • An informal procedure (so as not to disadvantage consumers); and • Specialised knowledge of the work of financial ombuds, as well as of financial services and credit. 	<p>Disagree.</p> <p>Subject to further consultation on the details through an Omnibus Bill, the existing FST mechanism in relation to decisions of statutory ombud schemes should apply to decisions of the NFO.</p>	<p>Further consideration is required of mechanisms to streamline or simplify current FST processes—at least in respect of NFO and RFO matters—to minimise potential consumer disadvantages due to "red tape" formalities.</p> <p>Further consideration is also required of the jurisdictional boundary with the Consumer Tribunal in relation to credit.</p>

	RECOMMENDATION	NATIONAL TREASURY RESPONSE	NEXT STEPS OR ADDITIONAL CONSIDERATIONS
	<p>The availability of an appeal should depend on whether the proposed appellant first satisfies the appeal body that:</p> <ul style="list-style-type: none"> • The case raises general or systemic implications for the financial sector or a significant part of it; and • There is <i>prima facie</i> evidence that the NFO ombud misunderstood the law, misunderstood the scope of the NFO's jurisdiction, or did not follow a fair process. 	<p>Disagree.</p> <p>Grounds for appeal or review should not be limited to the recommended matters, but should include the grounds for reconsideration by the FST as per the statutory schemes.</p>	<p>Although the National Treasury supports the need for finality to be reached on ombud matters as frequently as possible, the National Treasury is concerned that, in light of the proposal (which it supports) that the NFO's decisions should have the effect of a court order, there may be constitutional challenges if grounds of appeal or review are limited.</p>
	<p>If the appeal is upheld, the appeal body should have discretion whether to:</p> <ul style="list-style-type: none"> • Remit the case to the NFO for redetermination; or • If it considers that it would benefit both parties, reach its own decision on the merits. 	<p>On receiving an application for reconsideration, the FTS may:</p> <ul style="list-style-type: none"> • Dismiss the application summarily; • Hear and dismiss the application; • Hear the application and set aside the determination, sending the matter back to the new ombud scheme for reconsideration (with or without directions); or • Hear the application and, in exceptional cases, substitute or vary the decision or correct a defect resulting from the decision. 	
C	Retirement Funds Ombud (RFO)		
C1	<p>The statutory PFA, reformed and renamed the Retirement Funds Ombud (RFO), should continue to have jurisdiction over retirement funds but should add jurisdiction over advice or intermediary services concerning retirement funds provided by any person or entity that is otherwise within its jurisdiction.</p>	<p>Partially agree.</p> <p>Renaming of the PFA to the RFO will take place through COFI Bill consequential amendments to the FSR Act and the renamed Retirement Funds Act. COFI Bill's definitions of "complaint" and "complainant," which will also apply to the RFO, include specific retirement fund-related elements to clarify the RFO's jurisdiction.</p> <p>Agree with proposal to maintain separate statutory RFO as an interim measure, but medium-term intent is to also include retirement fund-related complaints in the ambit of the NFO as a future step.</p> <p>Disagree with the proposal to add jurisdiction over advice or intermediary services to the RFO's jurisdiction.</p>	<p>The National Treasury is concerned that adding advice or intermediation-related complaints to the RFO's jurisdiction would have unintended consequences including: jurisdictional overlaps where intermediaries provide services on both retirement funds and other financial product types; jurisdictional inconsistency between intermediaries who are representatives of retirement fund-related entities and those who are not; and duplication of skills and resources across the RFO, NFO, and FAIS ombuds.</p> <p>The OC will review coordination measures between schemes to minimise risks of retirement fund-related complainants being passed "from pillar to post" where their complaint relates wholly or partially to advice or intermediary services. Statistics provided by the PFA indicate, however, that there are few cases where referrals to the FAIS Ombud are required.</p>
C2	<p>The RFO's jurisdiction should continue the statutory jurisdiction of the PFA under the Pension Funds Act of 1956 (as amended), plus advice and intermediary services in respect of retirement funds where that advice or intermediary service is provided by any person or entity that is otherwise within its jurisdiction.</p>	<p>Partially agree. See response to recommendation C1.</p>	
	<p>It should cover complaints about acts or omissions by any person or entity that is within the RFO's jurisdiction.</p>	<p>Agree. See response to recommendation C1.</p>	

	RECOMMENDATION	NATIONAL TREASURY RESPONSE	NEXT STEPS OR ADDITIONAL CONSIDERATIONS
	Such a person or entity should also be liable for the acts or omissions of its agents, and the acts or omissions of any predecessor that it took over (or whose customer relationships it acquired).	<p>Agree.</p> <p>Concerning acts or omissions by agents, this is provided for in the COFI definition of complaint, which includes complaints about "service providers" to financial institutions.</p> <p>Service providers are defined to include representatives or other agents of the financial institution, and also to refer to services "connected with" the provision of financial products.</p> <p>Concerning acts or omissions of predecessors, this will be addressed in the context of the Omnibus Bill.</p>	
C3	<p>The RFO should accept complaints not only from customers and members of retirement funds but also from noncustomers or nonmembers likely to be adversely affected by acts or omissions of any person or entity that is within its jurisdiction, including the following:</p> <ul style="list-style-type: none"> • Prospective customers, for complaints about the financial provider's wrongful refusal to provide a service (for example, involving unlawful discrimination). • A beneficiary under a pension taken out by someone else (such as a pension taken out by an employer or by someone for their own benefit and the benefit of their family or dependents). 	<p>Agree.</p> <p>The COFI Bill's definition of "complainant" includes various noncustomers, including potential customers or members, beneficiaries, and other eligible noncustomer complainants in relation to retirement funds.</p> <p>The existing Pension Funds Act definition of "complainant" also already includes various nonmembers.</p>	
C4	<p>The RFO should have its own governing body (RFO board) to:</p> <ul style="list-style-type: none"> • Enhance and safeguard its independence; and • Appoint and support its ombuds. 	Agree.	This recommendation is not addressed in the pending COFI Bill consequential amendments to the FSR Act, but will be proposed in the subsequent Omnibus Bill.
C5	<p>The functions of the RFO board should include the following:</p> <ul style="list-style-type: none"> • Appointing the RFO chief ombud and other ombuds • Safeguarding the ombuds' independence • Ensuring that the RFO has adequate resources to handle its work • Adopting the budget and funding structure • Exercising the power to set processes and procedures (see section 30Y of the Pension Fund Act) • Overseeing the efficiency and effectiveness of the RFO • Advising on the strategic direction of the RFO • Ensuring effective relationships with stakeholders. 	<p>Agree in principle, subject to refinement through Omnibus Bill provisions and/or OC rules.</p> <p>The RFO will, at least for the medium term, remain subject to the PFMA. The accounting authority of the RFO will be its board, once established.</p>	<p>Further consideration is required of the respective roles of the RFO board and the OC in relation to prescribing governance requirements for the RFO. The OC currently has rule-making powers on these matters under s.201(2)(b) of the FSR Act.</p> <p>Proposals will be consulted on through an Omnibus Bill.</p>

	RECOMMENDATION	NATIONAL TREASURY RESPONSE	NEXT STEPS OR ADDITIONAL CONSIDERATIONS
	The RFO board should be: <ul style="list-style-type: none"> Prohibited from being involved in individual complaints against financial providers; and Required to delegate executive management of the RFO (including staff recruitment) to its chief ombud. 	Agree.	See preceding comment regarding the respective rule-making roles of the RFO board and the OC.
C6	The RFO board should have an odd number of members—not fewer than five and not more than nine—including the chair.	Agree in principle, subject to refinement through Omnibus Bill provisions and/or OC rules.	See preceding comment regarding the respective rule-making roles of the RFO board and the OC.
C7	The first members of the RFO board should be appointed by consensus amongst an electoral college comprising the following: <ul style="list-style-type: none"> One representative from the FSCA One representative from the OC The current PFA. 	The first members of the RFO board will be appointed by the Minister of Finance, after an appropriate selection procedure.	See annex B to National Treasury's policy statement for the implementation plan.
C8	Subsequent members of the RFO board should be appointed by the RFO board itself, by a transparent process, following a public advertisement.	Agree in principle, subject to refinement through Omnibus Bill provisions and/or OC rules.	Further consideration is required on the extent of OC involvement in the appointment criteria or approval of RFO board members. The OC currently has rule-making powers on these matters under s.201(2)(b) and (c) of the FSR Act.
C9	Collectively, the membership of the RFO board should provide a balance of understanding in respect of the following: <ul style="list-style-type: none"> Effective corporate governance Alternative dispute resolution Regulation of retirement funds The legitimate concerns of retirement fund beneficiaries The legitimate concerns of the financial industry, employers, and retirement funds. 	Agree in principle, subject to refinement through Omnibus Bill provisions and/or OC rules.	See preceding comment.
C10	The RFO should create a set of criteria for resolving complaints in a manner that is fair in all the circumstances, taking into account the law, regulatory standards, industry codes, and industry good practice.	Agree. COFI Bill consequential amendments to the FSR Act will require the RFO to apply principles of equity and to have regard to the contract and financial sector laws.	Further consideration is required of the respective roles of the RFO board and the OC in relation to prescribing complaint-handling requirements for the RFO. The OC currently has rule-making powers on these matters under s.201(2)(d) and (e) of the FSR Act.
C11	The RFO should have processes and procedures to apply the principles of fairness in resolving complaints, including the following: <ul style="list-style-type: none"> Making the process easy to use and efficient for complainants and providers The terminology used for the stages in the process and the staff involved in them The level of informal engagement with the parties throughout the process The time frames required for responses by the parties at each stage of the process 	Agree, subject to comment on recommendation B16 regarding disputes of fact. Note that the existing definition of "complaint" in the Pension Funds Act includes an allegation that a dispute of fact or law has arisen in relation to a fund.	Further consideration is required of the respective roles of the RFO board and the OC in relation to prescribing complaint handling requirements for the RFO. The OC currently has rule-making powers on these matters under s.201(2)(e) of the FSR Act. Pending establishment of the reformed ombud system, the OC is considering making OC rules regarding some elements of this recommendation and recommendation B16, to promote interim alignment of ombud scheme processes and procedures.

	RECOMMENDATION	NATIONAL TREASURY RESPONSE	NEXT STEPS OR ADDITIONAL CONSIDERATIONS
	<ul style="list-style-type: none"> • Triage and prioritization of complaints • Use of confidential information • Exchange of information and documents • Approach to dismissal of complaints with no merit or no reasonable prospects of success • Use of mediation • Use of nonbinding recommendations and provisional determinations • Use of provisional decisions before a final binding decision on more complex matters • Ombuds regularly making and publishing final decisions on cases • The information provided to the parties when a complaint is closed • How far parties can use information from the RFO in any subsequent legal proceedings. <p>Where relevant facts of a case are disputed, the ombud should decide (in light of the available evidence) what is most likely to have happened, without imposing an onus of proof on the complainant.</p>		
C12	<p>The availability of an appeal should depend on whether the proposed appellant first satisfies the FST that:</p> <ul style="list-style-type: none"> • The case raises general or systemic implications for the retirement fund sector or a significant part of it; and • There is <i>prima facie</i> evidence that the RFO ombud misunderstood the law, misunderstood the scope of the RFO's jurisdiction, or did not follow a fair process. 	<p>Disagree.</p> <p>Grounds of appeal or review should not be limited to the recommended matters, but should include the grounds for reconsideration by the FST as per the current FSR Act provisions for statutory schemes, with the addition of power for the FST (in exceptional cases) to substitute or vary the decision or correct a defect resulting from the decision.</p>	
D	NFO and RFO		
D1	<p>The NFO and RFO should each agree on and publish a simple and documented process for referral to the other of complaints that are not within the jurisdiction of the scheme that receives them but appear to be within the other's jurisdiction—including "hot transfers" of phone calls.</p>	<p>Agree.</p>	<p>Further consideration is required of the respective roles of the NFO and RFO boards and the OC in relation to prescribing complaint-handling requirements for ombud schemes. The OC currently has rule-making powers on these matters under s.201(2)(e) of the FSR Act.</p> <p>Pending establishment of the reformed ombud system, the OC is considering making interim OC rules to better align referral processes between schemes.</p>

	RECOMMENDATION	NATIONAL TREASURY RESPONSE	NEXT STEPS OR ADDITIONAL CONSIDERATIONS
D2	<p>Complainants should be able to refer a complaint to the NFO or RFO for at least three years from whichever is the later of the following:</p> <ul style="list-style-type: none"> • The date of the act or omission complained about; or • The date on which that complainant could realistically have known that they had cause to complain to the ombud. <p>An ombud should have discretion to waive the time limit if the failure to comply with it arose from circumstances outside the complainant's control (such as illness).</p>	<p>Agree.</p> <p>The time limits are currently contained in the Pension Funds Act and the FAIS Act.</p> <p>The FAIS Act extends the date of commission of complaint also to the date on which the complainant became aware or ought reasonably to have become aware of the occurrence.</p> <p>The Pension Funds Act refers to the Prescription Act in terms of which the period will not commence until the complainant has knowledge of the facts.</p> <p>The CoFI Bill consequential amendments will also refer to the Prescription Act. This is similar to the approach in the Pension Funds Act.</p>	<p>There will be further consideration of time limits, in the context of the Omnibus Bill, including any discretion to waive the time limits.</p> <p>Further consideration is required of the respective roles of the RFO board and the OC in relation to prescribing complaint-handling requirements for ombud schemes. The OC currently has rule-making powers on these matters under s.201(2)(e) of the FSR Act.</p>
D3	<p>This recommendation relates to any complaint that is referred to the NFO or RFO in circumstances where the NFO or RFO considers that the financial institution has not been given a sufficient opportunity to consider the complaint (a premature complaint).</p> <p>The NFO or RFO should accept the premature complaint but, before investigating it, may refer it to the financial institution and set a time limit.</p>	<p>Agree.</p>	<p>Pending establishment of the reformed ombud system, the OC is considering making OC rules to better align processes for handling "premature complaints" across existing schemes.</p>

	RECOMMENDATION	NATIONAL TREASURY RESPONSE	NEXT STEPS OR ADDITIONAL CONSIDERATIONS
D4	<p>An ombud who upholds a complaint should have power to award any one or more of the following forms of redress:</p> <ul style="list-style-type: none"> • Compensation for the following: <ul style="list-style-type: none"> – Loss caused directly by the financial institution's unfair act or omission – Consequential loss that would not have arisen but for the provider's unfair act or omission – Distress or inconvenience caused to the complainant by the provider's unfair act or omission. • Interest on compensation in appropriate circumstances. • A direction—which requires the financial provider to put things right by doing, or not doing, something (specified by the ombud) in relation to the particular complainant. 	<p>Agree in principle, subject to refinement through Omnibus Bill provisions and/or OC rules.</p> <p>The COFI Bill's definition of "complaint" includes complaints relating to "distress or substantial inconvenience."</p> <p>The revised provisions in the FSR Act concerning the PFA and FAIS Ombud enable both ombuds to award an amount as fair compensation for any financial prejudice, damage, distress or inconvenience suffered; to issue directives; and to provide for interest.</p>	<p>See annex A to National Treasury's policy statement for an outline of the NFO regime.</p> <p>See preceding comment regarding the respective rule-making roles of the NFO and RFO boards and the OC.</p> <p>Pending establishment of the reformed ombud system, the OC is considering making OC rules requiring existing schemes to grant redress for distress or inconvenience.</p> <p>Details of the current voluntary amalgamation exercise being undertaken by industry ombud schemes will also be assessed by the OC, to consider alignment opportunities in respect of redress measures.</p> <p>Some commentators raised concerns that redress for consequential loss may be better determined by a court of law. Similarly to the concerns around factual disputes (see comment on recommendation B16), the National Treasury's view is that appropriate provisions will be required, potentially through OC rules, to allow the NFO or RFO to decline to deal with particularly complex matters better suited to the courts, but without compromising access to the ombud system in cases where an ombud could indeed reasonably be expected to determine fair compensation for consequential loss.</p>
D5	<p>Subject to any appeal:</p> <ul style="list-style-type: none"> • If the complainant accepts an ombud's final decision: <ul style="list-style-type: none"> – The financial institution should be bound by the decision (whether or not the financial institution accepts the decision); and – The complainant should be bound by the decision they have accepted and should not be free to pursue the same issue against the same provider in the courts. • If the complainant does not accept an ombud's final decision <ul style="list-style-type: none"> – Neither party should be bound by the decision; and – The complainant should be free to pursue the same issue against the provider in the courts. 	<p>Agreed in principle.</p>	<p>Draft Omnibus Bill provisions will be consulted on, setting out appropriate proposals regarding the legal effects of a final decision of the NFO or RFO.</p>

	RECOMMENDATION	NATIONAL TREASURY RESPONSE	NEXT STEPS OR ADDITIONAL CONSIDERATIONS
D6	An ombud’s final decision that has become binding (and has not been overturned on appeal) should be enforceable through the court system in the same way as a court judgment.	Agree in principle, subject to refinement in Omnibus Bill provisions. This is consistent with the current position for statutory ombud schemes.	Proposals will be consulted on through an Omnibus Bill to ensure the binding effect of NFO decisions. Engagement with the NCR and DTIC may be required to ensure appropriate alignment for credit related decisions.
	The enforcement process should be able to be initiated by the complainant or (so that it can assist vulnerable complainants) by the NFO or RFO on behalf of the complainant.	Agree.	
D7	The chair and at least half of the other members of the NFO and RFO boards should not be people who: <ul style="list-style-type: none"> • Work in a financial provider or an association of financial providers, or have done so in the previous three years; or • Have (or have a close family member with) a beneficial interest of more than 5 percent in a financial provider. 	Agree in principle, subject to refinement through Omnibus Bill provisions and/or OC rules. [See relevant provisions on board membership in annex A to National Treasury’s policy statement.]	Further consideration is required of the respective roles of the NFO and RFO boards and the OC in relation to prescribing governance requirements for ombud schemes and on the extent of OC involvement in the appointment criteria for RFO board members. The OC currently has rule-making powers on these matters under s.201(2)(b) and (c) of the FSR Act.
	To avoid any perceived conflict of interest, none of the members of the NFO and RFO boards should be: <ul style="list-style-type: none"> • Someone who works in an association of financial providers (because they will owe a duty to the members of their association); • A serving financial regulator (to avoid any confusion between the differing roles of regulation and dispute resolution); or • A politician who holds an elected national or provincial office, or has done so in the previous three years (to avoid any possible link with political controversy). 	Disagree with exclusion of anyone who works in an association of financial institutions. Otherwise, agree in principle, subject to refinement through Omnibus Bill provisions and/or OC rules, that none of the directors can be: a person falling within (b) to (k) of the definition of a “disqualified person” in section 1 of the FSR Act; or a serving financial regulator. For this purpose, a financial regulator should include the OC.	See preceding comment regarding the respective rule-making roles of the NFO and RFO boards and the OC.
D8	Ordinarily, members of the NFO or RFO board should be: <ul style="list-style-type: none"> • Appointed for terms of not less than three and not more than five years; and • Be eligible for reappointment, subject to a maximum length of service of ten years. 	Agree, subject to refinement through Omnibus Bill provisions and/or OC rules.	See preceding comment regarding the respective rule-making roles of the NFO and RFO boards and the OC.
	Exceptionally, up to one third of the first members of the NFO and RFO boards may be appointed for terms of not less than two years, to facilitate creating continuity through a system of staggered terms.	Agree, subject to refinement through Omnibus Bill provisions and/or OC rules.	See preceding comment regarding the respective rule-making roles of the NFO and RFO boards and the OC.

	RECOMMENDATION	NATIONAL TREASURY RESPONSE	NEXT STEPS OR ADDITIONAL CONSIDERATIONS
	<p>Members of the NFO and RFO boards should be appointed on terms that:</p> <ul style="list-style-type: none"> Secure their independence from the industry, consumer bodies, financial regulators, and politicians; Protect them from removal—except for removal by the NFO or RFO board because of incapacity, misconduct, or other just cause; Require them to act in the public interest, to disclose any conflict of interest, and not to be involved in any discussion or decision where they have a conflict; Require them to preserve the independence, integrity, and fairness of the decision-making process; and Require them to ensure that the NFO or RFO is appropriately resourced to carry out its objectives in a timely and efficient manner. 	<p>Agree, subject to refinement through Omnibus Bill provisions and/or OC rules.</p>	<p>See preceding comment regarding the respective rule-making roles of the NFO and RFO boards and the OC.</p>
D9	<p>Only an ombud should be able to make a final decision on the following:</p> <ul style="list-style-type: none"> Whether a complaint is (or is not) within the NFO or RFO's jurisdiction The procedure for the resolution of any complaint The outcome of a complaint. 	<p>Agree, subject to the COFI Bill's definition of "complaint" and refinement through Omnibus Bill provisions and or/OC rules</p>	<p>See preceding comment regarding the respective rule-making roles of the NFO and RFO boards and the OC.</p> <p>The OC currently has rule-making powers on these matters under s.201(2)(d) and (e) of the FSR Act.</p> <p>Consideration is required of whether the current wide paragraph (d) of the FSR Act definition of "ombud" needs to be refined.</p>
	<p>Only the NFO or RFO chief ombud or a senior ombud should be able to establish the NFO or RFO's approach to particular types of cases.</p>	<p>Agree, subject to refinement through Omnibus Bill provisions and/or OC rules.</p>	<p>See preceding comment regarding the respective rule-making roles of the NFO and RFO boards and the OC.</p>
D10	<p>Ombuds should be:</p> <ul style="list-style-type: none"> Selected by a transparent process, following a public advertisement; and Appointed by the NFO and RFO boards. 	<p>Agree, subject to refinement through Omnibus Bill provisions and/or OC rules.</p>	<p>See preceding comment regarding the respective rule-making roles of the NFO and RFO boards and the OC.</p> <p>The OC currently has rule-making powers on aspects of the appointment of ombuds under s.201(2)(c) of the FSR Act.</p>
D11	<p>Anyone appointed as the NFO and RFO chief ombuds or as a senior ombud should not be someone who:</p> <ul style="list-style-type: none"> Works in a financial provider or an association of financial providers, or has done so in the previous three years; or Has (or has a close family member with) a beneficial interest of more than 5 percent in a financial provider. 	<p>Agree, subject to refinement through Omnibus Bill provisions and/or OC rules.</p>	<p>See preceding comment regarding the respective rule-making roles of the NFO and RFO boards and the OC.</p>

	RECOMMENDATION	NATIONAL TREASURY RESPONSE	NEXT STEPS OR ADDITIONAL CONSIDERATIONS
D12	<p>The NFO and RFO chief ombuds and any senior ombuds should be:</p> <ul style="list-style-type: none"> • Appointed for terms of not less than five years; • Eligible for reappointment, subject to a maximum length of service of 10 years; and • Told whether they are to be reappointed at least a year before the end of their first term. 	<p>Agree, subject to refinement through Omnibus Bill provisions and/or OC rules.</p> <p>The consequential amendments to the FSR Act in the COFI Bill provide that:</p> <p>“(a) the Ombud and Deputy Ombud for Financial Services Providers hold office for five years from the date of appointment, unless a shorter period is specified in the appointment, and may be reappointed once on the expiry of the term of office.</p> <p>(b) The Minister must, at least three months before the end of the Ombud’s and Deputy Ombud for Financial Services Providers’ first term of office, inform the Ombud or the Deputy Ombud whether the Minister proposes to reappoint the person as Ombud and Deputy Ombud for Financial Services Providers, as the case may be.”</p>	<p>See preceding comment regarding the respective rule-making roles of the NFO and RFO boards and the OC.</p>
	<p>All ombuds should be appointed on terms that:</p> <ul style="list-style-type: none"> • Secure their decision-making independence from the NFO or RFO board, the industry, consumer bodies, financial regulators, and politicians; • Protect them from removal—except for removal by the NFO or RFO board because of incapacity, misconduct, or other just cause; • Require them to act in the public interest, to disclose any conflict of interest, and not to be involved in any complaint where they have a conflict; • Require them to preserve the independence, integrity, and fairness of the decision-making process; and • Protect their pay from being influenced by the outcome of cases (for example, by linking it to at least that of an equivalent grade of judge or another relevant comparator). 	<p>Agree, subject to refinement through Omnibus Bill provisions and/or OC rules.</p>	<p>See preceding comment regarding the respective rule-making roles of the NFO and RFO boards and the OC.</p>
D13	<p>The NFO and the RFO should each continue to be free of charge to complainants, so that cost does not create a barrier to access.</p>	<p>Agree.</p>	

	RECOMMENDATION	NATIONAL TREASURY RESPONSE	NEXT STEPS OR ADDITIONAL CONSIDERATIONS
D14	The NFO board should resolve the complexities and inconsistencies in the rules and processes of the existing ombud schemes as quickly as possible.	Agree.	<p>Further consideration is required of the respective roles of the NFO and RFO boards and the OC in relation to prescribing complaint-handling requirements for ombud schemes. The OC currently has rule-making powers on these matters under s.201(2)(e) of the FSR Act.</p> <p>Pending establishment of the reformed ombud system, the OC is considering making OC rules regarding some complaint processing matters (covered by this and other recommendations), to promote interim alignment of ombud scheme processes and procedures.</p> <p>This will also be facilitated by the current voluntary amalgamation process underway between existing industry schemes, under the oversight of the OC.</p>
	As soon as possible after that, the NFO and the RFO should establish one or more points through which complainants can submit complaints in relation to all financial sectors covered by either scheme.	Agree.	
D15	<p>The NFO and the RFO should each ensure that they are able to accept complaints:</p> <ul style="list-style-type: none"> • By any reasonable channel of communication that is available to consumers; and • Without necessarily requiring them to be received in writing or with a signature. 	<p>Agree.</p> <p>The COFI Bill's definition of "complaint" includes oral complaints.</p>	<p>Pending the COFI amendments, the OC is considering introducing a requirement to accept oral complaints through OC rules, recognising the need to deal with practical implications for schemes and financial institutions.</p>

	RECOMMENDATION	NATIONAL TREASURY RESPONSE	NEXT STEPS OR ADDITIONAL CONSIDERATIONS
D16	<p>The NFO and the RFO should agree on a common strategy to train staff and combine resources in improving their visibility and should agree on a common strategy to train staff and combine resources in improving the visibility and accessibility of the financial ombud system, including the following:</p> <ul style="list-style-type: none"> • Equalising visibility and accessibility in different urban and rural localities by partnering with advice agencies and other widely located bodies, and by periodic visits • Targeted use of the press, radio, and social media that takes account of the differing audiences that they address • Taking full account of the needs of consumers who are disadvantaged, vulnerable, disabled, or unused to receiving information and transacting business in English • Identifying and reporting publicly on the socioeconomic profile of complainants, to help better identify those to whom the ombud system is less visible or accessible • Taking active steps to make the ombud system more visible and accessible to underrepresented groups of potential complainants • Cooperating with the consumer financial education activities of public agencies (but not being the body primarily responsible for consumer financial education). 	Agree.	<p>The OC will facilitate and support implementation of the elements of recommendation D16 including, to the extent feasible, in advance of the establishment of the reformed ombud system.</p> <p>This will also be facilitated by the current voluntary amalgamation process underway between existing industry schemes, under the oversight of the OC.</p>

	RECOMMENDATION	NATIONAL TREASURY RESPONSE	NEXT STEPS OR ADDITIONAL CONSIDERATIONS
D17	<p>The NFO and the PFA should each have the following:</p> <ul style="list-style-type: none"> • Sufficient skilled staff and other resources to ensure the timely resolution of its intended workload • An integrated, computerised case management and document management infrastructure to: <ul style="list-style-type: none"> – Support the staff in managing the handling and resolution of complaints; – Provide information to monitor the efficiency of operations; and – Provide information to assist efforts to improve accessibility • Clearly documented processes, procedures, and policies on the handling and resolution of complaints and on communication with users of the service • A knowledge management system to provide staff with ready access to regularly updated information and material relevant to their work • A training, mentoring, and validation programme to ensure that staff handling complaints have the necessary specialist knowledge and experience. <p>In addition, their budgets should include sufficient provision for these.</p>	Agree.	<p>Some elements of recommendation D17 will be facilitated by the current voluntary amalgamation process underway between existing industry schemes, under the oversight of the OC.</p> <p>The OC is also considering the extent to which elements of recommendation D17 can be facilitated through making interim OC rules within the current FSR Act framework.</p>
D18	<p>The NFO and the RFO should each have and report against the following:</p> <ul style="list-style-type: none"> • Published service and performance standards • A robust quality assurance programme to monitor quality, consistency, and timeliness • Regular sampling of user views on the quality of service they received. 	Agree.	The OC is considering the extent to which elements of recommendation D18 can be facilitated through making interim OC rules and/or introducing streamlined scheme reporting requirements within the current FSR Act framework.
	<p>The NFO and the RFO should have a published procedures for complaints about the level of service, including the following:</p> <ul style="list-style-type: none"> • How a service complaint can be made • How it will be handled and by whom • A final stage that is conducted by an independent external person. 	Agree.	The OC has also developed processes for dealing with complaints against ombud schemes that are escalated to it.
	<p>At least every five years, the NFO and RFO boards should commission an independent skilled person to review their operations (comparing them against international good practice) and publish the report.</p>	Agree.	
D19	<p>The NFO and the RFO should each publish an annual report from its board and chief ombud that includes (at least) the following:</p> <ul style="list-style-type: none"> • The numbers and types of complaints that: – <ul style="list-style-type: none"> – Were received; 	Agree, subject to OC reporting requirements under s.217(1) of the FSR Act and any necessary amendments to these.	Pending implementation of the reformed ombud system, the OC is in the process of consulting with all the existing schemes on proposed streamlined reporting requirements, under s.217(1) of the FSR Act, taking elements of recommendation D19 into

	RECOMMENDATION	NATIONAL TREASURY RESPONSE	NEXT STEPS OR ADDITIONAL CONSIDERATIONS
	<ul style="list-style-type: none"> – Were outside its jurisdiction; – Were referred to the other; – Were referred to financial providers as premature complaints; – The scheme declined to deal with (even though in jurisdiction); – Were discontinued; – Were resolved without an ombud’s final decision; – Were resolved by an ombud’s final decision; – Were appealed; – Were resolved in favour of the complainant; and – Were resolved in favour of the financial provider. <ul style="list-style-type: none"> • As well as: <ul style="list-style-type: none"> – Performance against its timeliness and quality standards – The outcomes of any service complaints – Socioeconomic information on the distribution of its complainants – Plans to reach underrepresented groups of potential complainants – Representative case studies – Any systemic or significant problems identified in the financial system. • The following (or links to them should be published on the NFO and RFO websites): <ul style="list-style-type: none"> – The NFO and RFO’s governance arrangements – The names and backgrounds of the members of its board – The names and backgrounds of its ombuds – Its rules – Its arrangements for information sharing with regulators – Its visibility and accessibility programme – Its quality assurance programme – Details of staff numbers (by role) – Its annual accounts. 		<p>account. The process has been informed by an information request conducted by the OC, assessing the extent to which current scheme reports are aligned to the recommendation.</p> <p>Reporting requirements imposed on the RFO (and in the interim the existing FAIS Ombud) under the PFMA will also be borne in mind when setting reporting requirements for statutory schemes.</p>
D20	The NFO should publish, and the RFO should consider publishing, a quarterly report of key statistics and new and emerging issues.	Agree, subject to OC reporting requirements under s.217(1) of the FSR Act.	See preceding comment above.

	RECOMMENDATION	NATIONAL TREASURY RESPONSE	NEXT STEPS OR ADDITIONAL CONSIDERATIONS
D21	As part of its wider programme of engagement with stakeholders, the NFO and the RFO should each consult publicly on the following: <ul style="list-style-type: none"> • Future business plans • Proposed budgets • Proposed funding arrangements • Proposed changes to scopes, powers, and processes. 	Agree.	Further consideration is required regarding the extent of the OC's involvement in the funding model and budget processes of ombud schemes. Note that the RFO will remain subject to applicable PFMA consultation requirements.
D22	The FSCA, NCR, NFO, and RFO (as the case may be) should provide one another, on a regular basis, with appropriate information to assist the other in fulfilling its functions.	Agree. Information sharing arrangements must also include the OC and, to the extent required for PFMA oversight purposes, the National Treasury.	The OC has commenced engagements with the FSCA to coordinate and streamline information sharing arrangements within the current regulatory framework. Similar engagements with the NCR will take place.
	The arrangements, including the scope of the information that may be exchanged, should be documented and published.	Agree.	
	The NFO, RFO, FSCA, or NCR (as the case may be) should take account of the information provided in fulfilling their functions.	Agree.	
	In particular: <ul style="list-style-type: none"> • The NCR should take account of reports from the NFO about complaints against credit providers that turned out to be unauthorised; and • The FSCA should take account of reports from the RFO about nonpayment of pension contributions by employers. 	Agree.	
	The FSCA, NCR, NFO, and RFO should each nominate a person to be responsible for the management of the liaison and exchange of information with the others.	Agree. The OC and National Treasury should also make such a nomination.	
E	Ombud Council		
E1	The statutory provisions relating to the OC should be modified in order to increase its independence, rename its chief executive, and modify its powers in order to facilitate (and then adapt to) the new structure of the ombud system.	Agree in principle, subject to refinement through appropriate Omnibus Bill provisions.	Further consideration is required of the extent to which the OC's powers and functions need to be adapted in light of the new ombud system structure. Draft Omnibus Bill provisions will be consulted on, setting out applicable proposals.

	RECOMMENDATION	NATIONAL TREASURY RESPONSE	NEXT STEPS OR ADDITIONAL CONSIDERATIONS
E2	<p>The statutory provisions for the appointment by the minister of the members of the OC (other than the Chief Ombud) should be amended so that:</p> <ul style="list-style-type: none"> • They are required to be chosen by a transparent process, following a public advertisement; • They are required to provide a balance of understanding in respect of: <ul style="list-style-type: none"> – The regulation of financial providers, – The legitimate concerns of consumers of financial services and credit, and – The legitimate concerns of the financial industry; and • They are appointed on terms that secure their independence (including from the minister), and for a minimum term of at least three years; while • They retain the existing statutory safeguards concerning their dismissal. 	<p>Agree in principle, subject to refinement through Omnibus Bill provisions.</p>	<p>Draft Omnibus Bill provisions will be consulted on, setting out applicable proposals.</p>
E3	<p>The statutory provisions for the appointment of the Chief Ombud should be amended so that the Chief Ombud:</p> <ul style="list-style-type: none"> • Is to be appointed by the other members of the OC and chosen by a transparent process, following a public advertisement; • Is to be appointed on terms that secure their independence (including from the minister), and for a minimum term of five years; • Must not have worked in a financial institution (or an industry body for the sectors) in the previous three years; and • Is to be protected from removal—except for incapacity, misconduct, or other just cause and only by the other members of the OC. 	<p>Agree that the Chief Ombud/Chief Executive should be appointed by the other members of the OC.</p> <p>Agree in principle with other elements of the recommendation, subject to refinement through Omnibus Bill provisions.</p>	<p>Draft Omnibus Bill provisions will be consulted on, setting out applicable proposals. Meanwhile, the COFI Bill amendments to the FSR Act provide for the Chief Executive Officer to be appointed on the recommendation of the OC board.</p>
E4	<p>The title “Chief Ombud” is likely to create confusion over the true role and responsibilities of the chief executive of the OC and should be replaced by something more consistent with the role, such as Chief Executive or Director General.</p>	<p>Agree.</p> <p>Renaming of the Chief Ombud to Chief Executive Officer of the OC will be effected through COFI Bill consequential amendments to the FSR Act.</p>	

	RECOMMENDATION	NATIONAL TREASURY RESPONSE	NEXT STEPS OR ADDITIONAL CONSIDERATIONS
E5	<p>To facilitate consolidation of the system, the OC should be given power (where it considers it appropriate) to:</p> <ul style="list-style-type: none"> • Authorize a recognised nonstatutory ombud (for example, the NFO) to deal with a complaint against a financial provider that is already within its jurisdiction, even if part or all of the complaint falls within the jurisdiction of a statutory ombud scheme; and • Designate a recognised nonstatutory ombud (for example, the NFO) as the automatic ombud scheme in a particular sector (or sectors) to exercise jurisdiction, with binding decisions, over any financial provider in that sector (or those sectors). 	<p>Agree in principle, subject to refinement through Omnibus Bill provisions.</p> <p>COFI Bill consequential amendments to the FSR Act will facilitate aspects of this recommendation in relation to the current FAIS Ombud's jurisdiction.</p> <p>Existing rule-making and designation powers of the OC under the FSR Act can also be used to support aspects of this recommendation (see sections 201(2)(d) and 211(1)(a)).</p>	<p>[See annex B to the National Treasury's policy statement for the implementation plan.]</p> <p>Note that the OC's existing rule-making and designation powers may need to be used in advance of the establishment of the NFO to address jurisdictional gaps and overlaps in the current system. The OC has begun a process of identifying such gaps and overlaps.</p>
E6	<p>The OC's current statutory duty to establish and operate one or more centres to facilitate financial customers' access to appropriate ombuds should be modified, so that it becomes a power to require the NFO and the RFO to establish and operate effective access points in relation to all financial sectors covered by either scheme.</p>	<p>Agree.</p> <p>This amendment will be made through the COFI Bill consequential amendments to the FSR Act, which repeal the current provision.</p>	
E7	<p>Once the NFO has been established, and in light of the consolidation of the system and the increased independence of governance, the National Treasury should review the statutory powers of the OC with a view to repealing any intrusive or coercive powers that:</p> <ul style="list-style-type: none"> • Are no longer appropriate in light of the reform of the ombud system; • Are no longer cost effective in light of the reform of the ombud system; and/or • May be perceived as infringing on the independence of the reformed ombud system. 	<p>Agree in principle, subject to consultation on appropriate Omnibus Bill provisions.</p>	<p>Draft Omnibus Bill provisions will be consulted on, setting out applicable proposals.</p> <p>An appropriate balance needs to be struck between avoiding inappropriately intrusive powers and ensuring adequate independent regulatory oversight over the exercise of the far-reaching powers to be conferred on the NFO and its board.</p>
E8	<p>The OC should be required to publish regular public reports (at least annually) on its work.</p>	<p>Agree.</p> <p>This is already required through the PFMA and supported by the provisions of s.217(2) and (4) of the FSR Act, but specific OC reporting requirements will be reviewed.</p>	

A SIMPLER, STRONGER FINANCIAL SECTOR OMBUD SYSTEM

FEEDBACK STATEMENT

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