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**FINANCIAL SECTOR REGULATION ACT, 9 of 2017**

**DRAFT OMBUD COUNCIL RULES FOR THE PENSION FUNDS ADJUDICATOR, 2026**

**CONSULTATION REPORT**

**Date of publication: [To be inserted]**

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**1. PURPOSE**

- 1.1. The Financial Sector Regulation Act (Act 9 of 2017) (the FSR Act) requires the maker of a regulatory instrument to publish a consultation report with each regulatory instrument, as part of the broader consultation process required when making such instruments.
- 1.2. The consultation report must include a general account of the issues raised in the submissions made during the consultation; and the maker's response to those issues. (Section 104 of the FSR Act). The consultation report must also be submitted to Parliament when the regulatory instrument is submitted to Parliament in accordance with section 103 of the FSR Act.
- 1.3. As the maker of the Ombud Council Rules for the Ombud for Financial Services Providers, 2024 (the Rules) the Ombud Council has therefore prepared this Consultation Report.

**2. DEFINITIONS**

In this Report the following terms have the following meanings:

**“Adjudicator”** means the Pension Funds Adjudicator appointed in accordance with section 30C of the Pension Funds Act;

**“FSR Act”** means the Financial Sector Regulation Act, 2017 (Act 9 of 2017);

**“OPFA”** means the Office of the Pension Funds Adjudicator established in accordance with section 30B of the Pension Funds Act;

**“Pension Funds Act”** means the Pension Funds Act, 1956 (Act 24 of 1956);

**“Rules”** means the Ombud Council Rules for the Pension Funds Adjudicator, 2026;

**“Statement of Need”** means the Statement of Need, Intended Operation and Expected Impact of the Rules. This Statement accompanied the invitation to comment on the Rules (and also accompanies the submission of the draft Rules to Parliament), as required by sections 98(1)(a) and 103(1)(a) of the FSR Act.

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## 3. SUMMARY OF CONSULTATION PROCESS

- 3.1. The Ombud Council published a draft of the Rules on its website on 30 September 2025. As required by section 98(1)(a) of the FSR Act, the draft Rules were published together with:
- A statement explaining the need for, intended operation of, and expected impact of the Rules; and
  - A notice inviting submissions in relation to the Rules.
- The closing date for submissions was 14 November 2025.
- 3.2. The publication of the draft Rules by the Ombud Council followed extensive engagement with the Adjudicator and other officials of the OPFA in the course of developing the draft Rules, and a round of informal, targeted consultation with members of the Financial Sector Conduct Authority's (FSCA) Market Conduct Committee (MCC). The MCC is a multi-stakeholder consultation forum established by the FSCA for engagements regarding financial sector market conduct regulatory matters. The Ombud Council and the OPFA are both represented on the MCC.
- 3.3. Inter-regulator engagement also took place with the FSCA.
- 3.4. This Consultation Report summarises the comments received through the public consultation process, the Ombud Council's response to the comments, and resulting changes to the Rules.
- 3.5. The Ombud Council received four written submissions on the draft Rules, from the following commentators:

<i>Category</i>	<i>Name</i>	<i>Abbreviation (Used in the remainder of this report)</i>
Industry Associations	Association for Savings and Investments, South Africa	ASISA
	Institute of Retirement Funds Africa	IRFA
Financial institution	Old Mutual Limited	Old Mutual
Statutory Ombud Scheme	Office of the Pension Funds Adjudicator	OPFA

- 3.6. The Ombud Council takes this opportunity to thank all commentators for their valuable inputs, which assisted in shaping the proposed final draft of the Rules.

## 4. GENERAL ACCOUNT OF ISSUES RAISED IN SUBMISSIONS

The main points raised in submissions during the public consultation process are summarised below. Please note that the Ombud Council responses below should be read together with the accompanying Statement of Need, which more fully sets out the rationale and intent of the Rules, and the more detailed specific responses in the attached comment matrix.

- 4.1. *Consistency with the Pension Funds Act:* Several comments noted that the Rules should not be inconsistent with the provisions of the Pension Funds Act, and some queries were raised as to whether the Rules intended to expand the OPFA's jurisdiction beyond the jurisdiction provided for in the Pension Funds Act. In particular, queries were raised whether Rules 3 and 4, dealing with the category of persons qualifying as complainants and the types of complaints to be dealt with by the Adjudicator, sought to expand the Adjudicator's scope beyond the corresponding definitions in the Pension Funds Act.

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*Ombud Council response:* The Council confirms that the intention is not to expand the Adjudicator’s jurisdiction beyond that contemplated in the Pension Funds Act, which would not be permissible. Section 201(2)(d) of the FSR Act empowers the Ombud Council to make rules regarding “the definition and type of complaints to be dealt with by specified ombud schemes”, but is balanced by section 201(3) which provides that an Ombud Council rule must not be inconsistent with relevant financial sector laws. Accordingly, the provisions of the Rules now being made are not inconsistent with the relevant provisions of the Pension Funds Act, but rather seek to complement them. See also new sub-Rule 1(3) which, for avoidance of doubt, confirms this position.

- 4.2. *Alignment with future Conduct of Financial Institutions Bill (COFI) framework:* As the Ombud Council pointed out in the Statement of Need, one of the aims of the Rules is to align the Rules with anticipated amendments to the OPFA’s governing legislation as per proposed consequential amendments to the FSR Act (through the draft Conduct of Financial Institutions (COFI) Bill), with a view to mitigating the need for further changes when those provisions take effect – to the extent possible within the existing legislative framework. Some suggestions were therefore made for changes to the Rules to better align them with certain of these pending legislative amendments.

*Ombud Council response:* As noted above, the extent to which alignment with the future COFI Bill framework can be achieved through these Rules is constrained by the need to ensure consistency with the current Pension Funds Act provisions. For example, although the future COFI framework will permit oral complaints and will allow persons acting on behalf of complainants to be regarded as complainants without having to demonstrate a personal interest in the complaint, such provisions are at this stage inconsistent with current primary law. Our detailed responses therefore clarify that the Pension Funds Act provisions remain on place in this regard.

- 4.3. *Complaints against retirement fund benefit administrators:* The FSCA recently published a Conduct Standard for retirement fund benefit administrators which, among other requirements, obliges them to implement complaints management processes. In light of this, requests were made for the Rules to provide for specific processes for complaints against administrators, over and above complaints against funds and employers.

*Ombud Council response:* Again, the Ombud Council’s rule-making powers are constrained by the need to align with the language used in the Pension Funds Act, which deals specifically with complaint processes in relation to funds and employers. Section 7D of the Pension Funds Act, which allows for funds to delegate functions to other parties such as administrators but stipulates that the fund is not divested or relieved of responsibility for such functions, also needs to be borne in mind. We point out however that, where necessary, administrators will be joined as parties to a complaint by the Adjudicator, and that complaint handling co-ordination processes between funds, administrators and the OPFA, which can take the FSCA Conduct Standard requirements into account, may be developed.

- 4.4. *Risk of informal or incomplete complaints:* Rule 5(2) allows the Adjudicator to submit a directly received complaint to the respondent on behalf of the complainant in certain circumstances, and Rule 5(3) allows the Adjudicator to publish an official Complaint Form and decline to deal with complaints not submitted on a fully completed form, but does allow deviation from the prescribed form where the Adjudicator deems it fair and equitable to do so. A concern was raised that this could allow informal and incomplete

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complaints, and that the Adjudicator should not be permitted to substitute or expand on complaints for complainants.

*Ombud Council response:* We do not agree that allowing the flexibility provided for in these Rules presents a risk of incomplete or informal complaints, as there are sufficient safeguards in the Act and the Rules to ensure that the Adjudicator's processes are fair to all parties. This provision is intended to allow flexibility, accessibility, and expeditious complaint resolution where fairness so requires, for example in urgent cases or in the case of vulnerable customers who may face difficulty in completing the official form. There is also nothing in the Rules to suggest that they will result in the Adjudicator substituting or expanding complaints for complainants.

- 4.5. *Obligations imposed on respondents:* Rule 6(1) imposes disclosure obligations on respondents regarding complaints channels and the availability and contact details of the Adjudicator. A comments was made that the Ombud Council does not have jurisdiction over respondents, and may only make Rules pertaining to the conduct of ombud schemes.

*Ombud Council response:* Section 210(2) of the FSR Act does enable the making of Ombud Council Rules in regard to financial institutions' disclosures regarding ombud schemes. We acknowledge however that this provision does not empower the Ombud Council to make rules in respect of respondents who are not financial institutions, such as employers. The Rule has therefore been revised to limit it to respondents that are financial institutions. The Ombud Council would however urge responsible participating employers to implement similar disclosures, and recommends that funds or administrators who assist employers in their communications with members, encourage similar disclosures by employers.

- 4.6. *Timelines and process steps:* Some suggestions were made that certain Rules should stipulate specific timeframes and processes for some steps in the complaint handling process.

*Ombud Council response:* Save for the limited instances where the Pension Funds Act and the Rules already specific timeframes, the Ombud Council believes it is preferable to allows the Adjudicator the flexibility to set and communicate these matters, rather than "hard coding" them in a regulatory instrument. Note that Rule 11 allowing the Adjudicator to set time limits generally.

- 4.7. *Objectivity of the Adjudicator:* Concerns were raised that some Rules could potentially compromise the Adjudicator's objectivity. These include Rules 6(3)(c), 6(4) and 6(7), which respectively provide for discussions with a party to a complaint to obtain further information; sharing of information provided by one party with another party; and providing complainants with explanations of how they are able to obtain assistance to enforce determinations made in their favour.

The OPFA raised a particular concern that the discretion conferred on the Adjudicator under Rule 6(4) to share information provided by one party to a complaint with another party, inappropriately contemplates the editing or redacting of submissions before sharing them, which the OPFA fears will compromise objectivity and have material resource implications. The OPFA also raised a concern that this Rule conflicts with section 30F of the Act, which obliges the Adjudicator to afford a person against whom allegations contained in a complaint are made to opportunity to comment on the allegations.

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*Ombud Council response:* For reasons fully set out in the attached detailed response matrix, the Ombud Council does not believe these measures present any risk of compromising the Adjudicator's objectivity. All of the mechanisms referred to are aimed at facilitating the investigation of complaints or, in the case of Rule 6(7) helping to ensure that complainants are empowered to obtain the outcomes they are entitled to after a determination. We point out that whether and how to implement the processes provided for in Rules 6(3) and 6(4) are entirely at the Adjudicator's discretion, and the Rules are primarily aimed at ensuring co-operation from the parties if or when such measures are adopted. In addition to the several provisions of the Pension Funds Act and the Rules that provide procedural fairness safeguards, it is open to the Adjudicator to develop such further processes, including appropriate delegations, as may be deemed necessary to ensure procedural fairness is maintained.

Regarding the OPFA's concern with Rule 6(4), the Ombud Council points out that Rule 6(4) clearly stipulates that section 30F of the Act must be complied with, and does not confer any discretion in this regard. As explained in the attached matrix, the Rule in no way suggests that the Adjudicator should redact allegations, reformulate complaints, or edit submissions, which the Ombud Council agrees would be unfair and inappropriate. Where information falling outside the ambit of section 30F is concerned, the Rule confers an enabling discretion on the Adjudicator, aimed at facilitating complaint resolution through the sharing of information.

- 4.8. *Preliminary determinations:* A commentator proposed that the issuing of preliminary determinations before a final determination should be reintroduced.

*Ombud Council response:* We have been advised by the Adjudicator that the practice of issuing preliminary determinations, at the Adjudicator's discretion, is in place and will remain so. Please see new Rule 6(5) which confirms this.

- 4.9. *Conciliation process should be discretionary:* Comments were made by the OPFA and others that resolution of complaints through a conciliated settlement as contemplated in Rule 7(1) should be at the Adjudicator's discretion and not be mandatory, with concerns raised that a mandatory conciliation process will slow down resolution times, be resource intensive, and thus not in the interests of the parties.

A specific suggestion was also made by the OPFA that the process requirement in Rule 7(4), that the Adjudicator (in cases where the settlement recommendation process is used) should obtain evidence that a party has taken the action agreed to in the settlement agreement before closing the matter, should be optional and not mandatory.

*Ombud Council response:* These concerns appear to be based on a mis-reading of Rule 7(1). The conciliated settlement process in general, and the option of settling a matter through a written settlement recommendation that may be accepted by the parties, is at the Adjudicator's discretion and not mandatory. Rule 7(1) requires the Adjudicator to consider whether there is a reasonable prospect of conciliated settlement, and confirms that this does not limit the generality of section 30J of the Act or Rule 2(3), which grant the Adjudicator discretion to follow any procedure considered appropriate. The practical impact of this provision will depend on the opportunities that the Adjudicator has to use it, and the extent to which the Adjudicator opts to implement it. Please also refer to the detailed rationale for this Rule set out in

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paragraph 3.2.8 of the Statement of Need, and the detailed responses in the attached matrix.

The Ombud Council agrees with the suggestion regarding Rule 7(4). The Rule has been revised to grant the Adjudicator greater flexibility in this regard.

- 4.10. *Summary dismissals:* Rule 8(1) allowing for summary dismissal on certain grounds was welcomed. Suggestions were made that the Adjudicator should provide the complainant with an opportunity to respond before a summary dismissal, and that the respondent should be informed of the complaint and the dismissal.

*Ombud Council response:* The Ombud Council does not believe it is necessary to prescribe that the Adjudicator should in all instances give the complainant an opportunity to respond to an intended summary dismissal. Depending on the situation this could be an inefficient use of the OPFA's resources. The Adjudicator is however free to do so should they deem it appropriate in any given case. We agree with the suggestion regarding informing the person complained about of the matter and have provided for this in sub-Rule 8(2).

- 4.11. *Default determinations:* Requests were made for additional process steps to be provided for in the Rules to ensure procedural fairness to respondents.

*Ombud Council response:* For reasons set out in the attached matrix, the Ombud Council does not believe that additional processes are required in the Rules, but we point out that the Adjudicator is free to implement such processes as they deem appropriate.

- 4.12. *Cost awards:* Concerns were raised that Rule 10, dealing with the making and quantification of costs awards by the Adjudicator against a respondent or, in specific limited circumstances, against a complainant, could discourage use of the scheme and undermine its consumer-friendly role. It was suggested that the Rule should provide that cost orders will only be made in "exceptional circumstances" and that guidance should be provided regarding various practical aspects of the making of costs orders.

*Ombud Council response:* Section 30N of the Act empowers the Adjudicator to make any order a court may make, and therefore already empowers the making of costs orders. The purpose of the Rule, which aligns with a corresponding provision for the FAIS Ombud, is primarily to set parameters and quantification criteria for a costs award should the Adjudicator choose to make one. Any party aggrieved by a costs order, which would include the quantum of the costs order, may request reconsideration of this aspect of the Adjudicator's determination by the Financial Services Tribunal. Please also see our more detailed responses to these comments in the attached matrix.

- 4.13. *Correction of errors in determinations:* Commentators requested a provision in the Rules allowing the Adjudicator to correct manifest factual, typographical or clerical errors in a determination, without intervention of the Financial Services Tribunal.

*Ombud Council response:* Although the Ombud Council agrees that such a provision is desirable, we believe that it requires a primary law provision to override the common law *functus officio* principle. We will encourage the implementation of such a provision through relevant legislative processes.

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- 4.14. *Transitional period for implementation:* Industry commentators did not request or recommend a specific implementation period, but noted that an appropriate implementation lead time will be required to the extent that any required changes in the OPFA processes may require implementation changes for them, and to allow the Adjudicator an opportunity to develop requested guidance. The OPFA noted that adjustment of workflow and systems (and possibly additional resources) for new processes being introduced would be required, and was of the view that the implementation date should align with performance periods as well as budgeting processes. In this regard, the OPFA indicated that one calendar month will be insufficient, but did not propose a specific transition period.
- 4.15. *Ombud Council response:* The Ombud Council notes these comments, and we have indicated in the draft Rules (see footnote to Rule 15) that we will determine an implementation period for certain identified Rules of not less than two months after the date of publication, after further consultation with the Adjudicator. Rules that are not expected to have practical implementation implications will come into effect immediately on publication on the Ombud Council's website.

### **5. MATRIX OF SUBMISSIONS AND OMBUD COUNCIL RESPONSES**

- 5.1. The Table below sets out comments received and issues raised by the commentators listed in paragraph 3, and the Ombud Council's responses, including instances where the Rule concerned has been revised in light of the comment

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## COMMENTS ON DRAFT OMBUD COUNCIL RULES FOR THE PFA

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<b>No.</b>	<b>Rule No.</b>	<b>Commentator</b>	<b>Issue/Comment/Recommendation</b>	<b>Ombud Council response</b>
1	<b>General</b>	ASISA	<p>ASISA members support the objectives of the Ombud Council Rules as set out in the Statement of Need. For example, ASISA welcomes alignment of OPFA procedures with the FSR Act and the publication of plain-language guidance to improve member understanding of outcomes and remedies. Co-ordinated data-sharing protocols with the FSCA, in line with POPIA, and minimisation of duplicative reporting, is also supported.</p> <p>In line with the stated intention in the Statement of Need, ASISA members support alignment (where necessary) of the Rules with the draft Conduct of Financial Institutions (COFI) Bill, when enacted. For instance, the last available version of the Bill had the definitions of “complaint” and “complainant” deleted and section 30A to 30Y repealed in the Pension Funds Act. The draft Rules however still refer to those sections in the Pension Funds Act.</p>	<p>Noted.</p> <p>The Rules are expected to come into operation before the COFI Bill’s promulgation. Sections 30A to 30Y and the existing definitions of “complaint” and “complainant” in the Pension Funds Act will therefore still be in operation when the Rules come into operation. It therefore remains necessary for the Rules to refer to these provisions.</p>
2	<b>General</b>	OPFA	To avoid confusion with lay complainants, and for purposes of clarity, there should be a provision informing the reader that the rules are subject to the Act. Any inconsistency with the Act will be null and void.	See new sub-rule 1(3) referencing section 201(3) of the FSR Act. Although this provision is not strictly necessary as it restates the FSR Act provision, we support the OPFA’s suggestion to clarify this for avoidance of doubt.
<b>Rule 1 - Definitions and application</b>				
3	<b>"respondent"</b>	IRFA	The definition of 'respondent' is ambiguous. It should be clarified whether the term is limited to the main party in a complaint or if it can include others with a direct link to the issue. This will ensure the right parties are involved from the start.	It is unclear in what respect the definition is ambiguous. The definition confirms that “respondent” may include any party to the complaint from whom the Adjudicator has requested a response. The definition should be

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SECTION B - COMMENTS ON THE DRAFT OMBUD COUNCIL RULES FOR THE PENSION FUNDS ADJUDICATOR, 2026 (“the RULES”)				
No.	Rule No.	Commentator	Issue/Comment/Recommendation	Ombud Council response
				read with section 30G of the Act, which stipulates the parties to a complaint.
<b>Rule 2 - Fundamental principles.</b>				
4	Rule 2(3)	IRFA	<p>The phrase 'any procedure the Adjudicator considers appropriate' is too vague and undermines the need for clear rules. We suggest removing it to ensure a consistent process.</p> <p>If some flexibility is necessary, the rules should at least require that any procedure is fair, transparent, and timely. We suggest the following is inserted in that instance: <u><i>“that such procedures must be consistent with fairness and appropriate timelines”</i></u></p>	We disagree. The language used is consistent with the language used in section 30J of the Act, which also refers to “any procedure he or she considers appropriate” in regard to Adjudicator procedures. There are several other provisions of the Act and the Rules aimed at ensuring fair and timely processes.
<b>Rule 3 - Category of persons qualifying as complainants</b>				
5	Rule 3	OPFA	<p>Clarification is requested on who would be the lawful successor in title in respect of a complaint relating to:</p> <ul style="list-style-type: none"> <li>(i) Section 13A by a member;</li> <li>(ii) Section 37C death benefit by a beneficiary or potential beneficiary; and</li> <li>(iii) Section 37D withholding by a member.</li> </ul>	The inclusion of a “lawful successor in title” within the overall scope of potential complainants does not mean that this situation will necessarily arise in respect of every type of complaint or complainant. The question whether there is scope for a successor in title to qualify as a complainant will depend on the circumstances of each case.
6	Rule 3	OPFA	“Dependant or nominee”. These are covered under paragraph (a)(ii) of the definition in the Act.	Agreed. Explicit references to dependants or nominees are however considered useful to ensure clarity for stakeholders that such persons are eligible to submit a complaint to the OPFA, where they can demonstrate the requisite interest in the matter.
7	Rule 3	OPFA	“Member or former member of a fund”. These are covered under paragraph (a)(i) of the definition in the Act.	The reference to a “member or former member of a fund” should be read with the full text of Rule 3. It provides that the lawful successor,

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				dependant or nominee of a member of former member of the fund may qualify as a complainant, rather than referring to the member or former member of the fund themselves. As the OPFA correctly points out, the member or former member of a fund is already explicitly included in the definition of “complainant” in the Act.
8	Rule 3	IRFA	Requiring a representative to have an 'interest in the complaint' is problematic. The interest lies with the complainant. This rule could prevent professionals like lawyers or guardians from representing complainants. We recommend removing this requirement so that complainants can choose who represents them.	<p>We agree that the wording of the Rule places an unfortunate restriction on the extent to which persons acting on behalf of the main complainant may also be regarded as complainants. This is contrary to the anticipated definition of “complainant” to be introduced through the COFI Bill, which does not require the person concerned to have such an interest. However, removing the requirement that the person concerned must have an interest at this stage, runs the risk of being in conflict with the current definition of “complainant” in the Pension Funds Act. Accordingly, the wording of this Rule will remain as drafted until such time as the definition is replaced by the COFI definition.</p> <p>Note however that the OPFA does in practice permit someone else to act on a complainant’s behalf with the complainant’s written authorisation.</p>
<b>Rule 4 - Jurisdiction: Types of complaints to be dealt with by the Adjudicator</b>				

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9	Rule 4(1)(a)	ASISA	<p>The draft CoFI Bill describes a complaint as “an expression of dissatisfaction, made orally or in writing...”.</p> <p>If the intention is that a complaint can be submitted orally, it is recommended that the Ombud Council Rules for the PFA should deal with oral expressions of dissatisfaction. This would be helpful and may further assist to distinguish the rules relating to when a matter is considered to be a query or a service request, and when it becomes a complaint.</p>	<p>The Rules are expected to come into operation before the COFI Bill’s promulgation. The current section 30A of the Act requiring complaints to be in writing will therefore still be in operation when the Rules come into operation. If or when the COFI Bill provision for oral complaints comes into effect, the Ombud Council will consider the extent to which Ombud Council Rules may be required to provide for procedures for the handling of such complaints.</p>
10	Rule 4(1)(a)	IRFA	<p>Allowing oral complaints could lead to confusion and disputes. We strongly recommend that all complaints be in writing to ensure there is a clear record. If oral complaints are accepted, there must be clear rules for how they are recorded and confirmed. It is also important to distinguish clearly between a query and a complaint.</p> <p>We also need to know if these rules will replace the current Resolution Facilitation Team (RFT) process, which has been successful. We support retaining the RFT process.</p>	<p>See response to item 9.</p> <p>It is open to the OPFA to develop criteria, within the ambit of the Act and the Rules, for distinguishing between queries and complaints should they deem it necessary. The Rule seeks to clarify that a complaint must be regarded as such despite it being submitted together with or in relation to a query.</p> <p>We assume the commentator is referring to the OPFA’s current “Refer to Fund” (RTF) process, in which regard see response to item 11.</p>
11	Rule 4(1)(a)	OPFA	<p>The rules should confirm that the expression of dissatisfaction must be in writing.</p> <p>Further clarification is required regarding the requirement to lodge the grievance with the fund first in terms of section 30A(1) (aka “the RTF process”). Do the rules intend to override this requirement?</p>	<p>Agreed, in view of the fact that section 30A of the Act requiring complaints to be in writing will still be in operation when the Rules come into operation. See insertion of the word “written” in Rule 4(1)(a).</p> <p>The Rules may not and do not intend to override section 30A(1). Please refer to Rules 5(1) and 5(2) which confirm the application of section 30A(1).</p>

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12	Rule 4(1)(b)	OPFA	<p>Section 7D(2) of the Act provides that:</p> <p><i>(a) The board may, in writing and in accordance with a system of delegation set out in the rules, delegate any of its functions under this Act to a person or group of persons, or a committee of the board, subject to conditions that the board must determine.</i></p> <p><i>(b) The board is not divested or relieved of a function delegated under paragraph (a) and may withdraw the delegation at any time.</i></p> <p>The rules should clarify that the fund remains responsible/liable for functions delegated to the administrator.</p>	<p>We disagree that clarification is necessary. Rule 4(1)(b) confirms that a complaint as envisaged in the Act against a fund, administrator, or employer may arise from the actions of an agent or service provider acting on behalf of any of them – in other words that the conduct of such agents or service providers may be the subject matter of a complaint against their principal. It does not in any way detract from the responsibility of a fund in relation to functions delegated to its administrator or any other party, as provided for in section 7D(2) of the Act.</p>
13	Rule 4(2)	OPFA	<p>Whilst section 211 of the FSR Act empowers the Ombud Council to make a designation, the FSR Act does not permit the Ombud Council to extend the definition of complaint in the rules made in terms of section 201 of the FSR Act. These are two separate processes and should not be conflated.</p>	<p>Rule 4(2) does not conflate the Ombud Council’s rule-making power under section 201(2)(d) of the FSR Act and its designation powers under section 211 of the FSR Act. The Rule references these in separate sub-rules (paragraphs (ii) and (iii) of Rule 4(2) respectively). Section 201(2)(d) empowers the Ombud Council to make rules regarding “the definition and type of complaints to be dealt with by specified ombud schemes”, and section 201(3) provides that an Ombud Council rule must not be inconsistent with relevant financial sector laws. Accordingly, the provisions of the Rules now being made, insofar as they relate to the definition and types of complaints the dealt with by the OPFA, are not inconsistent with the relevant provisions of the Pension Funds Act.</p>

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				See also new sub-Rule 1(3) which, for avoidance of doubt, confirms this position.
14	Rule 4(3)	OPFA	Following from the comment in (2) above, this can only relate to complaints as defined in the Act, or designated in terms of section 211 of the FSR Act i.e. not in terms of the rules	<p>For a complaint to fall within the ambit of Rule 4, it follows that it will remain within the ambit of the Act. This is because Ombud Council Rules may not be inconsistent with the Act (section 201(3) of the FSR Act), and section 30D(1) of the Act confirms that handling complaints designated by the Ombud Council is part of the Adjudicator’s mandate. Rule 4(2) is accordingly intended to provide clarity to stakeholders regarding the different existing bases upon which the Adjudicator’s jurisdiction is founded.</p> <p>See also new sub-Rule 1(3) which, for avoidance of doubt, confirms this position.</p>
15	Rule 4(6)	IRFA	<b><i>For purposes of clarity:</i></b> There is sometimes a problem where cases are referred back to the Adjudicator by the FST, the Adjudicator makes a decision and the complainant remains unhappy with that decision and subsequently lodges a new complaint so will this rule then allow the Adjudicator to have power to say that it has already considered the matter therefore a new complaint on essentially the same issue cannot be presided over?	<p>We understand the question to relate to the situation where the Financial Services Tribunal has ordered the Adjudicator to reconsider a complaint and the Adjudicator has issued a fresh determination after such reconsideration. This fresh determination will typically require the Fund concerned to in turn reconsider the matter (for example a section 37C death benefit allocation), having regard to further considerations that may have been raised by the FST ruling. When this occurs, the ensuing decision of the Fund constitutes a new decision, regardless of whether the practical outcome is the same or similar to the decision that gave rise to the initial complaint. Accordingly, such new decision can form the</p>

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				<p>basis of a new complaint, which the Adjudicator will consider afresh.</p> <p>Please also refer to the OPFA’s Communication 2 of 2025 for further guidance on this matter.</p>
<b>Rule 5 – Receipt of complain</b>				
16	Rule 5(1)	IRFA	Is the intention of this rule, to grant the Adjudicator additional powers to extend their jurisdiction when complaints are received. Our understanding is that the “complaint” is a defined term and the Adjudicator can only have jurisdiction on complaints as defined in the Act.	<p>No, the intention is not to expand the Adjudicator’s jurisdiction.</p> <p>See responses to items 13 and 14.</p>
17	Rule 5(1)	OPFA	As per previous comments, the Rules cannot extend the jurisdiction. Jurisdiction is determined in terms of the Act and section 211 of the FSR Act	See the responses to items 13 and 14.
18	Rule 5(1)(a)	IRFA	<b>Recommendation:</b> For consistency, the rules should use the defined term 'respondent' instead of 'fund' or 'employer'. The rules should also permit complaints to be made directly to the administrator, as allowed by the Conduct Standard for Pension Benefit Administrators.	<p>Rule 5(1)(a) has been drafted to align with the wording of sections 30A(1) and (2) of the Act, which refer to submission of complaints to the fund, and consideration and responses by the fund or employer. Section 201(3) of the FSR Act requires Ombud Council rules to be consistent with financial sector laws.</p> <p>We appreciate however that in practice an administrator may be a respondent to a complaint (or one of the respondents), and that the Adjudicator will engage with the administrator accordingly. We also note the requirements of the FSCA’s Conduct Standard for Benefit Administrators, which requires administrators to have frameworks in place for</p>

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				<p>receipt and handling of complaints about their administration functions.</p> <p>Section 7D(2) of the Act provides in summary that the board of a fund may delegate functions (which would include delegation of benefit administration to an administrator in terms of section 13B of the Act), but that the board is not divested or relieved of such a delegated function. In light of this provision, read with the above-mentioned Conduct Standard, the Ombud Council assumes that in practice funds and administrators will agree appropriate processes between them for the handling of complaints about benefit administration, including the handling of such complaints when submitted to the OPFA.</p> <p>It will also be open to the Adjudicator to develop such complaint handling processes for liaison between administrators, the fund, and the OPFA, within the framework of the Act and these Rules, that the Adjudicator may deem necessary in light of the provisions of the Conduct Standard.</p>
19	Rule 5(1)(b)	Old Mutual	Rule 5.1 (b) what would be the manner/specifications that would be required by the adjudicator.	This will be a matter for the Adjudicator to stipulate and communicate.
20	Rule 5(2)	IRFA	<b>Recommendation:</b> Either expand to include reference to an administrator or use the defined term of ‘respondent’ – instead of only referring to fund.	See response to item 18 regarding the term “respondent” instead of “fund”, and the response to item 11 regarding the OPFA’s RTF process.

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			<p>Does this relate to the informal process that is currently followed? Reference is made to the OPFA’s RTF process where the Fund is allowed 20 days to respond. If so:</p> <ol style="list-style-type: none"> <li>1. Clarity is requested around the time period the respondent will be provided with once the complaint is then made formal by the Adjudicator’s offices as currently, respondents are being provided with very limited time periods in which to respond therefore suggest a time period which is reasonable taking into account that once a complaint is made formal, a complete re-investigation is conducted.</li> <li>2. <b>Recommendation:</b> at least 20 days thereafter.</li> </ol> <p>Ambiguity exists in Rule 5(2) since this refers only to complaints being submitted to the fund, especially in instances where it is an administration related matter – could a direct submission to the administrator be permitted in certain instances. The Conduct Standard for Pension Benefit Administrator allows for complaints to be made directly to the administrator.</p> <p>In respect of Rule 5(2) and 5(3) we envisage that this may allow incomplete or informal complaints. A complaint should be submitted in a manner that shows completeness and fairness to all parties including respondents. The Adjudicator’s role should be limited to ensure compliance with section 30A of the Act without potentially substituting or expanding on the complaint for the complainant</p>	<p>Please refer to Rule 11, which permits the Adjudicator to set time limits for any aspect of the proceedings in connection with a complaint, subject to the three year time barring and prescription provisions in section 30I of the Act. It will be for the Adjudicator to stipulate and communicate these matters.</p> <p>See response to item 18 regarding submission of complaints to administrators in light of the FSCA Conduct Standard.</p> <p>We do not agree that allowing the flexibility provided for in Rules 5(2) and 5(3) this presents a risk of incomplete or informal complaints, as there are sufficient safeguards in the Act and the Rules to ensure that the Adjudicator’s processes are fair to all parties. There is also nothing in the Rule to suggest that it will result in the Adjudicator substituting or expanding complaints for complainants.</p>
21	Rule 5(3)	ASISA	<p>This may allow incomplete or informal complaints. A complaint should be submitted in a manner that shows completeness and fairness to all parties including respondents. It is submitted that the Adjudicator’s role should be limited to ensure compliance with</p>	<p>The Rule allows the Adjudicator the discretion to receive complaints other than through its published official complaint form in circumstances where it is fair and equitable to</p>

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			section 30A of the Act without substituting or expanding on the complaint for the complainant.	do so. This provision is intended to allow flexibility and accessibility in such cases, for example in urgent cases or in the case of vulnerable customers who may face difficulty in completing the official form.  We do not agree that allowing this flexibility presents a risk of incomplete or informal complaints. Please see response to item 20 above.
22	Rule 5(3)	IRFA	<b>Recommendation:</b> To include the option for Complainants to use secure online portals and electronic communication to enhance accessibility, efficiency, digital security provisions and data protection.	Rule 5(3) does not preclude the Adjudicator from adopting the channels proposed. This will be a matter for the Adjudicator’s discretion and the Ombud Council would support any secure and reliable communication channels that would enhance the accessibility and efficiency of the scheme.
<b>Rule 6 – Communication with and rights and duties of parties to the complaint</b>				

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23	Rule 6(1)	OPFA	The Ombud Council does not have jurisdiction over respondents and is not empowered to enforce rules against respondents. It may only make rules pertaining to the conduct of ombud schemes.	<p>Please refer to section 210(2) of the FSR Act which provides for Ombud Council rules in regard to financial institutions’ disclosures regarding ombud schemes. This provision should be read with section 201(2)(g) of the FSR Act which empowers the Ombud Council to make rules on matters that may in terms of any other provision of the FSR Act be regulated by Ombud Council rules.</p> <p>We acknowledge that this provision does not empower the Ombud Council to make rules in respect of respondents who are not financial institutions, such as employers. See amendment to the Rule to limit it to respondents that are financial institutions.</p> <p>The Ombud Council would however urge responsible participating employers to implement similar disclosures; and recommends that funds or administrators who assist employers in their communications with members, encourage similar disclosures by employers.</p>
24	Rule 6(2)	IRFA	<b>Recommendation:</b> The Adjudicator to include a timeline for a complainant to comment on the response received from a Respondent.	Please see sub-Rule 6(2)(b) which allows the Adjudicator to set such a time limit. This should be read with Rule 11, allowing the Adjudicator to set time limits generally. This is therefore a matter to be stipulated and communicated by the Adjudicator.
25	Rule 6(2)(b)	IRFA	The current wording is not easy to follow.	Substantially agree, thank you. See revised wording of sub-Rule 6(2)(b).

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			<b>Proposed replacement wording:</b> <u>the response provided by the respondent, where the Adjudicator is aware of such response, to the extent necessary for the complainant to reply. Where the Adjudicator considers it necessary, the Adjudicator must also inform the complainant of the timeframe within which they must submit their reply.</u>	
26	Rule 6(3)	Old Mutual	Rule 6.3 the rule says as reasonably practicable – this could perhaps have an exact time linked to it.	We disagree. It is preferable to allow the Adjudicator flexibility in this regard, recognising that the nature of different complaints or the circumstances of the parties to a complaint may influence what timeframe is reasonably practicable in the circumstances. Rule 11 however allows the Adjudicator to set time limits in these circumstances if the Adjudicator believes this would be appropriate.
27	Rule 6(3)	OPFA	<p>Discussions with one of the parties, in the absence of other parties, creates negative perceptions of bias. It is not allowed in the courts and should also not be allowed in the rules.</p> <p>It would also place a high practical burden of arranging a meeting with all the parties present to have a discussion and will slow down turnaround times.</p> <p>Suggest alternative: OPFA publishes general guidance on what is required from parties when responding to different types of complaints and refers the parties to such requirements</p>	<p>Rule 6(3) does not oblige the Adjudicator to enter into discussions but leaves it to the Adjudicator to determine whether or when discussions may be necessary; which parties to include in such discussions; and what procedures should be followed in regard to any such discussions. The Adjudicator therefore has flexibility to manage the practical implications of the process.</p> <p>Although the Adjudicator must of course ensure that the scheme’s handling of a complaint avoids any perceptions of bias and is always procedurally fair, the Adjudicator is not bound by the same rigorous procedures as would apply to a judge in regard to court proceedings. In the course of the investigation stage of a complaint, it could well be helpful to</p>

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				<p>engage with a party – for example to clarify facts or aspects of their version or obtain additional information - and this should not be objectionable. Such discussions need not necessarily take place with the Adjudicator themselves, but could be delegated.</p> <p>The intent of the Rule is to ensure that parties are encouraged to co-operate with the scheme, including through being open to discussions, when the OPFA deems this necessary. Such discussions are entirely at the Adjudicator’s discretion and, if the Adjudicator would prefer to have some or all discussions in the presence of all parties, then that is their prerogative – this would depend on the circumstances of the case.</p> <p>Rule 6(3) will therefore be retained, although the Ombud Council has no objection to – and would welcome - the OPFA also publishing the guidance suggested.</p>
28	Rule 6(3)	IRFA	<p>Rule 6(3) (b) and (c) makes reference to fund or other party, but the definition of ‘respondent’ includes other parties.</p> <p>We see the Adjudicator’s office as being independent. This rule allows the Adjudicator to meet with any of the parties independently which may be prejudicial to other parties. The Adjudicator should only be allowed to meet with all parties after they have reviewed all the information that has been submitted in</p>	<p>The definition of “respondent” refers to other parties “in respect of whom the Adjudicator has requested a response”. The wording of Rule 6 is broader and enables communication with parties to the complaint regardless whether they fall within the definition of “respondent”.</p> <p>See response to item 27 above.</p>

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			respect of the complaint and this meeting should be only for the purpose of clarifying issues.	
29	Rule 6(3)(a)	IRFA	<p>The current wording is not easy to follow:</p> <p><b>Proposed replacement wording:</b> <u>of the complaint submitted to the Adjudicator, in such manner and to the extent necessary to enable a full response, including notification of any applicable time periods</u></p>	Agree, thank you. See revised wording of sub-Rule 6(3)(a).
30	Rule 6(3)(b) and (c)	ASISA	Reference is made to fund or “other party,” but the definition of ‘respondent’ already includes other parties. It is therefore recommended that the words: “or other party” be deleted.	See response to item 18.
31	Rule 6(3)(c)	IRFA	It is not clear what is envisaged by “that the Respondent or party must discuss the complaint with the Adjudicator?” Will the discussion envisaged in rule 6(3)(c) be part or a precursor to the conciliation process?	See response to item 27. Rule 6(3) is not prescriptive regarding at which stage of the complaints handling process the OPFA may deem it necessary to have a discussion with a party to a complaint.
32	Rule 6(4)	IRFA	<p>The wording is not easy to follow.</p> <p><b>Proposed replacement wording:</b> <u>At any stage during the handling of a complaint, the Adjudicator may share information submitted by one party with any other party to the complaint, if the Adjudicator, in their discretion, considers it reasonably necessary to give the receiving party an opportunity to respond or to facilitate the fair and efficient resolution of the complaint. The Adjudicator must provide such information where required by section 30F of the Act.</u></p>	Agree, thank you. See revised wording of sub-Rule 6(4).

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33	Rule 6(4)	OPFA	<p>Section 30F of the Act does not afford the Adjudicator a discretion. It provides that:</p> <p><i>30F. Opportunity to comment.—When the Adjudicator intends to conduct an investigation into a complaint he or she shall afford the fund or person against whom the allegations contained in the complaint are made, the opportunity to comment on the allegations.</i></p> <p>Importantly, it does not give the Adjudicator a discretion to decide on the relevance of the allegations (which may be perceived by the party making the allegation to be very relevant). If the parties wish for the Adjudicator to consider its representations then it must consider whether those representations are relevant before submitting it to the Adjudicator. It would be unfair for a party to expect the Adjudicator not to afford the other parties an opportunity to respond to certain parts of its representations.</p> <p>The Adjudicator cannot redact submissions provided to it. The Adjudicator has already been cautioned by the FST and High Court against reformulating complaints and this type of provision presents the same risk.</p> <p>The Adjudicator is required to keep a public record in terms of section 30L of the Act.</p> <p>The courts do not edit submissions made to it before it is shared with the other parties and similarly the Adjudicator should also not be required to do so.</p> <p>Furthermore, should this provision remain, it would have a substantial financial impact pertaining to the operations of the OPFA that will require additional resources to implement. At</p>	<p>Rule 6(4) makes it clear that the Adjudicator is obliged to comply with section 30F of the Act, and does not purport to confer a discretion in this regard.</p> <p>Section 30F refers specifically to “allegations contained in the complaint” made against the fund or person concerned. Rule 6(4) is broader, and encompasses any information provided by any party (not only the party making “allegations”) at any stage of the complaint handling process.</p> <p>The Rule in no way suggests that the Adjudicator should redact allegations, reformulate complaints, or edit submissions, which the Ombud Council agrees would be unfair and inappropriate.</p> <p>Where information falling outside the ambit of section 30F is concerned, the Rule confers an enabling discretion on the Adjudicator, aimed at facilitating complaint resolution through the sharing of information. It is open to the Adjudicator to decide whether and to what extent, through what processes, and in what circumstances any such information sharing will be implemented. As noted above, the Rule does not require the redaction or editing of information. If the Adjudicator believes that it is appropriate to share any and all information (over and above information in any event subject to section 30Q) provided by a party in its entirety, this is for the Adjudicator to decide.</p>

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			<p>present, the OPFA receives, on average, in excess of 50 complaints per day. The additional resources will need to be skilled enough to determine what may be redacted or not.</p> <p>The OPFA opposes the rule in its current form.</p>	The basis of the concern that Rule 6.4 will have a substantial financial impact on OPFA operations and resources, is therefore unclear.
34	Rule 6(5)(a) (Renumbered as 6(6)(a))	OPFA	As per previous comments, the rules cannot prescribe jurisdiction. It may provide definitions or clarification.	Please see response to item 14.
35	Rule 6(5)(e) (Renumbered as 6(6)(e))	IRFA	<b>Recommendation:</b> We recommend that the Adjudicator reintroduces the issuing of preliminary determinations before issuing a final determination.	We have been advised by the Adjudicator that the practice of issuing preliminary determinations, at the Adjudicator’s discretion, is in place and will remain so. Please see new Rule 6(5) which confirms this.
36	Rule 6(6)	IRFA	<b>Recommendation:</b> Where a determination relating to an employer’s failure to comply with s13A is issued, in addition to the existing standard order against the fund and the employer, we recommend that the PFA’s determination also include in simple language a statement addressed to the Complainant to the effect that in the event that an employer fails to pay the outstanding contributions plus late payment interest, the Complainant may take the determination to the sheriff for execution and enforcement.	This would be an example of the type of communication envisaged by this Rule, particularly the requirement to ensure the complainant understands “possible steps they are able to take to obtain assistance to enforce the determination in the event the respondent does not take the required action”, in the applicable cases.
37	Rule 6(6) (Renumbered as 6(7))	OPFA	<p>The determinations are usually written in plain language and the orders set out what is required from each of the parties and, where applicable the timelines.</p> <p>A section 228 notice accompanies all determinations as well as directing the complainant to seek legal advice on enforcement, including informing the parties of the option to approach the Legal Aid Board or a private attorney.</p>	The Ombud Council does not agree that providing the explanatory, practical, process-related information contemplated in this Rule could be construed as giving legal advice, or that it compromises the Adjudicator’s objectivity or the <i>functus officio</i> principle, or could give rise to perceptions of bias.

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			<p>The OPFA is concerned that this provision goes too far, and constitutes giving legal advice. Further, it is inconsistent with the doctrine of <i>functus officio</i> and compromises the Adjudicator’s objectivity. In the event of multiple complaints against a respondent or remitted reconsiderations by the FST, the party against whom the determination is sought to be enforced may legitimately raise a perception of bias by the Adjudicator who seeks to help a complainant to enforce a determination.</p> <p>Suggest alternative: the Adjudicator publish general guidance on its website on how to enforce determinations and where parties may seek assistance in respect of same.</p>	<p>If the standard documentation currently accompanying determinations already substantially meets the requirements of Rule 6(6), then it appears that only relatively minor changes may be required.</p> <p>The Ombud Council has no objection to – and would welcome - the OPFA also publishing the general guidance suggested. Provided such guidance meets the requirements of Rule 6(6), the same content could be used to comply with the Rule.</p>
<b>Rule 7 – Settlement and conciliation</b>				
38	Rule 7(1)	IRFA	<p><b>Recommendation:</b> that settlement and conciliation process is not a mandatory process for Adjudicator. This should be at the discretion of the Adjudicator. If this is a mandatory requirement it will have impact on time taken for complaints to be finalised and will not be in best interest of complaints and respondents.</p>	<p>The conciliated settlement process is not mandatory. Rule 7(1) requires the Adjudicator to <u>consider whether</u> there is a reasonable prospect of conciliated settlement, and confirms that this does not limit the generality of section 30J of the Act or Rule2(3), which grant the Adjudicator discretion to follow any procedure considered appropriate.</p> <p>Please also refer to the detailed rationale for this Rule set out in paragraph 3.2.8 of the Statement of Need published with the draft Rules.</p> <p>The practical impact of this provision will depend on the opportunities that the Adjudicator has to use it, and the extent to which the Adjudicator opts to implement it.</p>

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39	Rule 7(1)	OPFA	<p>The RTF process already provides a mechanism for the parties to reach an amicable solution. Adding another mandatory conciliation step “in the first instance” is unnecessary and will dramatically slow down the time it takes for a complaint to be resolved.</p> <p>The majority of complaints received by the OPFA (relating to arrear contributions) are not capable of being resolved by conciliation.</p> <p>It should remain the discretion of the Adjudicator to consider conciliation, noting that the majority of complaints pertain to non-payment of contributions.</p> <p>The OPFA opposes this rule insofar as it makes conciliation a mandatory first step.</p>	<p>Rule 7(1) does not impose a mandatory conciliation step. See response to item 38 and the detailed rationale for this Rule set out in paragraph 3.2.8 of the Statement of Need published with the draft Rules.</p> <p>As noted in paragraph 3.2.8 of the Statement of Need, the Adjudicator retains full discretion regarding the circumstances in which conciliation in general, or the written recommendation mechanism provided for in particular, is deemed appropriate. The Adjudicator also retains discretion and flexibility as to the format of the process to be adopted in facilitating settlement of a complaint, for example the extent to which a relatively informal mediation style approach is adopted, or the extent to which a more formal (internal or external) conciliation process is implemented. This in turn will likely depend on the specific facts and nature of the dispute.</p> <p>If there are specific categories of complaint or factual scenarios where it is clear from the outset that a conciliated settlement will not be feasible or appropriate, then the requirement in Rule 7(1) to <u>consider whether</u> such a settlement has a reasonable prospect of success will not be a burdensome or time-consuming one. The Adjudicator is free to develop processes or guidance for relevant OPFA staff members in regard to the types of complaints or circumstances in which such settlements are or are not feasible, and the</p>

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				application of such guidance will achieve compliance with Rule 7(1).
40	Rule 7(2)	ASISA	Please replace reference to section 30D (2) with section 30D, as reference to section 30D (2) appears to be incorrect.	<p>We confirm that the reference to section 30D(2) is correct. Section 30D(2) provides as follows:</p> <p>“(2) In disposing of complaints in terms of subsection (1) the Adjudicator must—</p> <p>(a) apply, where appropriate, principles of equity;</p> <p>(b) have regard to the contractual arrangement or other legal relationship between the complainant and any financial institution;</p> <p>(c) have regard to the provisions of this Act; and</p> <p>(d) act in a procedurally fair, economical and expeditious manner.”</p>
40	Rules 7(3) to 7(5)	IRFA	<p>Rules 7(3) to 7(5) envisages that there is timeline that the settlement and conciliation must be agreed to by the parties - there is only reference to “within a stipulated period” for the parties to reach a settlement.</p> <p><b>Recommendation:</b> We recommend that a timeline should be stipulated in Rule 7 for efficiency and to avoid ambiguity. In our view, 30 days seems to be a reasonable time. A stipulated time period will provide certainty for all parties and avoids delays.</p>	<p>We disagree. It is preferable to allow the Adjudicator flexibility in this regard, recognising that the nature of different complaints and the type of settlement process adopted may influence what timeframe is reasonably practicable in the circumstances. Rule 11 however allows the Adjudicator to set time limits in these circumstances if the Adjudicator believes this would be appropriate.</p> <p>Also note new version of sub-Rule 7(4), which has been revised to grant the Adjudicator</p>

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<b>No.</b>	<b>Rule No.</b>	<b>Commentator</b>	<b>Issue/Comment/Recommendation</b>	<b>Ombud Council response</b>
				greater flexibility in requiring evidence that the respondent has taken action required in a settlement agreement.
41	Rule 7(4)	OPFA	<p>Should be changed to “may” to allow discretion, ensure optimal use of OPFA resources and ensure that cases are closed timeously.</p> <p>Furthermore, if the Adjudicator gets involved in the conciliation process, it may compromise the Adjudicator’s objectivity in determining the matter, should that step become necessary.</p>	<p>Substantively agree. See new version of sub-Rule 7(4), which has been revised to grant the Adjudicator greater flexibility in requiring evidence that the respondent has taken action required in a settlement agreement.</p> <p>A request by the Adjudicator (or other delegated official), after the conciliation process has been concluded, that a party provide evidence that they have performed specific actions they agreed to take in the settlement agreement, is a factual enquiry and does not constitute becoming “involved in” the conciliation process. However, also refer to sub-Rule 7(2) which requires necessary safeguards to be in place to maintain the Adjudicator’s objectivity where conciliation is pursued. It is open to the Adjudicator to implement any processes they deem necessary when implementing Rule 7(4) to ensure their objectivity is not compromised.</p>
42	Rule 7(6)	Old Mutual	In the event that would this be the case even where a member have been treated unfairly and have prejudiced, or a party has been in contravention of the law.	Note that Rule 7(6) provides that the Adjudicator “may” (and is thus not obliged to) stop the investigation and close the matter in the circumstances envisaged in the Rule.
<b>Rule 8 – Dismissal of complaints</b>				

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43	Rule 8(1)	IRFA	<p>This rule is welcomed.</p> <p><b>Request:</b></p> <ol style="list-style-type: none"> <li>1. that the Adjudicator inform the respondents of cases of this nature</li> <li>2. that the Adjudicator provide the complainant with reasons for dismissal of complaint and an opportunity for the complainant to provide a response before the complaint is dismissed. This will promote fair outcomes by giving the complainant an opportunity to be heard. This will limit the cases referred to the Financial Services Tribunal which have no merit.</li> </ol>	<p>Noted.</p> <p>We agree with the first request. See new sub-Rule 8(2) and renumbering of the remaining sub-Rules of Rule 8.</p> <p>Regarding the second request, see Rule 6(5)(d) which already requires the Adjudicator to provide reasons for the dismissal of a complaint in terms of Rule 8. The Ombud Council does not believe it is necessary to prescribe that the Adjudicator should give the complainant an opportunity to respond to an intended dismissal in all the circumstances envisaged in Rule 8(1), as depending on the situation this could be an inefficient use of the OPFA’s resources. The Adjudicator is however free to do so should they deem it appropriate in any given case.</p>
44	Rule 8(1)	OPFA	Suggest including a provision that the respondent/s must be notified of the complaint and the summary dismissal.	Agreed. See new sub-Rule 8(2) and renumbering of the remaining sub-Rules of Rule 8.
<b>Rule 9 –Procedure in the event of lack of response</b>				
45	Rule 9(1)	IRFA	<p><b>Recommendation:</b></p> <ol style="list-style-type: none"> <li>1. For the inclusion of a minimum response period and to ensure procedural fairness, proof of service to the Respondent/Respondents.</li> </ol>	In response to recommendation 1: Rule 9(2) provides that the Adjudicator must, before issuing a default determination, afford a respondent a reasonable opportunity to respond with “clear timelines”. We believe it is preferable to allow the Adjudicator flexibility in this regard, recognising that the nature of

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			<p>2. Default determinations: There is no provision for final notice to the respondent before the default determination is issued. We recommend that a provision for mandatory final notice to alert the respondent of the consequences of failure to respond to encourage compliance by respondents be added. This will ensure an informed decision and determination by the Adjudicator with information from both parties.</p>	<p>different complaints may influence what timeline is appropriate in the circumstances. Rule 11 however allows the Adjudicator to set timeframes, including standard timeframes, in these circumstances if the Adjudicator believes this would be appropriate.</p> <p>In response to recommendation 2: Sub-Rule 9(2) already requires that “an explanation of the potential consequences of failing to respond” must have been provided before proceeding to issue a default determination. We therefore do not believe that there is a need for a mandatory additional “final notice” to be prescribed in the Rules. The Adjudicator is however free to implement such a step should they deem it appropriate.</p>
46	Rule 9(2)	IRFA	<p>The wording is not easy to follow.</p> <p><b>Proposed replacement wording:</b> <i><u>Without limiting the generality of subrule(1), if, after giving a respondent a reasonable opportunity to respond to a complaint or any related correspondence - with clear timelines and an explanation of the potential consequences of failing to respond - no response is received, the Adjudicator may proceed to issue a default determination as a final determination under section 30M of the Act, based on the information provided by the complainant or other parties, where the Adjudicator considers such information sufficient to make a determination</u></i></p>	<p>Substantially agreed. See revised wording of Rule 9(2).</p>
<b>Rule 10 – Costs and interest</b>				
47	Rule 10(1)	ASISA	<p>ASISA members support the stated intention as set out in the Statement of Intent ensuring alignment with consequential amendments to the FSR Act and for only allowing for a cost</p>	<p>Although we note the reference to section 234 of the FSR Act which limits cost orders by the Financial Services Tribunal to “exceptional</p>

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			<p>award in “exceptional cases”, “warranted by severe instances”. Although the stated intention seems clear in this regard, the proposed wording in the Rules does not make it as clear that this would only be considered in exceptional cases and in severe instances. Alignment with the Financial Services Tribunal (FST) &amp; FSR Act (section 234) is recommended, thereby only allowing costs in exceptional circumstances.</p> <p>It is recommended that there should be clear guidelines with regard to the making of cost orders, inter alia, some of the practical considerations are the following:</p> <ul style="list-style-type: none"> <li>• Under what circumstances will a cost order be granted against the respondent? Will it be granted as a matter of course in the case of a determination against the respondent, or only in certain instances?</li> <li>• Will a cost order be limited to cases where the complainant had legal representation? If not, on what basis will the quantum of the costs be determined?</li> <li>• On what scale will costs be granted? Will it be limited to party and party costs in accordance with the High Court or Magistrate Court scales, with attorney and client costs reserved for cases where the respondent acted in an unreasonable manner?</li> </ul> <p>The Ombud system is furthermore designed to provide a free, informal, and an accessible alternative to the courts for resolving disputes. Allowing the Adjudicator to award legal costs, except in exceptional circumstances, may:</p> <ul style="list-style-type: none"> <li>• Discourage utilisation of the forum.</li> <li>• Undermine the Adjudicator’s role as a consumer-friendly dispute resolution mechanism.</li> </ul>	<p>circumstances”, we also note that the corresponding provisions in section 28(2)(b)(iii) of the FAIS Act for the FAIS Ombud do not contain such a limitation. Note however that the Rule already strictly limits the circumstances in which a costs order may be made against a complainant.</p> <p>Section 30E(1) of the Act, which empowers the Adjudicator to make any order a court may make, therefore already empowers the making of such costs orders. The Ombud Council does not believe that aligning this Rule with the corresponding FAIS provision, thus setting parameters for a costs award should the Adjudicator choose to make one, presents any new risk of discouraging the use of the scheme by complainants or undermining its intended role.</p> <p>Although it is the Adjudicator’s decision as to whether or when to make a costs order in a given case (using the criteria in Rule 10), the Ombud Council has no reason to believe that the Adjudicator will change established practice by starting to issue costs orders “as a matter of course in the case of a determination against the respondent” as the commentator has queried. Regarding the quantum of a costs order, again we point out that section 30E(1) of the Act already permits such an order, without prescribing its quantum. Rule 10(2) sets out the criteria the Adjudicator must apply when quantifying a costs award.</p>

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			It is recommended that there be clear rules that deal with orders for mora interest. ASISA members have noted inconsistencies in the principles of how it is applied.	<p>We also point out that any party aggrieved by a costs order, which would include the quantum of the costs order, may request reconsideration of this aspect of the Adjudicator’s determination by the Financial Services Tribunal.</p> <p>The OPFA is welcome to develop or issue guidelines regarding its approach to costs orders or interest orders should the Adjudicator deem this necessary or appropriate.</p>
48	Rule 10(1)	IRFA	<p>The wording is not easy to follow.</p> <p><b>Proposed replacement wording</b> <i>When making a final determination in terms of section 30M of the Act, the Adjudicator may award costs against a respondent. Alternatively, if the Adjudicator is of the opinion that the complainant’s conduct was improper, unreasonable, or caused an undue delay in finalising the investigation, costs may be awarded against the complainant. In either case, the costs are awarded in favour of the other party to the complaint.</i></p>	Partially agree. See revised wording of Rule 10(1).
49	Rule 10(2)	IRFA	<p>We assume that the PFA has the absolute discretion to decide what “appropriate cost” are? Are funds / employers / respondents permitted to request more information if they aren't satisfied with the breakdown of costs provided to them?</p> <p>Is there an existing guide that details how cost are determined or will on be published?</p> <p><b>Request:</b> that “costs” guide be published to ensure transparency</p>	See response to item 47.
<b>Rule 11 - Time limits</b>				

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<b>Rule 12 – Administrative and procedural matters</b>				
50	Rule 12(2)	IRFA	We recommend that the rules explicitly empower the Adjudicator to amend determinations that contain manifest factual errors. This will streamline the process for correcting minor errors and will avoid the need for a formal review process for what are, in effect, administrative corrections. Such a provision would enhance efficiency and reduce the burden on the Financial Services Tribunal.	Although the Ombud Council agrees that such a provision is desirable, we believe that it requires a primary law provision to override the common law <i>functus officio</i> principle. We will encourage the implementation of such a provision through relevant legislative processes.
51	Rule 12(2)	ASISA	<p>Rule 12(2) may result in procedural rigidity where a determination is materially flawed with obvious factual or clerical errors. The only recourse in such cases is reconsideration by the Financial Services Tribunal (Rule 13). It is recommended that the Ombud Council consider introducing a limited internal review mechanism for correcting obvious factual or clerical errors.</p> <p>The following wording is therefore recommended: “The Adjudicator does not have the power to rescind or revoke a determination issued in accordance with section 30M of the Act, except to correct clerical or typographical errors, or where permitted by law. Any party aggrieved by a determination may apply for reconsideration in accordance with Rule 13.”</p>	Rule 12(2) does not introduce a new approach, but confirms the existing legal position. See response to item 50.
<b>Rule 15 - Short title and commencement</b>				
52	Rule 15(1)	ASISA	Whilst ASISA members have no comments on the commencement date of the Draft Ombud Council Rules, if amendment of the OPFA Rules or procedures are required, those would need appropriate and reasonable implementation time for industry.	Noted. See revised Rule 15 which allows for a post publication implementation period (to be determined, but at least two months) for specified Rules, with the remainder of the Rules coming into effect on date of publication.
53	Rule 15(1)	IRFA	We have requested various guidance notes which the Adjudicator will need to consider and provide. Given this request, a transition period may be appropriate.	Noted. See revised Rule 15 which allows for a post publication implementation period (to be determined, but at least two months) for

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				specified Rules, with the remainder of the Rules coming into effect on date of publication.
54	Rule 15(1)	OPFA	<p>Guidance will be needed to be published by the OPFA in certain instances and this will require a transition period.</p> <p>Adjustment of workflow and systems (and possibly additional resources) for new processes being introduced.</p> <p>The implementation date should align with performance periods as well as budgeting processes. In this regard, one calendar month will be insufficient.</p>	<p>The need for a transition period to develop guidance is noted. As highlighted in the detailed responses in Part B above, to the extent that the Rules envisage new processes for the OPFA, these are in the main enabling and discretionary in nature. Resourcing and budgetary implications (which we do not expect to be significant) are therefore within the Adjudicator’s management control. Also see our responses in Part C below.</p> <p>See revised Rule 15 which allows for a post publication implementation period (to be determined, but at least two months) for specified Rules, with the remainder of the Rules coming into effect on date of publication.</p>

<b>SECTION C – QUESTIONS RELATING TO THE ANTICIPATED IMPACT OF AND NEED FOR THE OMBUD COUNCIL RULES FOR THE PENSION FUNDS ADJUDICATOR, 2026</b>				
<b>C.1. Do you support the introduction of the proposed Ombud Council Rules for the Pension Funds Adjudicator? Please provide reasons for your answer.</b>				
<b>No</b>	<b>Commentator</b>	<b>Comment</b>	<b>Ombud Council response</b>	
C.1.1	ASISA	ASISA supports the introduction of the Rules, subject to the proposed refinements and requests for guidance. The Rules strengthen procedural consistency, transparency, and alignment with the Financial Sector Regulation Act and the anticipated Conduct of Financial Institutions (COFI) Bill. The Rules largely codify existing OPFA practices, which will enhance predictability for complainants and respondents and promote a more efficient and trusted complaint-resolution process.	Noted, thank you.	

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C.1.2	IRFA	Greater clarity on the future complaints process will provide guidance and building trust in the system for all stakeholders.	Noted, thank you.
C.1.3	OPFA	The OPFA qualifies its support subject to the comments made above.	Noted. Please refer to the Ombud Council's responses above.
<b>C.2. Will any provisions of the draft Rules in your view have unintended consequences or not be in the interests of complainants, respondents or retirement fund stakeholders? If so, please specify which Rules and explain the potential challenges.</b>			
No	Commentator	Comment	Ombud Council response
C.2.1	ASISA	<p>As positioned under “General” in section B above, ASISA generally welcomes and supports the Rules and objectives. ASISA members would however appreciate attention on the following to avoid unintended consequences:</p> <ul style="list-style-type: none"> <li>• As expressed more fully under Rule 10 above, although intended to deter abuse, the possibility of cost orders against complainants, except in exceptional cases and without guidance, may have the effect of discouraging vulnerable members from lodging legitimate complaints. It may also inadvertently undermine the Adjudicator’s role as a consumer-friendly dispute resolution mechanism.</li> <li>• No power to correct flawed determinations as more fully explained under Rule 12(2) above, could create procedural rigidity with an inability to expeditiously correct obvious errors. The unintended consequence is that it may cause unnecessary delays. ASISA recommends limited correction powers as positioned.</li> </ul>	See above responses regarding Rules 10 and 12.
C.2.2	IRFA	Yes, the introduction of Rule 7 may present additional challenges. While its intended purpose is to facilitate the timely resolution of complaints, it could inadvertently require more time, effort, and resources in investigating a complaint. The existing informal and formal complaints procedures already provide sufficient opportunities for the complainant and respondent to resolve matters directly. Furthermore, Rule 7 does not clarify whether the proposed conciliatory process will be conducted in writing or in person, nor does it specify the duration of this process. If the conciliatory process fails, the standard formal procedure will still need to be initiated, potentially leading to further delays	See above responses regarding Rule 7, as well as the detailed explanations regarding the rationale and expected impact of this Rule set out in paragraph 3.2.8 of the Statement of Need published with the draft Rules.

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C.2.3	OPFA	<p>Rule 6(3), 6(4) and 6(6) will compromise the objectivity of the Adjudicator.</p> <p>Rule 7(1) and 7(4) will cause inordinate delays in finalising a complaint.</p> <p>Rule 6(4) and 7(4) will require additional resources thereby increasing the budget and levies.</p>	<p>As set out in the responses above, the Ombud Council does not agree that Rules 6(3), 6(4) and renumbered 6(7) present any threat to the Adjudicator’s objectivity.</p> <p>See responses above regarding Rules 7(1) and 7(4), and see the revised version of Rule 7(4) which allows for further flexibility. These are enabling provisions and the settlement recommendation process provided for is at the Adjudicator’s discretion. In light of these explanations, it is unclear why the OPFA believes these Rules will cause inordinate delays.</p> <p>See responses above regarding Rules 6(4) and also see revised Rule 7(4). Again, these are enabling provisions and the extent to which the Adjudicator elects to adopt them in appropriate cases is discretionary. No mandatory process changes are required, and any resourcing or budgetary impacts are accordingly within the Adjudicator’s management control.</p>
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**C.3. Will the proposed Rules impose additional compliance and/or operational implications (such as changes to ICT systems, business processes, staffing or staff training) for your business? If yes, please provide details of these impacts below, including expected costs**

Commentator	Requirement	Compliance / operational implication	Expected cost	Ombud Council response
ASISA	<p>The Rules (overall implementation):</p> <p>Implications only fully known once the OPFA Rules and procedures are amended. For example:</p>	<p>Training will be conducted for all staff members whose roles are impacted, to ensure awareness and correct application of the new Ombud Council Rules for the</p>	<p>Low – moderate (training only)</p>	<p>Noted.</p>

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		Pension Funds Adjudicator, including the proper handling of complaints submitted directly to the OPFA without first being lodged with the fund in terms of section 30A(1) of the Pension Funds Act, and the correct referral and tracking of such matters.		
	Rule 6 (Communication with parties)	Update of complaint-response templates and internal processes to include required OPFA contact details, escalation channels, and plain-language communication standards.	Low – moderate (alignment review of template for possible revisions and training)	Noted. We point out that the requirement for financial institutions to provide their customers with the contact details of applicable ombud schemes is an existing obligation under section 210(2) of the FSR Act.
	Rule 9 (Default Determinations)	Enhancement of monitoring and response-tracking mechanisms to ensure timely replies to OPFA correspondence and to record proof of service.	Moderate (process and tracking updates)	Noted. We point out however that in practice the Adjudicator already issues default determinations from time to time.
	Rule 14 (Liaison and Section 13A Reporting)	Review of internal Section 13A reporting processes to align with new OPFA–FSCA liaison mechanisms.	Rule 14 (Liaison and Section 13A Reporting)	Noted, however these Rules require action by the OPFA, not financial institutions.
OPFA	Rule 6(4)	To edit responses or submissions	Additional capacity (costs to be determined).	See responses above regarding Rule 6(4). This is a discretionary, enabling information-sharing provision and does not require the OPFA to edit responses or submissions.

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	Rule 7(4)	To monitor compliance with settlement agreements	Additional capacity (costs to be determined).	See revisions of Rule 7(4) to enable more flexibility.
	Rule 6(3), 6(4) and 6(6)	To preserve objectivity	Additional capacity (costs to be determined) plus contingency given the increased risk of costs orders against the OPFA.	See responses regarding these Rules above. For the reasons provided, the Ombud Council does not believe these provisions will in any way compromise the Adjudicator’s objectivity or expose the OPFA to increased risk of cost orders.

**C.4.** Draft Rule 15 provides for the Rules to take effect on the date of final publication. Do you believe a transitional period is needed for any of the Rules? If so, please indicate which Rules, proposed lead time, and reasons.

No	Commentator	Comment	Ombud Council response
C.4.1	ASISA	Whilst ASISA members have no comments on the commencement date of the Draft Ombud Council Rules, if amendment of the OPFA Rules and procedures are required, those would need appropriate implementation time for industry. For example, rules relating to communications (Rule 6), default determinations, liaison and reporting (Rule 14), could necessitate allowance for administrators, consultants and funds to have sufficient time to amend complaint-response templates, update websites and disclosures, and train staff on any new communication and liaison and reporting requirements. It is also to enable implementation of improved correspondence-tracking systems and to ensure that staff are trained to manage OPFA deadlines and notifications correctly. (See examples under question 3 above.) A short transitional period will ensure smooth adoption without compromising compliance or member experience.	Noted. See responses under section C3 above.
C.4.2	IRFA	A transitional period is recommended to allow all parties to be prepare adequately.	Noted, although we note that no suggestions were made

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			regarding an appropriate transition period.
C.4.3	OPFA	As per the comment provided under rule 15	Noted. See response regarding Rule 15 above.

**SECTION D – ADDITIONAL GENERAL COMMENTS**

1.	ASISA	ASISA members generally welcome and support the Rules. Please see above comments under “Section B – General”	Noted, with thanks.
2	IRFA	<p>Scope of Adjudicator Determinations: The draft rules are silent on the scope of the Adjudicator's remedial powers. We recommend that the rules provide clear guidance on the types of orders that the Adjudicator may make, including any limitations on such powers. This will provide greater certainty to all stakeholders and will align the Adjudicator's powers with those of other similar bodies. For understanding and clarity across all stakeholders, guidance is required as to what type of orders can be granted, to what extent, and what the limitations are.</p> <p>Impact of the Conduct of Financial Institutions (CoFI) Bill: We note that the CoFI Bill, in its last published version, envisaged replacing the name of the Pension Funds Act and had the definitions of 'complaint' and 'complainant' deleted, with sections 30AA to 30Y repealed in the Pension Funds Act. However, the draft rules continue to refer to those sections in the Pension Funds Act. We request clarity on the intended impact of the CoFI Bill on the proposed rules and on the continued effectiveness of the rules once the CoFI Bill is promulgated. It is essential that the rules be aligned with the CoFI Bill to ensure a cohesive and consistent regulatory framework.</p>	<p>Section 30E(1)(a) of the Act provides that, in order to achieve their main objective, the Adjudicator “may make the order which any court of law may make”. The Ombud Council does not have the power to limit this broad power through Ombud Council Rules.</p> <p>We agree that the Rules will need to align with consequential amendments to the FSR Act and the Pension Funds Act (expected to be renamed the Retirement Funds Act) that are expected to come into effect once the COFI Bill is promulgated. The Ombud Council will review these amendments once finalised and ensure that any required amendments to any Ombud Council Rules are effected. Until then, references to the relevant Pension Funds Act provisions remain necessary.</p>

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	<p>Alignment with the Policy on Expedited Complaints and Vulnerable Complainants: The Office of the Pension Funds Adjudicator (OPFA) issued a draft Policy on Expedited Complaints and Vulnerable Complainants during 2024. We seek clarity on how, and whether, this policy will be aligned with the draft rules to ensure a cohesive and consistent regulatory framework. It is important that all policies and rules issued by the OPFA are harmonised to avoid confusion and to ensure that all stakeholders have a clear understanding of their rights and obligations.</p> <p>Conclusion: IRFA welcomes the opportunity to comment on the draft Ombud Council Rules for the Pension Funds Adjudicator. We trust that the Ombud Council will give due consideration to the recommendations contained in this submission, which are aimed at ensuring that the rules are clear, fair, and operationally effective. IRFA remains committed to engaging constructively with the Ombud Council and other stakeholders to promote the interests of the retirement industry and, ultimately, the interests of retirement fund members and beneficiaries.</p>	<p>The Ombud Council is not aware of any inconsistencies between these Rules and the OPFA policy referred to, but we agree that in the event any inconsistencies may exist, the OPFA policy will need to align with these Rules.</p> <p>Noted with thanks.</p>
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