

BRIEFING TO THE JOINT STANDING COMMITTEE ON DEFENCE

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AIM

To brief the Joint Standing Committee on Defence (JSCD) on the Institutional Independence of the Office of the Military Ombud in particular on it's possible re-positioning as a Schedule 3 Entity under the PFMA.



INTRODUCTION

1. This is the 4th year of the establishment of the Office of the Military Ombud.
2. Core Business:
 - a. Ensure that complaints by current and former members of South African National Defence Force (SANDF), as well as complaints from members of the public are resolved in a fair, economical and expeditious manner.
 - b. If the Military Ombud upholds the complaint, the Military Ombud must recommend the appropriate relief for implementation to the Minister of Defence and Military Veterans.



VISION AND MISSION

1. **Vision:** A world leading independent and impartial Military Ombud Institution.
2. **Mission:** To provide an independent, impartial and expeditious complaints resolution process for serving and former members of the SANDF and the public to promote good governance.



STRATEGIC OBJECTIVES

Strategic Objective 1

- To ensure strategic direction to the Office of the Military Ombud in-line with Government's intent and expectations

Strategic Objective 2

- To enhance and maintain corporate operations within the Office of the Military Ombud

Strategic Objective 3

- To administrate Military Ombud resources as prescribe in the regulatory framework



CONTEXT

1. Section 6(4) states that the “Ombud must investigate a complaint fairly and expeditiously without fear, favour or prejudice”.
2. The Act prescribes that the “Ombud and staff members must serve independently and impartially and must perform their functions in good faith and without fear, favour, bias or prejudice, subject to the Constitution and the law.” (S 8(1)).
3. The Minister is required to afford the Ombud such assistance as may be reasonably required for the protection of the independence, impartiality and dignity of the Ombud.
4. No person may hinder or obstruct the Ombud or members of his or her staff in the performance of his or her or their functions.

NB: These provisions of the Act speak to operational and institutional independence of the Office.



CONTEXT (continue)

5. Expenditure in connection with the administration of the Office must be funded from monies appropriated by Parliament for that purpose, as part of the budget vote of the Department. (Section 10(1)).
6. The Military Ombud is required to account for all monies received or paid by the Office and cause the required accounting and other records to be kept.
7. In terms of Section 9 and 10 of the Act the Military Ombud is personally responsible for management of resources (*human resources, financial and material*).

NB: *These provisions of the Act speak to financial independence of the Office.*



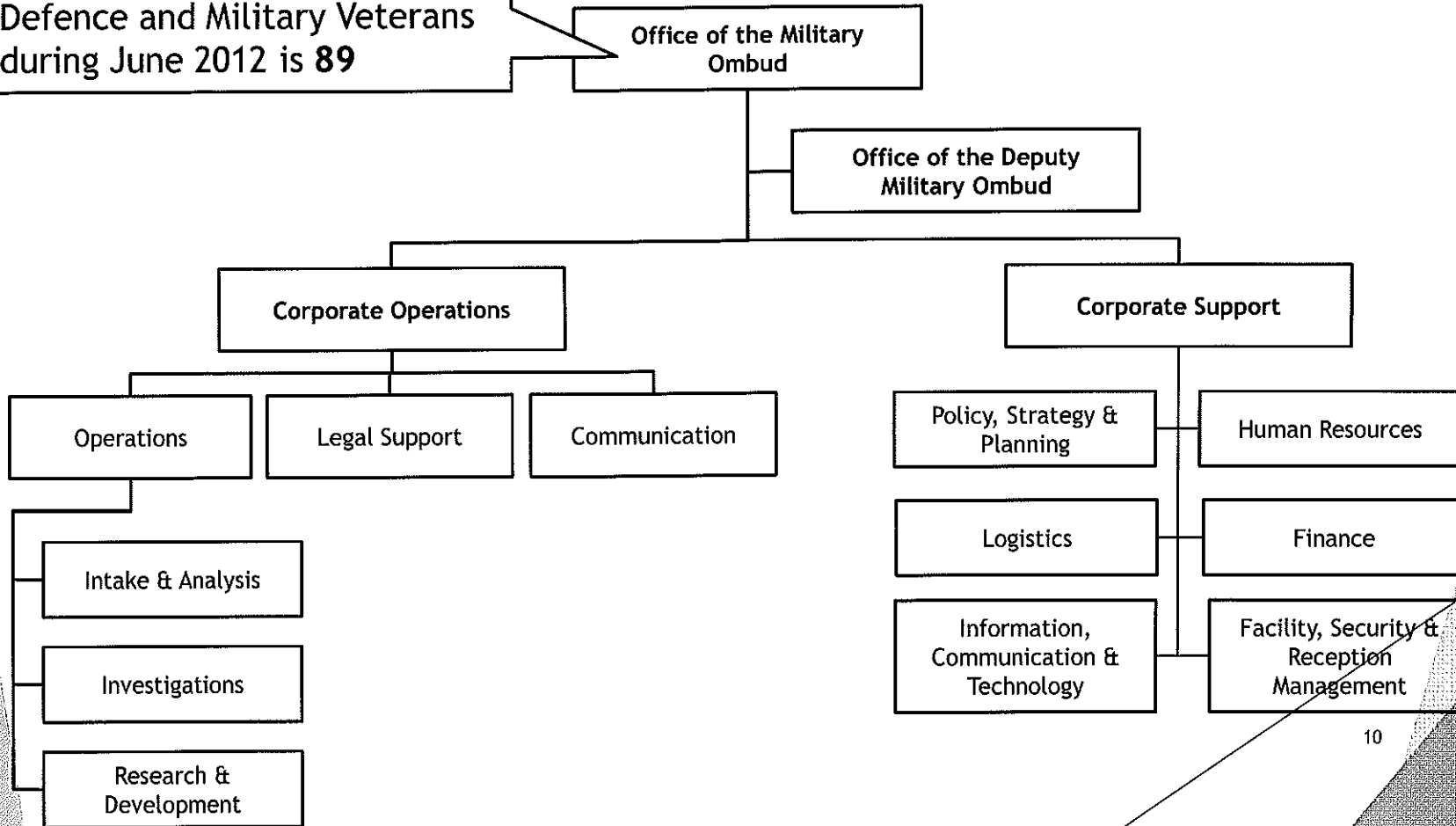
CONTEXT....(continue)

8. Section 11 of the Act provides for reporting and states that the Ombud must submit an annual report to the Minister on the activities of the Office at the end of a financial year.
9. It goes on to add that the Ombud must report to the Minister on the activities of the office as and when required to do so by the Minister.
10. The reporting envisaged in section 11 is not restricted to financial reporting but also includes reporting on the activities of the Office during the previous financial year.
11. The budget of the Military Ombud is appropriated by Parliament and the Military Ombud is required to account, for all monies received and to keep accounting records.

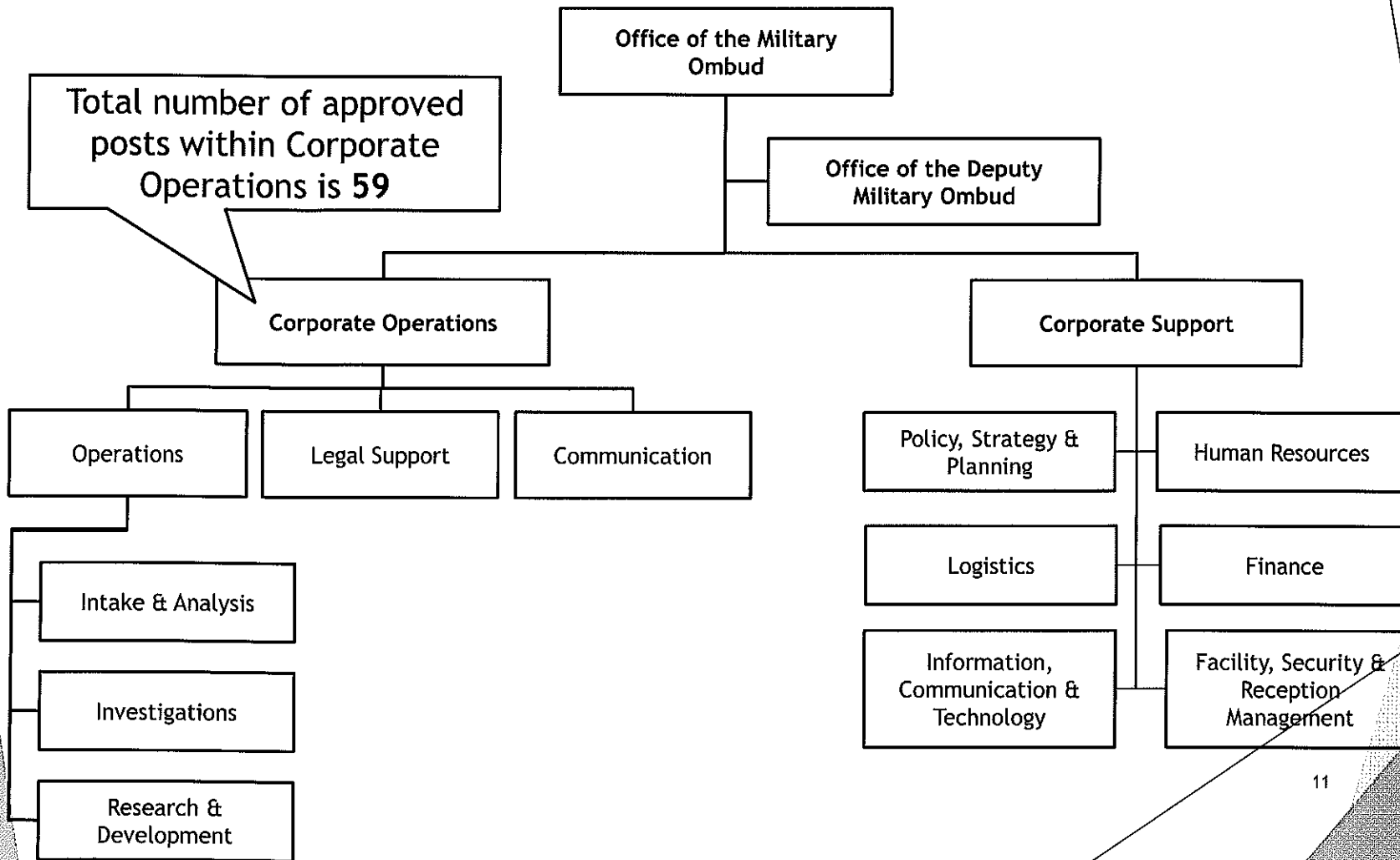


ORGANISATIONAL STRUCTURE

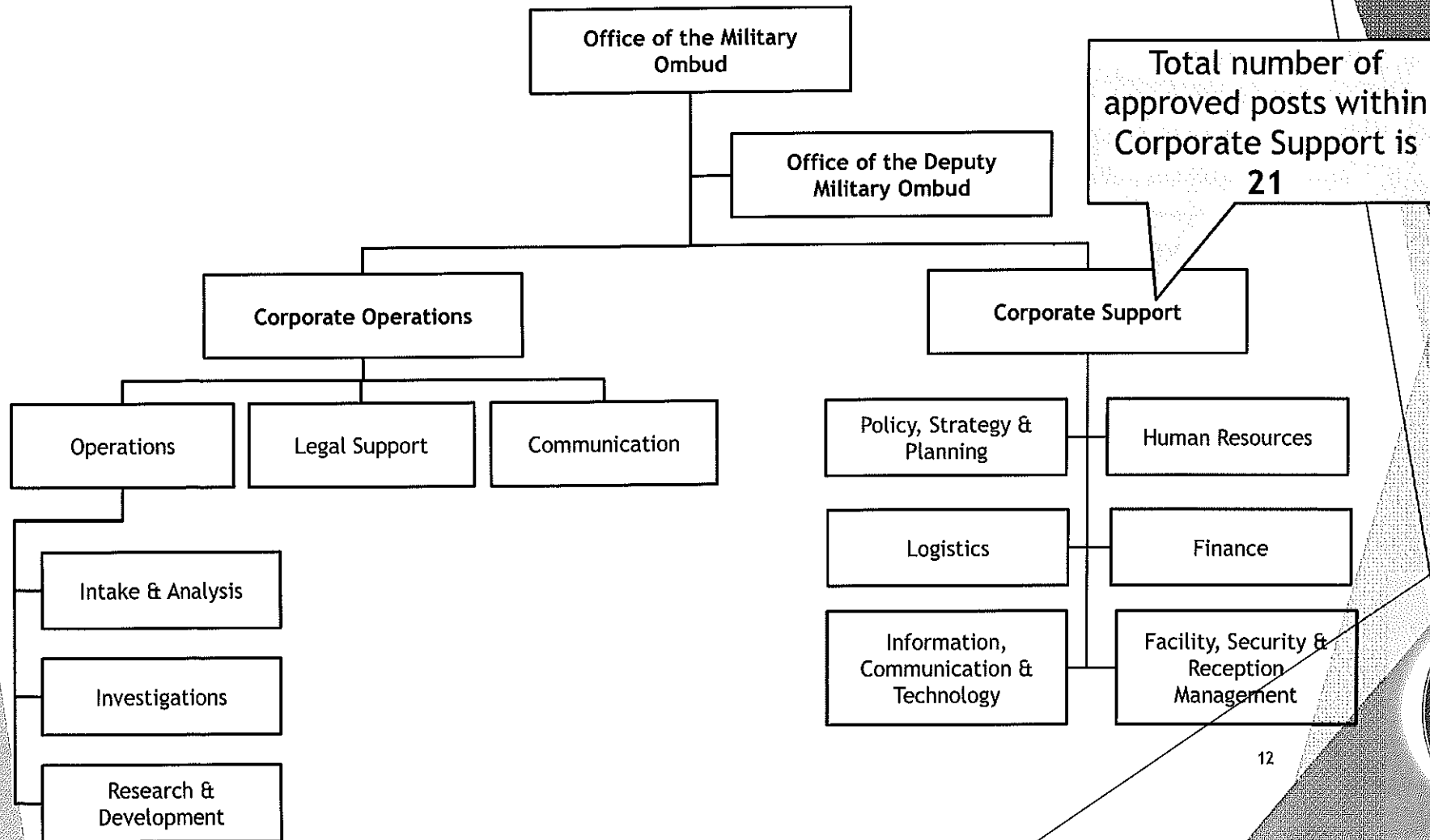
Total number of posts as approved by the Minister of Defence and Military Veterans during June 2012 is **89**



ORGANISATIONAL STRUCTURE (continue)



ORGANISATIONAL STRUCTURE (continue)



Total number of approved posts within Corporate Support is 21



PERFORMANCE REPORT

Four Year Statistical Overview

FINANCIAL YEAR	TOTAL CARRIED OVER CASES	TOTAL CASES RECEIVED IN FY	TOTAL RECEIVED	TOTAL FINALISED	ACTIVE CASES AT FY END
a.	b.	c.	d.	e.	f.
FY2012/13	0	307	307	117	190
FY2013/14	190	301	491	219	272
FY2014/15	272	279	551	318	233
FY2015/16	233	250	483	365	118

As of 31 March 2016, 10 reports submitted by the Military Ombud and accepted by the Minister of Defence and Military Veterans were still pending implementation by the SANDF



PERFORMANCE REPORT

Performance Information Per Complaints Category

CATEGORY	CARRIED OVER FORM FY2014/15	RECEIVED IN FY2015/16	TOTAL RECEIVED	FINALISED IN YEAR RECEIVED	TOTAL FINALISED	CARRIED OVER TO FY2016/17
a.	b.	c.	d.	e.	f.	g.
Promotion, Demotion and Rank Review	49	34	83	20	55	28
Utilisation & Placement	19	18	37	13	31	6
Service Benefits & Working Environment	46	76	122	59	96	26
Education, Training & Development	6	3	9	3	8	1
Remuneration	18	25	43	20	31	12
Grievance/Discipline Procedures	8	13	21	10	16	5
Service Termination	68	69	137	47	103	34
Other	18	5	23	5	21	2
Official Conduct Of Member Of SANDF	1	7	8	3	4	14 4
TOTAL	233	250	483	180	365	118



OPERATIONAL INDEPENDENCE

1. Section 6(7)(b) of the Act states that *after investigating a complaint the Ombud must recommend an alternate resolution to the Minister.*
2. The recommendations route taken in the Act leaves the Military Ombud powerless with regard to enforcing his recommendations.
3. This is proving to be an obstacle in the effectiveness of the Military Ombud as, once approved by the Minister of Defence and Military Veterans, the perception exists that implementation of recommendations are negotiable.
4. This poses a reputational risk for the Office in its effort to establish itself as a credible and independent Institution.
5. No mechanism exists to have the Department of Defence account for the non-implementation of recommendations.



OPERATIONAL INDEPENDENCE (continue)

6. Another mechanism that may enhance independence of the Office is the capacity to undertake investigations under own initiative which is currently not provided for by the Act.
7. “Own initiative investigations” would allow the Military Ombud to be proactive more especially on systemic issues within the SANDF.

NB: The Military Ombud Act must be amended to address the above challenges.



INSTITUTIONAL INDEPENDENCE

1. Section 2 of the Military Ombud Act provides for the establishment of the Office but does not explicitly indicate the legal nature of the Office. As a result it has not been defined as a “national public entity” in terms of section 1 of the PFMA. (*FAIS, Pension Fund Adjudicator, Community Schemes*)

2. “A national public entity means:
 - a. a national government business enterprise; or

 - b. a board, commission, company, corporation, fund, or other entity (other than a national government business enterprise which is-
 - i. established in terms of national legislation
 - ii. fully or substantially funded either from National Revenue Fund, or by way of a tax, levy, or other money imposed in terms of national legislation; and
 - iii. accountable to Parliament”



INSTITUTIONAL INDEPENDENCE (continue)

3. Currently the Office is funded through the budget of the DOD. The Accounting Officer of the DOD is solely responsible for the defence vote.
4. This creates several difficulties as the as the Office has limited control of its budget as the budget is not appropriated in parliament as specified in the Military Ombud Act (Section 10 (1)).
5. Therefore funds cannot be managed independently from the DOD.
6. The Military Ombud accounts to the Minister of Defence and Military Veterans as can be seen from section 11 (2).
7. The Military Ombud must be expressly designated as the Accounting Officer or an official under his direct control must be designated as such.



INSTITUTIONAL INDEPENDENCE (continue)

8. Parliament's Analysis of the Military Ombuds Bill of 2011, as compiled by the Research Unit in July 2011, indicated that *section 9 places an onerous obligation on the Military Ombud, and as a result a suitably qualified and experienced person as Chief Executive Officer of the Military Ombud should be appointed to assist the Ombud subject to his or her direction and supervision in the performance of all financial and administrative functions in terms of the Act.*
9. These significant suggestions speaking to the independence of the Ombud were however not all taken further.
10. As a result of the difficulties experienced as far as the institutional independence of the Ombud is concerned, steps have been embarked on to address the organisational and other requirements for the transition of the office to a Schedule 3 Entity or any other appropriate model.



INSTITUTIONAL INDEPENDENCE (continue)

11. The Military Ombud Act must be amended to expressly confer on the Military Ombud or a Chief Executive Officer, the power to act as the Accounting Officer for the Office.

12. In addition, the legal status of the Office must be clearly defined to align with the definition of a national public entity and its requirements in the PFMA as the Military Ombud must report in terms thereof.



CURRENT ORGANISATION FORMS

1. Over and above the Chapter 9 Institutions, National Departments, Provincial Departments and Local Government structures the following organisational forms are found in Government:
 - a. Specialised Service Delivery Units
 - b. Government Components
 - c. Public Entities
 - d. Government Business Enterprises



PUBLIC ENTITIES & GOVERNMENT BUSINESS ENTERPRISES

Schedule	Description	Operation and/or Funding Characteristics
1.	Constitutional Entities	Fully funded by Government (e.g. ICASA, IEC)
2.	Major Public Entities	Operate under business principles (e.g. Eskom, Transnet, SABC, CEF)
3a.	National Public Entities and SETA's	Fully or substantially funded through NRF, tax levy imposed through legislation (e.g. Housing Development Agency, Competition Commission and Tribunal)
3b	National Government Business Enterprises	Operate under business principles with limited borrowing (e.g. PIC)
3c	Provincial Entities	Fully or substantially funded through NRF, tax levy imposed through legislation
3d	Provincial Government Business Enterprises	Operate under business principles with limited borrowing (e.g. Algoa bus company, Natal Trust Farm)



COMPARISON BETWEEN GOVERNMENT COMPONENT & PUBLIC ENTITY

Government Component	Public Entity
Governance and Administration	
<ul style="list-style-type: none"> Adhere to governance arrangements applicable to the public service as determined by the EA by Notice in the Gazette 	<ul style="list-style-type: none"> Adhere to governance arrangements specified in enabling legislation and various codes and protocols e.g., King Code and Protocol on Corporate Governance
<ul style="list-style-type: none"> Accounts to the EA 	<ul style="list-style-type: none"> Accounts to Parliament via the EA in terms of its enabling legislation
<ul style="list-style-type: none"> HoC shall have the same duties and responsibilities as: <ul style="list-style-type: none"> A head of a national or provincial department - PSA The accounting officer - PFMA 	<ul style="list-style-type: none"> Governing Authority (Board) is the accounting authority
<ul style="list-style-type: none"> Staff remains public servants 	<ul style="list-style-type: none"> Staff are employees of the entity
Service Delivery Model	
<ul style="list-style-type: none"> Enable direct service delivery through a focused, ring-fenced component under the direct control of an EA or a department 	<ul style="list-style-type: none"> Render stewardship, regulatory, research, advisory and service delivery functions through an²³ independent entity under the direct control of a Governing Authority



COMPARISON BETWEEN GOVERNMENT COMPONENT & PUBLIC ENTITY

Government Component	Public Entity
Legal Status / Framework	
<ul style="list-style-type: none"> Remains part of the State similar to that of a department 	<ul style="list-style-type: none"> Separate juristic person in terms of enabling legislation
<ul style="list-style-type: none"> Original, assigned and/or delegated statutory powers and duties 	<ul style="list-style-type: none"> Original powers and duties in terms of enabling legislation
<ul style="list-style-type: none"> Easier to set up - 9 to 12 months 	<ul style="list-style-type: none"> More complicated to set up - 2 to 3 years
Funding Model	
<ul style="list-style-type: none"> Transfer payment from principal department supplemented by levies charged in terms of legislation <ul style="list-style-type: none"> Cash accounting framework similar to department; or Accrual Accounting framework for trading activities Retention of income on conditions set by National Treasury Chapter 5 of PFMA applies 	<ul style="list-style-type: none"> Transfer payment from principal department supplemented by levies charged in terms of legislation <ul style="list-style-type: none"> Accrual Accounting framework. Retention of income Companies expected to pay tax and some dividends Chapter 6 of PFMA applies



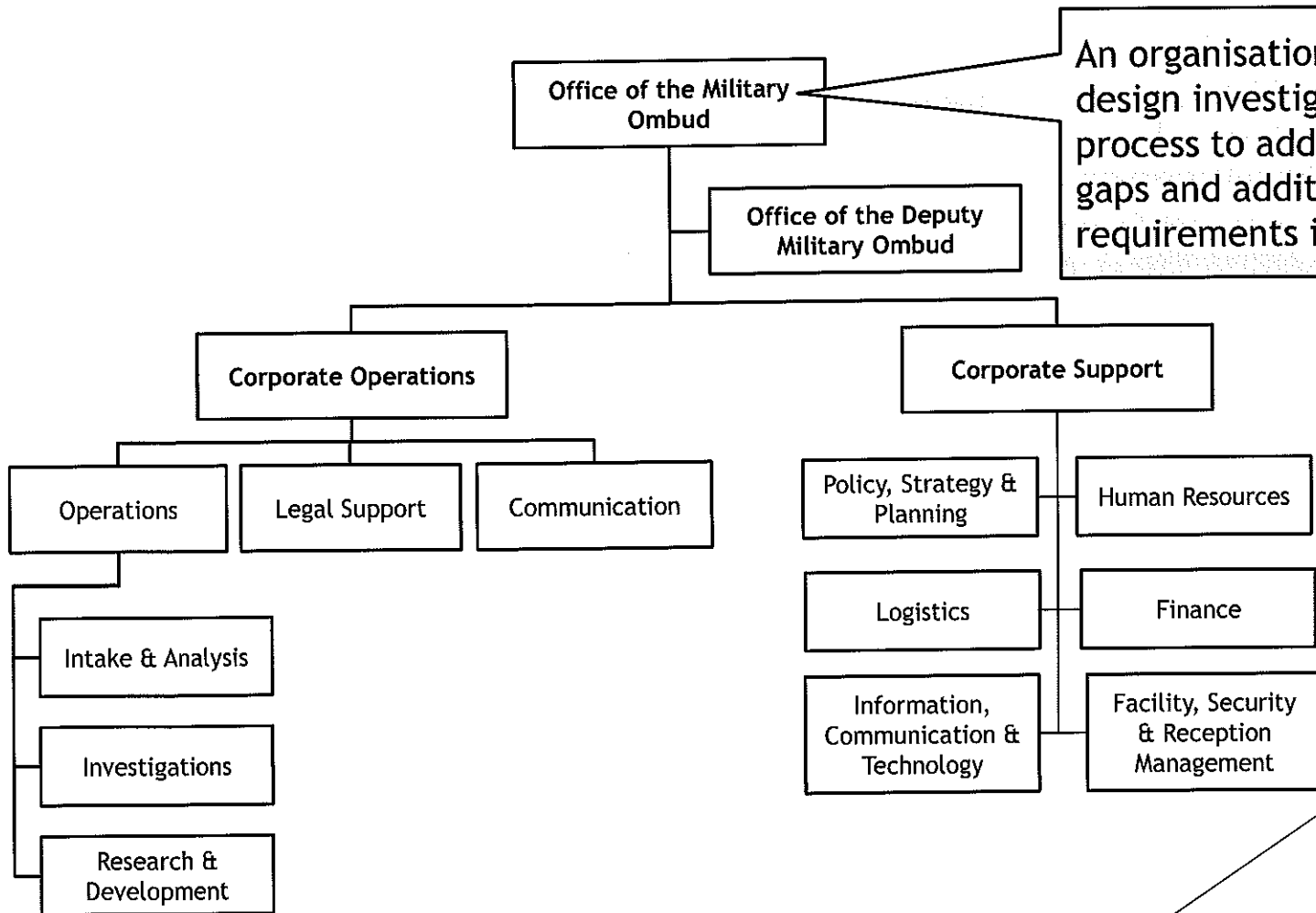
RATIONALE FOR SCHEDULE 3A (continue)

1. Given the mandate of the Office and its relationship with the DOD, Schedule 3A is considered the most appropriate public entity form for the Office.
2. The Office is fully funded from the Revenue Fund (See section 10 of the Act) and yet it requires a certain level of autonomy and independence from DOD as it exercises oversight responsibilities and reports directly to the Minister of Defence & Military Veterans.
3. Research on similar organisations, both in form and function, within the Public Sector reveals that they have all been granted public entity status under Schedule 3A e.g.:
 - a. Office of the Ombud for Financial Service Providers;
 - b. Community Schemes Ombud Services;
 - c. Office of Health Standards Compliance;
 - d. Office of the Pensions Fund Adjudicator;
 - e. Commission for Conciliation, Mediation & Arbitration; and
 - f. National Consumer Commission & Tribunal.



SCHEDULE 3 IMPLICATIONS ON STRUCTURE

An organisation structure design investigation is in process to address the gaps and additional requirements identified.



MILESTONES TO DATE

Ser No	ACTION TAKEN	DATE	OUTCOME
	a.	b.	c.
1.	Submission of Military Ombud Rationale	Dec 2012	Meeting with National Treasury to discuss rationale submitted. - Oct 2013.
2.	Conducting of research, benchmarking and discussions	2013 - 2014	<ul style="list-style-type: none"> ✓ Benchmarking with schedule 3 entities to discuss requirements (FAIS Ombud, CCB, Pension Fund Adjudicator, Public Protector) ✓ Drafting of Staff papers on way-forward.
3.	Drafting of the Military Ombud Conditions of Service and Staff Conditions of Service	Jun 2015	Submission to the Minister of Defence and Military Veterans for approval - 30 Oct 2015.
4.	Presentation to the Council on Defence	4 Sept 2015	COD Minutes, para 9 refers.
5.	Drafting and submission of the Military Ombud Regulations	6 Nov 2015	Approved and published by the Minister of Defence and Military Veterans.



MILESTONES TO DATE (continue)

Ser No	ACTION TAKEN	DATE	OUTCOME
	a	b	c.
6.	Request for Assistance from the Government Technical Advisory Centre (GTAC) to support the Office of the Military Ombud	9 Nov 2015	Discussion and submission of proposed project charter.
7.	Auditor General (AG) SA Letter - Compliance with the Military Ombud Act	15 Feb 2016	Requesting clarity on the status of the Office from National Treasury as the Office according to Section 10 and 11 of the Military Ombud Act 4 of 2012 complies with the definition of a public entity.
8.	Letter to the Office of SecDef requesting a workgroup to be created based on the COD minutes and the AGSA letter	March 2016	<ul style="list-style-type: none"> ✓ First meeting took place to discuss the requirement. ✓ The Office is awaiting date from the DOD to discuss and action the request.

The Office is currently engaging with the following stakeholders: DPSA, NT and DOD.



WAY-FORWARD

1. The public entity option is suitable for the Military Ombud which requires the involvement of state and civil society stakeholders to ensure effective and efficient service delivery.
2. A large degree of autonomy in decision-making is required.
3. Decision-making must be seen to be made by an independent juristic person in order to enhance public confidence in the organisation.



CONCLUSION

1. The Military Ombud is dependent on the JSCD to fulfil its mandate and objectives as envisaged by the Military Ombud Act.
2. The Institutional Independence of the Office can only be achieved through such meaningful engagement.



THANK YOU



QUESTIONS

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