



# SECTION 13A

# Challenges and Opportunities

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# AGENDA

- Introduction
- Process
- Considerations
- Challenges
- Opportunities
- Conclusion





# INTRODUCTION

- The NFMW is one of the largest fund within local government.
- Membership of 55,000 and AUM over R23 billion.
- The NFMW has 134 participating employers and 201 pay points.
- The NFMW is regulated by the Pension Funds Act and the Fund Rules.
- The participating employer has a duty to pay contributions and submit schedules on behalf of members.

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# Introduction (continued)

- In terms of Section 13A of the Pension Funds Act of 1956, all contributions must be paid by no later than the 7<sup>th</sup> day after the end of the month in respect of which the contributions are payable.
- All supporting information must be submitted to the Fund by no later than the 15<sup>th</sup> day after the end of the month in respect of which contributions are payable.
- The Fund in turn has a duty to take all reasonable steps to ensure that contributions are paid timeously and in accordance with the Act (s7D(1)(d)).





# PROCESS

## The legislated process include:

- Principal Officer reports non-compliance to the Board.
- Inform members of the employer's failure to pay over the contributions or submit the supporting schedules.
- Report the employer's contravention to the Authority.
- Report the employer's contravention to the Office of the Pension Funds Adjudicator.
- Report the matter to the South African Police Service.
- Raise compound interest on late payments or unpaid amounts as prescribed.





# CONSIDERATIONS

## POINTS FOR DISCUSSION

- Intention of the law.
- Enforcement mechanisms.
- Regulatory authorities' requirements.
- Drivers of non-payment of contributions.
- Competing need for service delivery vs payment of contributions.



# CHALLENGES

- The NFMW is very diligent in the monitoring of Section 13A compliance.
- In the event where the employer is found to be in contravention of Section 13A, the following progressive actions are taken:
  - Principal Officer (monitoring person) reports infringement to the Board.
  - Inform members of the employer's failure to pay over the contributions or submit the supporting schedules.
  - Follow-up with the employer regarding the non-payment of contributions.
  - Report the employer's contravention to the Authority.
  - Report the employer's contravention to the Office of the Pension Funds Adjudicator.
  - Raise compound interest on late payments or unpaid amounts as prescribed.

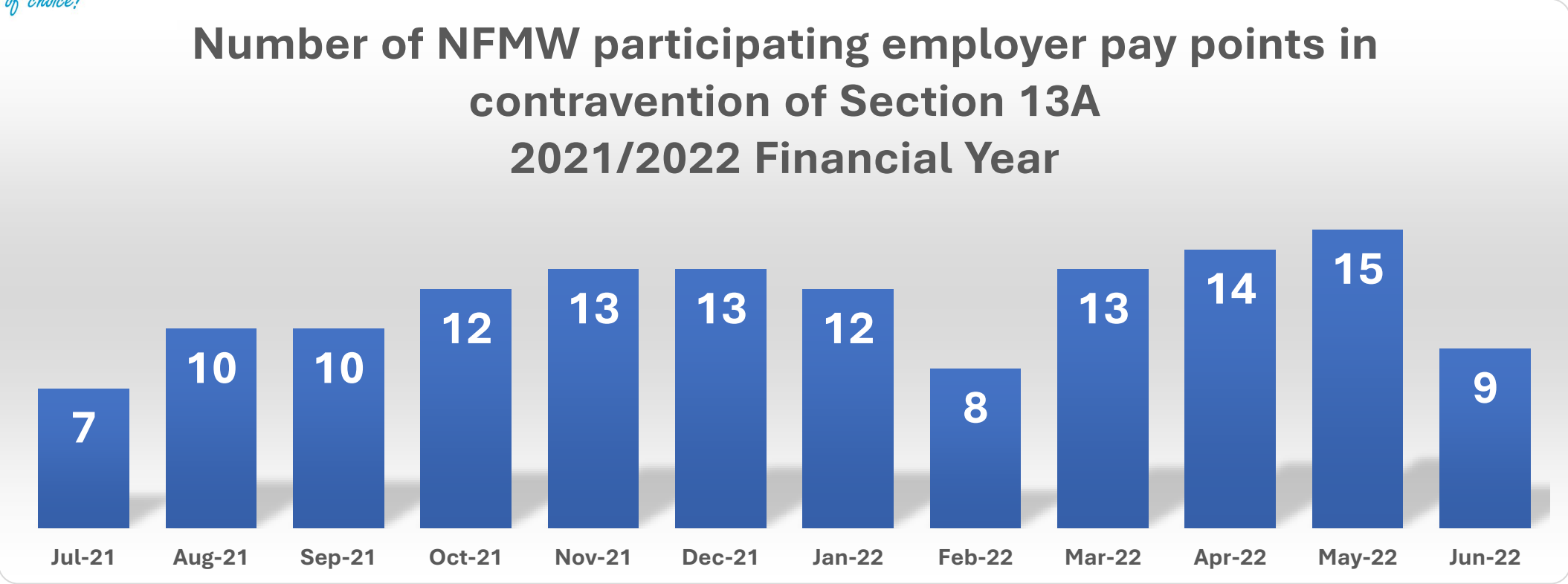
Despite the NFMW's efforts, there were still a total of 136 incidents of Section 13A non-compliance during the period 1 July 2021 – 30 June 2022

The total amount due as on 30 June 2022 was R61,644,948 (arrear contributions R42,045,601 and penalty interest R19,599,348)



# Challenges(Continued)

**Number of NFMW participating employer pay points in contravention of Section 13A  
2021/2022 Financial Year**



The monthly average of non-compliance incidents during the financial year ended June 2022 were 11 out of 201 pay points (average monthly non-compliance rate of 5 %).



# Challenges(Continued)

## Remedies available to Funds to enforce the OPFA's determination:

- The determination may be enforced through the execution of the employer's property.
- This process, entails the attachment of the employer's moveable, immovable or incorporeal property.
- Execution can only be carried out once judgment has been granted and by way of a Court issued writ or warrant of execution.





# Challenges(Continued)

## Challenges experienced when executing a writ or warrant of execution:

- the Sheriff is unable to gain access to the property or find sufficient property to attachment ;
- the value of the attached property is insufficient to satisfy judgment debt; and/or
- the property attached by the sheriff is owned by a third party.
- As is the case with any auction, the anticipated price that an item will be sold for cannot be guaranteed.





# Challenges(Continued)

## Experience of the NFMW regarding the writ of execution:

- The amount owed R600 000 vs amount attached by Sheriff R40,000.
- Sheriff went to attach property to recover amount owed and only to find 2 new waste removal trucks, ethical question for Fund: Do we go ahead and attach?





# Challenges(Continued)

## **Criminal cases with the South African Police Service:**

- Futile exercise to report Section 13A contraventions to SAPS.
- Unclear whether it is due to lack of understanding, capability and/or capacity for SAPS.
- Our experience is that most of the cases take a very long time.
- One example the same information was requested on two occasions, in another files were lost.
- No feedback has been received on all matters referred.
- To date we have not seen any employers charged that have been reported to either SAPS.

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# Challenges(Continued)

## Criminal cases with the National Prosecuting Authority

- The status quo is similar to SAPS.
- Unclear whether it is due to lack of understanding, capability and/or capacity for NPA.
- Whether the cases from SAPS ever reach the NPA.
- However, in this case it may be assumed it is a capacity issue.
- The wheels of the justice system seem to be turning very slowly.
- No prosecution on employers by the NPA to date.

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# Challenges(Continued)

- Currently no real consequences for employers who contravene Section 13A of the Act.
- The lack of consequences perpetuates the problem.
- There are no clear enforcement mechanisms which include the employers to make payments of contributions.





# Challenges(Continued)

## Impact on members

- Members are informed of the employers non-compliance, but there's prevalence of inertia.
- Consequence of the employer's non-compliance is the financial loss suffered in terms of contributions and investment return by the member.
- There is also a loss of risk benefits which includes funeral, insured death as well as insured disability benefits.
- Employers who do settle arrear contributions often fail to settle the penalty interest, resulting in further investment return loss for members.





# Challenges(Continued)

## Drivers of Section 13A non-compliance:

- Financial distress (Covid-19)
- Maladministration (municipalities under administration)
- Municipalities with lesser equitable share





# OPPORTUNITIES

**The following are potential opportunities to resolve the issue of Section 13A non-compliance:**

- The FSCA's naming and shaming of employers.
- Raising awareness amongst members and employers.
- Introduce jurisdiction in respect of employers to deem them responsible entities.
- Regulator must provide clear guidance/support on the enforcement mechanisms.
- Prioritise training and capacitation of the justice system.
- Foster partnership amongst key stakeholders.

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# CONCLUSION

- Employers owe duty of good faith to their employees.
- It is a criminal offence to deduct contributions from employees and not pay them over.
- Accounting officials must be personally liable for non-compliance.
- Regulator must create an enabling environment to ensure that the laws are enforceable.
- Collaborative effort by Regulatory Authorities is required.
- As a Fund we continue to discharge our monitoring and reporting obligations.
- Fund's objective is ultimately to ensure retirement adequacy for members.





**THANK  
YOU**

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