B-BBEE COMMISSION

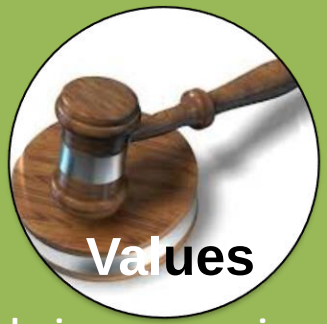
Presentation to the Portfolio Committee on Trade and Industry Parliament

06 March 2019

Vision, Mission & Values

Mission

To facilitate the accelerated productive implementation of the Act



Values

An inclusive economy is our first consideration

Open access and availability to all economic citizens

Impartiality and Consistency

Accountability for all decisions and actions taken by us

Zero tolerance to corruption

Vision

An inclusive economy that is globally competitive

B-BBEE COMMISSION
a member of the dti group

Broad-Based Black Economic Empowerment

"broad-based black economic empowerment" means the viable economic empowerment of all black people, in particular women, workers, youth, people with disabilities and people living in rural areas, through diverse but integrated socio-economic strategies that include, but are not limited to:	
increasing the number of black people that manage, own and control enterprises and productive assets;	Skills Development, Management Control and Ownership
facilitating ownership and management of enterprises and productive assets by communities, workers, co-operatives and other collective enterprises;	Skills Development, Management Control and Ownership
human resource and skills development	Skills Development
achieving equitable representation in all occupational categories and levels in the workforce;	Management Control and Skills Development
preferential procurement from enterprises that are owned or managed by black people; and	Enterprise and Supplier Development
investment in enterprises that are owned or managed by black people	Enterprise and Supplier Development

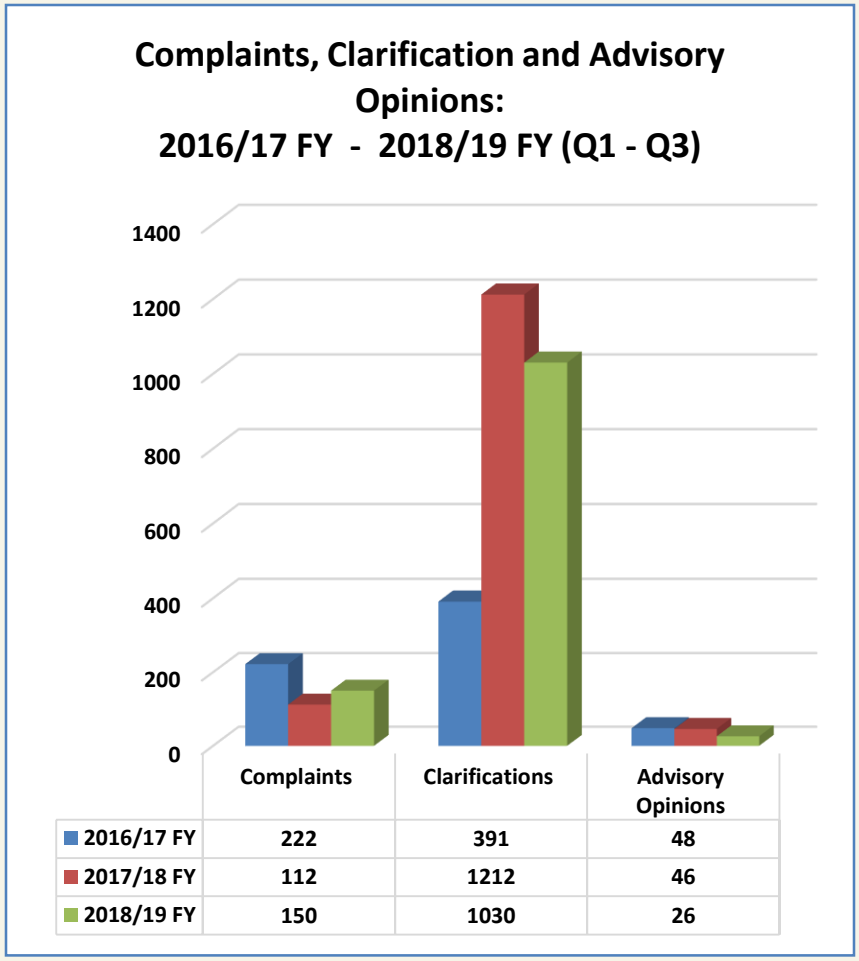
Mandate of the B-BBEE Commission

Section 13F outlines the functions of the B-BBEE Commission as follows:	
Monitor, supervise and promote adherence – in the interest of the public - 13F(1)(a)	Daily media monitoring Instruction for withdrawal of 153 invalid B-BBEE certificates 65 tip-offs received and followed up, with 16 Site Visits conducted 612 Meetings & Walk-ins
Strengthen collaboration between private and public sectors to promote and safeguard the objectives - 13F(1)(b)	Strategic engagements held with Business Unity SA (BUSA), Business Leadership SA (BLSA), Black Management Forum (BMF), Afrikaans Handels Instituut (AHI), Black Business Council (BBC), CSI Council, Law Society of SA (LSSA), Fiduciary Institution of Southern Africa, World Bank representatives
Receive complaints relating to B-BBEE - 13F(1)(c)	442 were received from the public 100% pre-screened
Investigate, either on its own or in response to complaints received, any matter concerning with B-BBEE - 13F(1)(d)	Of total 484 cases, 42 Investigations initiated by the B-BBEE Commission 167 cases were closed 81 findings issued 9 alternative dispute resolution concluded
Promote advocacy, access to opportunities and educational programmes - 13F(1)(e)	Advocacy positions and comments provided on Draft Preferential Procurement Policy Framework Act (PPPFA) Regulations and Draft Procurement Bill, Concept of the Proposed Implementing Agent, Short Term Funding for Higher Education, Once Empowered, Always Empowered, ICT, Financial, Construction, Property & AgriBEE Sector Codes, Competition Act Amendment Bill
Maintain register of major B-BBEE transactions of R25 million and above - 13F(1)(f)	341 received, 212 registered and 102 rejected

Mandate of the B-BBEE Commission

Section 13F outlines the functions of the B-BBEE Commission as follows:	
Receive and analyse prescribed reports (listed entities, SETA, Public Entities, Organs of State) - 13F(1)(g)	337 received and 308 assessed
Promote good corporate governance and accountability by creating an effective and efficient environment for implementation of B-BBEE - 13F(1)(h)	Engagements and referrals to CIPC, and recommendations for governance training where appropriate
Increase knowledge of the nature and dynamics and promote public awareness on matters relating to B-BBEE by implementing education and information measures for public awareness and providing guidance - 13F(3)	National status report 2016 and 2017 issued Quarterly trends reports 5 practice guides and 4 explanatory notices 120 advisory opinions 2662 clarifications Annual Conferences – 4 held 187 Workshops and Information Sessions
May liaise with any regulatory authority on matters of common interest to exchange information, participate in each other's proceedings and advise or receive advice from each other - 13F(4)	Memoranda concluded with SA Revenue Services Companies and IP Commission Commission for Employment Equity Competition Commission National Gambling Board KZN Department of Economic Development South African National Accreditation System
May enter into agreement with any person, body or persons or organ of state, to perform any of the duties and functions of the B-BBEE Commission under the B-BBEE Act - 13F(5)	None entered into yet.

Complaints, Clarifications & Advisory Opinions

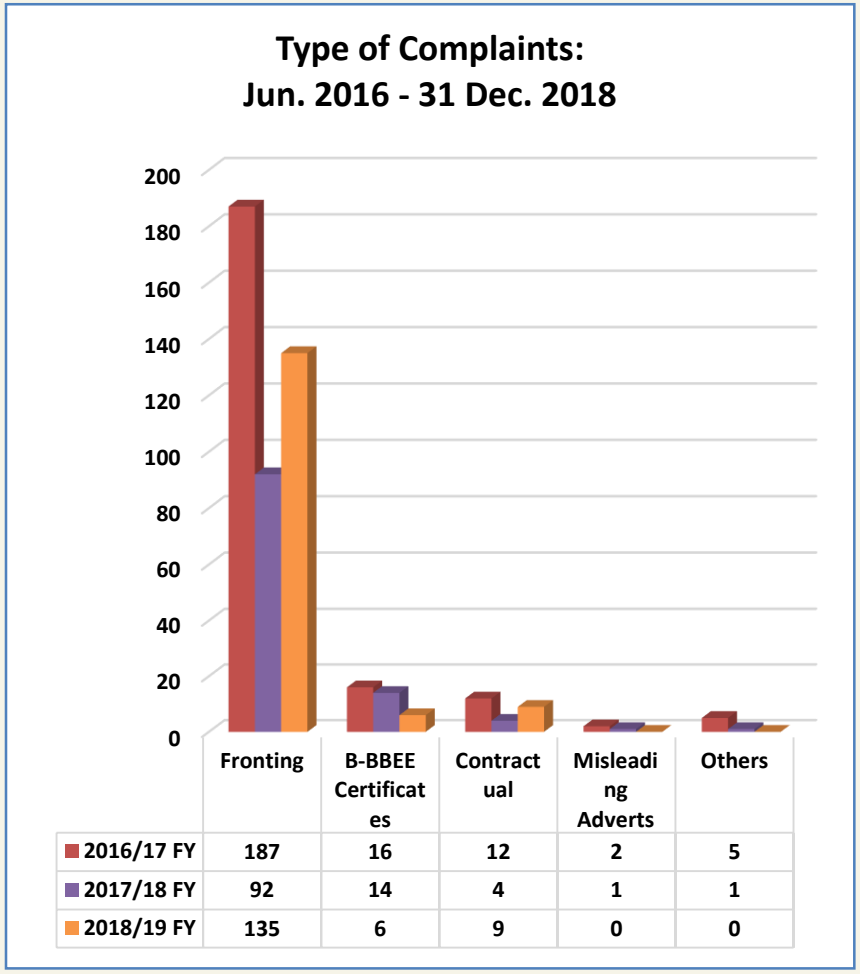


	Complaints	Clarifications	Advisory Opinions
2016/17 FY	222	391	48
2017/18 FY	112	1212	46
2018/19 FY	150	1030	26

- Implementation of compliance strategy and the corrective enforcement strategy
- Requests for advisory services increased with entities seeking advice prior to implementing
- Advice sought mainly on ownership structures followed by enterprise and supplier development initiatives
- Meeting targets on Advisory Services but investigations take longer

Source: B-BBEE Commission

Complaints handled by type



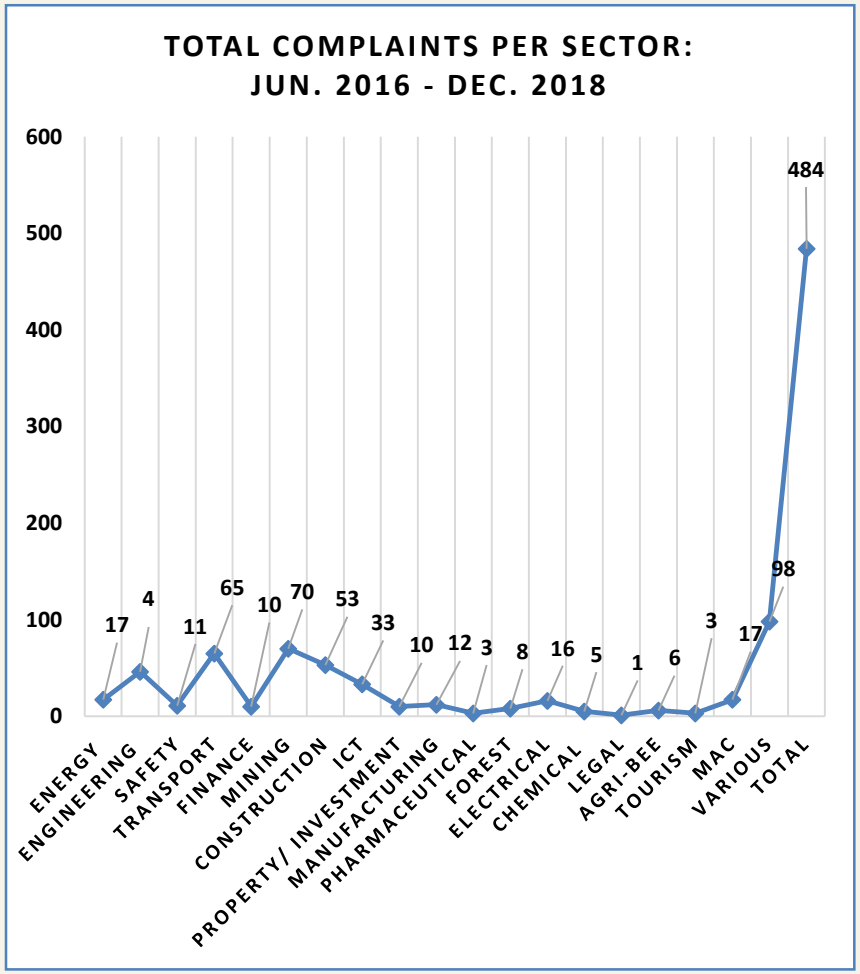
	Fronting	B-BBEE Certificates	Contractual	Misleading Adverts	Others
2016/17 FY	187	16	12	2	5
2017/18 FY	92	14	4	1	1
2018/19 FY	135	6	9	0	0

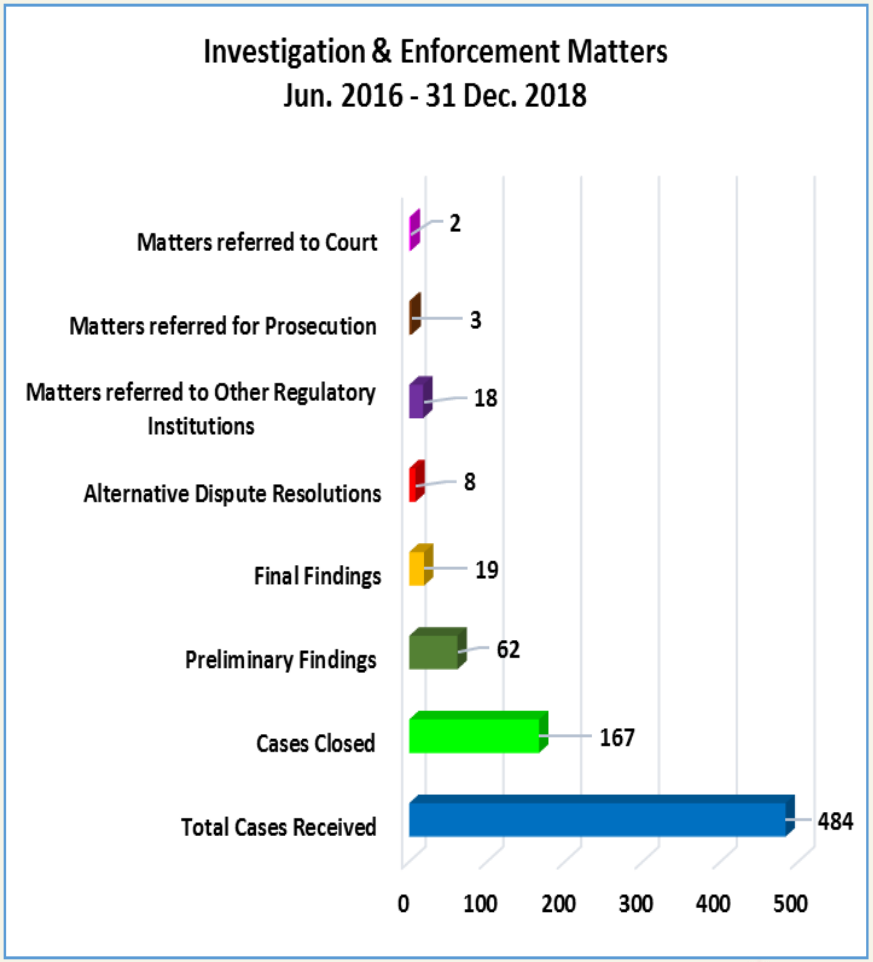
- Fronting practice dominates with over 85%
- Observations – creation of 51% black owned entities and black ownership with no economic benefits/participation
- Patterns identified in structures involving Trusts, BBOs and ESOPS
- B-BBEE certificates dealt with through withdrawal – list on website – 150 withdrawn
- 65 tipoffs received – some leading to investigation

Source: B-BBEE Commission

B-BBEE COMMISSION
a member of the dti group

Complaints handled by sector

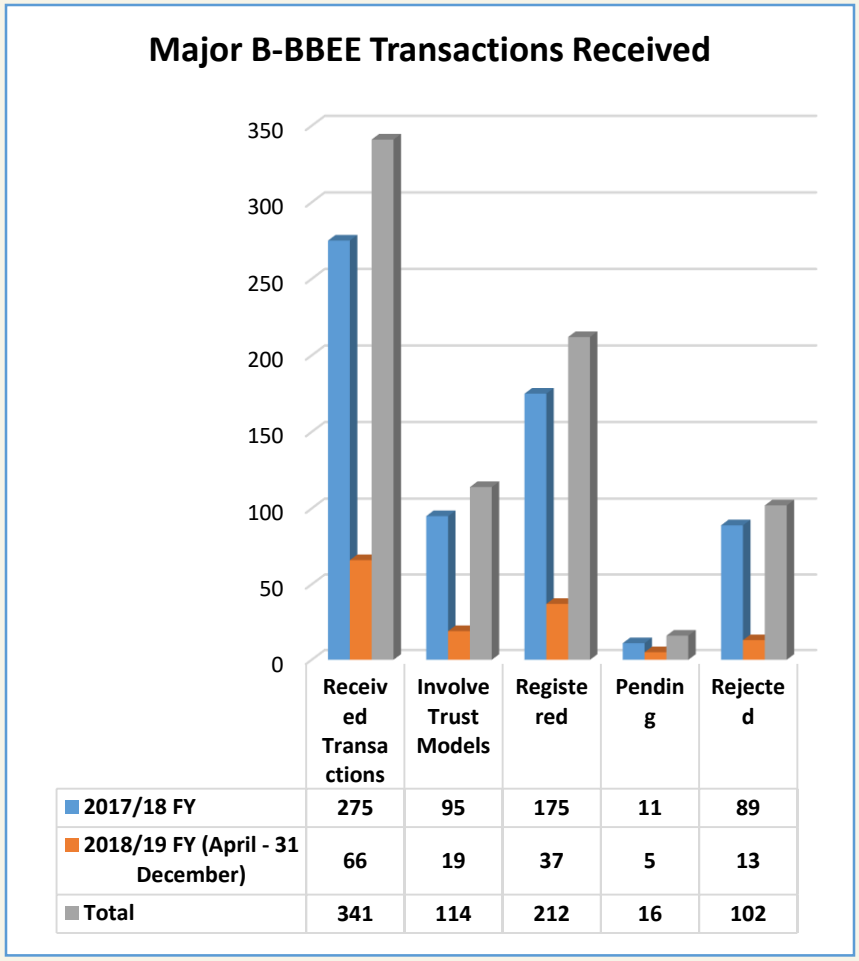




Source: B-BBEE Commission

B-BBEE COMMISSION
a member of the dti group

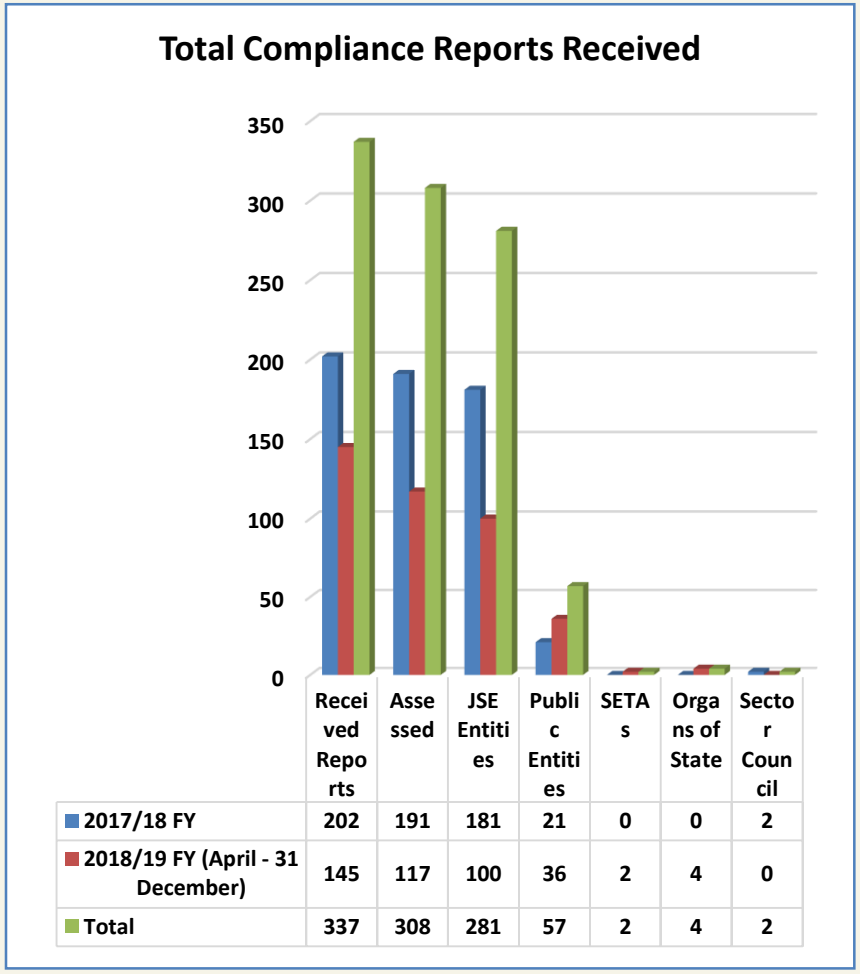
Major B-BBEE Transactions



- R25 million transaction value threshold – over 60% vendor financed
- 30% rejection rate for non compliance with basic requirements
- 33% involve ownership through trust models with potential to benefit workers, communities and other collective schemes
- Feedback on transactions being given to entities, some have remedied concerns

Source: B-BBEE Commission

Annual Compliance Reports



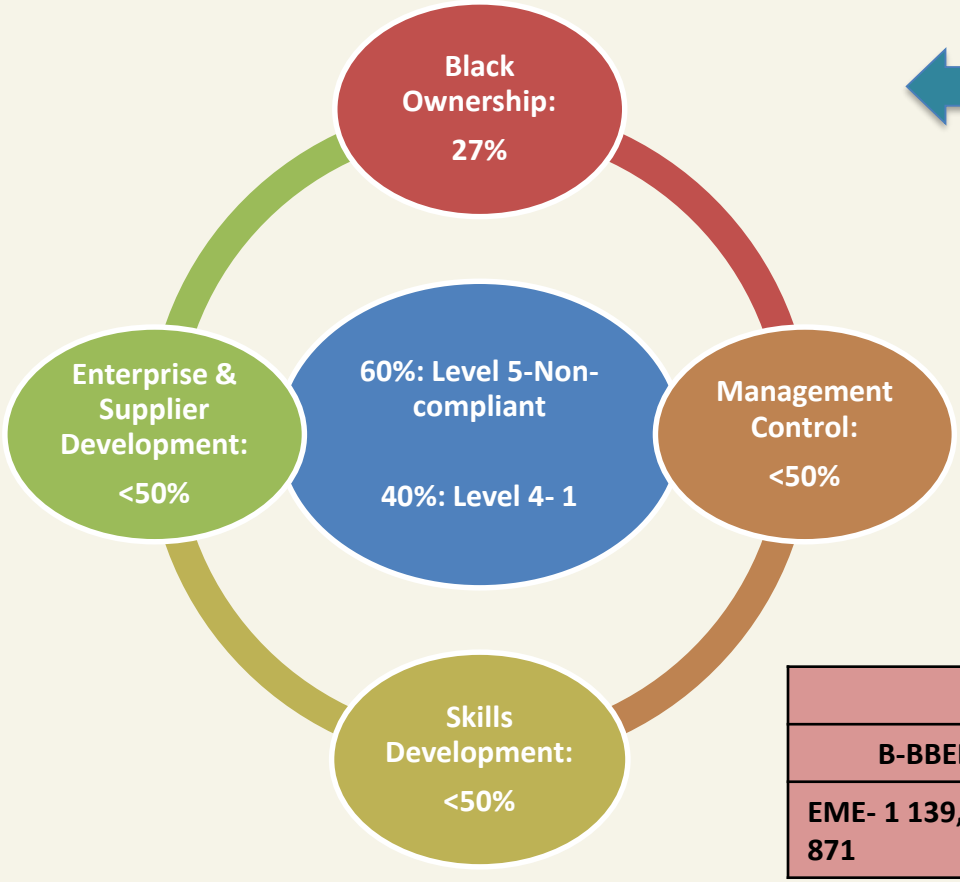
	Received Reports	Assessed	JSE Entities	Public Entities	SETAs	Organs of State	Sector Council
2017/18 FY	202	191	181	21	0	0	2
2018/19 FY (April - 31 December)	145	117	100	36	2	4	0
Total	337	308	281	57	2	4	2

- 0% government entities & SETA reported (2017) – 2018 records a few
- Letters issued to government and SETAs
- JSE made B-BBEE reporting a listing requirement
- Auditor-General to audit government on B-BBEE – instruction note due to be issued
- Non-compliance to be referred for prosecution in 2019

Source: B-BBEE Commission

B-BBEE COMMISSION
a member of the dti group

Analysis of Compliance Reports for 2017



Black Women Ownership: 9%

2017 report
Ownership regressed from 32% to 27%
<50% of targets achieved on Skills, ESD and MC
0% reports from government and SETAs

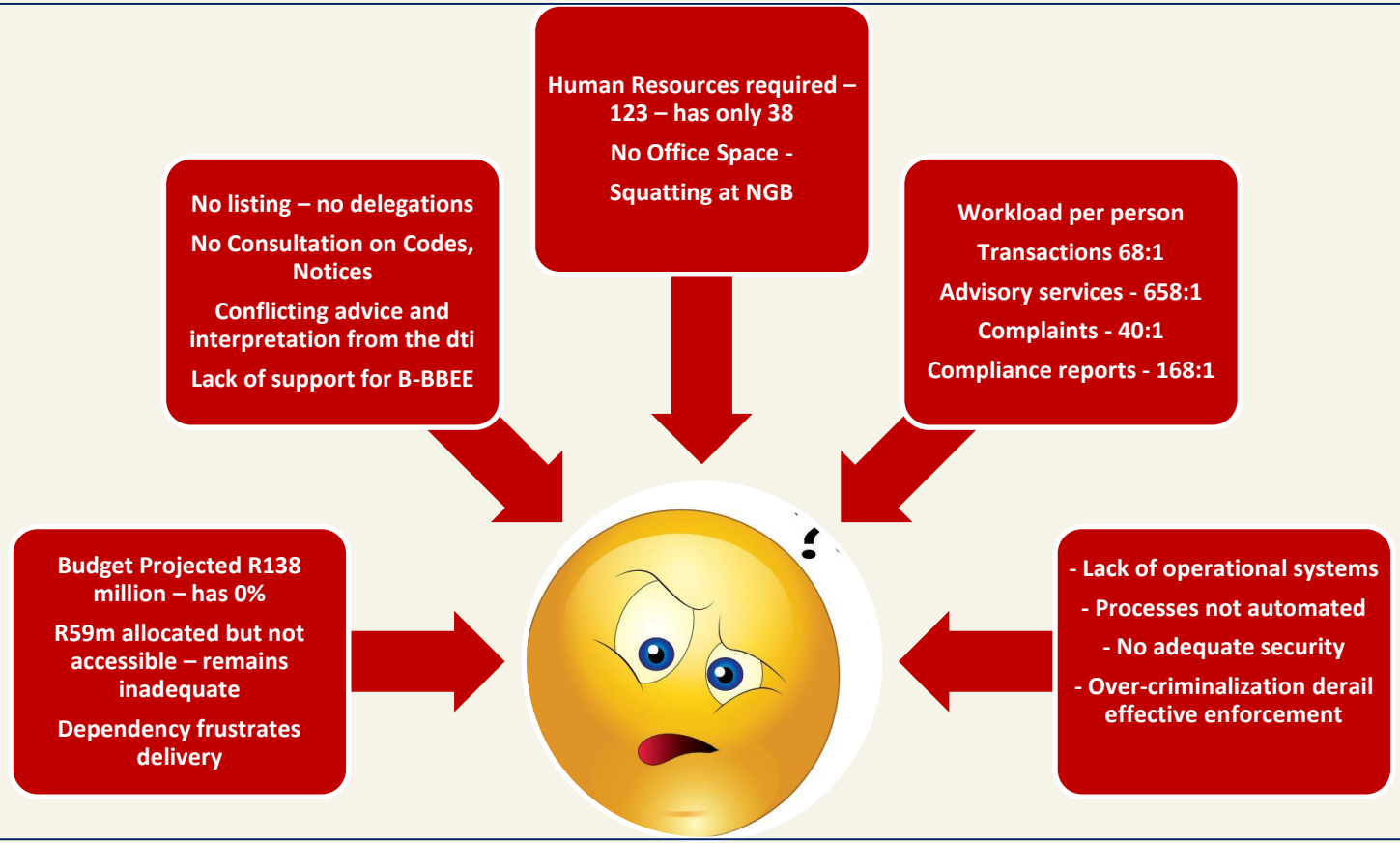
Whites		Blacks	
M	F	M	F
58%	4%	20%	18%

Number of Entities Reported	
B-BBEE Certificate Portal	Compliance Reports
EME- 1 139, QSE- 851 & LARGE-871	JSE listed-121 & SOE-4

Source: B-BBEE Commission

B-BBEE COMMISSION
a member of the dti group

Main Challenges



B-BBEE COMMISSION
a member of the dti group

Strategic Objectives

Programme 1: To safeguard the outcomes of inclusive economy

Strategic objective	Description	Outputs / deliverables
Guide the implementation of the B-BBEE Act.	The B-BBEE Commission providing answers to specific queries and requests for advice, as well as formulating directives, explanatory notes and clarification on the approach and interpretation where required.	Advisory Opinions / Clarifications
		Practice Notes/Guides
		Guidelines/ Brochures
		Education and awareness
Assess B-BBEE Transactions and provide advice.	Compliance checks prior to deals being completed to reduce the number of violations. By registering B-BBEE transactions, the B-BBEE Commission will have a handle on the number of transactions, extent and rate of compliance and be able to advise appropriately.	Certificates of registration
		Remedial Instruction
		B-BBEE Transactions Register
	Encourage disclosure of transactions that are not registered for assessment of compliance with the B-BBEE Act.	Leniency programme
Assess Compliance Reports and provide feedback.	The B-BBEE Commission receives and assess compliance reports and provide feedback with regards to the state of compliance as per the B-BBEE Act.	Certificates of compliance / rejection
		Compliance Register

Strategic Objectives

Programme 2: To implement corrective enforcement to achieve compliance

Strategic objective	Description	Outputs / deliverables
Conduct both proactive and reactive Investigations.	Conduct pro and re-active investigations and produce reports with recommendations – includes summons, public hearings and site visits where required.	Investigation findings
Facilitate and guide resolution of disputes through ADR and feral to other regulatory entities.	Resolve and refer cases for alternative dispute resolution [r15 (11)].	ADR Agreements
	Referral to other regulatory entities [s13J (6)].	Notice of referral
Refer for prosecution when necessary.	Refer relevant cases for prosecution [s13J (5)].	Notice of referral

B-BBEE COMMISSION
a member of the dti group

Strategic Objectives

Programme 3 & 4

Programme 3: Researching, analysing and reporting on the state of transformation

Strategic objective	Description	Outputs / deliverables
Collect and analyse data by economic sectors	Collation of data for analysis and monitoring of trends from the B-BBEE portal system for production of sector report and trend tracking	Sector Trends Report
Report on B-BBEE National Status and Transformation Trends	Collate and analyse compliance reports, sector council reports, major B-BBEE Transactions, B-BBEE certificate portal and produce report on National State of B-BBEE Economic Transformation	'National Status' Annual Report

Programme 4: Collaborating with relevant stakeholders to advance transformation

Strategic objective	Description	Outputs / deliverables
Build mutual relationships with selected stakeholders.	Identify stakeholders, set-up meetings, agree on areas of mutual interest and enter into memoranda of agreement/binding agreements.	Memoranda of Cooperation
		Binding agreements with enforcement Agencies
		Referral Protocol
Satisfactory Customer service	Develop a service delivery plan for customer satisfactory service.	Service Delivery Improvement Plan

B-BBEE COMMISSION
a member of the dti group

Strategic Objectives

Programme 5: Developing capability and capacity of the B-BBEE Commission to deliver on its mandate

Strategic objective	Description	Outputs / deliverables
Develop an ICT Strategy and infrastructure	Assess B-BBEE Commission's needs, engage with stakeholders, conduct benchmark study, collate information, confer with stakeholders and develop ICT strategy, integrated data-base (data warehouse) as well as infrastructure.	Integrated data bases (data warehouse) of the B-BBEE Commission
		ICT infrastructure
Develop and maintain Support Systems	Prioritise systems in line with ICT needs of the B-BBEE Commission and maintain.	Financial system
		Human Resource Management and Development (HRM & D) System
		Contact Centre Management System
		B-BBEE Certificate Portal
		Case Management System
Staff the B-BBEE Commission and develop a talent pipeline.	Develop and implement strategy for capacity building of B-BBEE Commission staff and creation of talent pool.	Capacity building programme and internship program

B-BBEE COMMISSION
a member of the dti group

Enhancing the Profile of the entity

- Improve *ICT delivery systems* to increase accessibility & improve turnaround times
- Widely *publish findings of cases* & increase referrals of contraventions for prosecution
- Implement the approved *Communication Strategy* to reach more beneficiaries, especially in rural and underdeveloped areas
- Launch a more *interactive website* & *enhance online accessibility* through emails, please call me, sms, WhatsApp and social media for responsive action
- Increase *awareness campaigns* through annual conference, training sessions and other outreaches provincially
- Increase *collaboration with strategic partners* as well as organised structures in business, labour and civil society to increase impact
- Conduct immediate *site visits on tipoffs* for quicker redress, especially for workers
- Publish *packaged messages* for business & investors and step by step guides, continue giving prompt advice and assistance

B-BBEE COMMISSION
a member of the dti group

Proposed Agenda for the New Administration

- Immediately allocate adequate resources and show visible support for the regulator to be effective and independent in its operation
- Pronounce B-BBEE as a priority and adopt consistent messaging of its importance in achieving economic inclusivity locally and abroad
- Directing DPME to ensure compliance with B-BBEE by all government and introduce serious consequences for non-compliant HODs
- Effect changes to the Codes of Good Practice to pool all ESD, Skills and Socio-Economic B-BBEE funds for better impact as an option
- Conclude Service Level Agreement and Shareholders' Compact for effective cooperation between line department and the regulator
- Process immediate amendments to the B-BBEE Act to address issues of constrained enforcement raised, including specialised Tribunal and compliance notices
- Address market access issues and funding for black people

B-BBEE COMMISSION
a member of the dti group