



Presentation to the Portfolio
Committee on Trade and Industry
by the B-BBEE Commission on
Activities for 2020/2021 Financial
Year

15 February 2022

Mandate under the B-BBEE Act

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❑ Established by the B-BBEE Act in terms of section 13B and functions are outline in section 13F as follows:

- *Oversee*, supervise and promote adherence with the B-BBEE Act in the public interest
- *Strengthen* and foster collaboration between public and private sector to safeguard objectives
- Receive *complaints* and investigate complaints proactively and/or reactively
- Promote *advocacy and access* to opportunities, educational programmes and B-BBEE initiatives
- Maintain *registry* of major B-BBEE transactions (R25 million)
- Receive and analyse *compliance reports* (JSE, SETAs, state organs)
- Promote *good governance and accountability*
- Increase *knowledge and awareness* on B-BBEE
- Exercise any power conferred by the Minister in writing, which does not conflict with the B-BBEE Act

Strategy Implemented

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Compliance Driven Strategy

- Advisory opinions & Clarifications
- Compliance Reports
- Major B-BBEE transactions
- Explanatory Notices
- Practice Guides/Brochures
- Advisory Letters
- Education & Awareness sessions
- Advisory Stakeholder meetings
- Site visits for tip-offs/reports

Corrective Enforcement Strategy

- Complaints
- Non-Investigations
- Investigations
- Site visits for investigations
- Alternative dispute resolution
- Findings
- Remedial recommendations
- Referral to other regulators
- Referral for criminal prosecution

Core Processes and Timelines

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Complaint

B-BBEE7 Form
Alternative Dispute Resolution
Findings and Recommendations
Up to 12 months to investigate



Advisory Opinion

Explanatory Note on Procedure issued
Non-binding and based on set of facts
Provide within 30 days



Registration of Major B-BBEE transaction

Based on Threshold
Certificate of Registration within 10 days
Feedback on merit within 90 days



Compliance Report

JSE Listed, SETA, Organs of State, public entity
Sector Council
Consider report within 90 days



Written Clarification

General interpretation or application of B-BBEE
Issued within 5 days

- *All timelines achieved/exceeded except the 12 months for set for investigations*

Compliance with Employment Equity (EE) Act

Employment Equity as at 2020/21												
Gender	Male					Female					Total	PWD
Race	African	Asian	Coloured	White	Total	African	Asian	Coloured	White	Total		
SMS (13-16)	1	0	0	0	1	5	0	0	1	6	7	0
MMS (11&12)	7	0	0	0	7	0	0	0	0	0	7	0
ASD (9&10)	1	0	0	0	1	2	0	0	0	2	3	0
Level 6-8	0	0	0	0	0	0	0	0	0	0	0	0
Level 1-5	9	0	0	0	9	13	0	0	0	13	22	0
Total	18	0	0	0	18	20	0	0	1	21	39	0
EE (Actual)	46.00	0.0	0.0	0.0	46.00	51.00	0.0	0.0	3.00	54.00	-	0.0
EE (Target)	39.20	1.90	6.10	6.70	53.9	34.20	1.10	5.20	5.50	46.00	-	2.00

% of women at SMS level	Actual	Target
	86%	50%

Source: Commission

- Only designated groups qualify under EE Act
- New recruitment must improve persons with disability

Staff Establishment & Vacancy Rate as at 2020/21

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Division	Approved Posts	Filled Posts	Vacancy Rate
Office of the Commissioner	5	2	60%
Organisational Strategy & Performance	15	2	87%
Compliance	25	3	88%
Research, Analysis & Reporting	12	0	100%
Investigation & Enforcement	17	6	65%
Legal Support & Prosecutions	8	0	100%
Operations	31	7	77%
Total Posts	113	20	82%

- *Interns/Trainees absorbed additional to establishment as Administrative Clerks are 19 (nineteen)*
- *Intern that is currently on board is 1 (one)*
- *0% budget for compensation of employees due entity not listed as public entity under PFMA since 2016*

Source: Commission

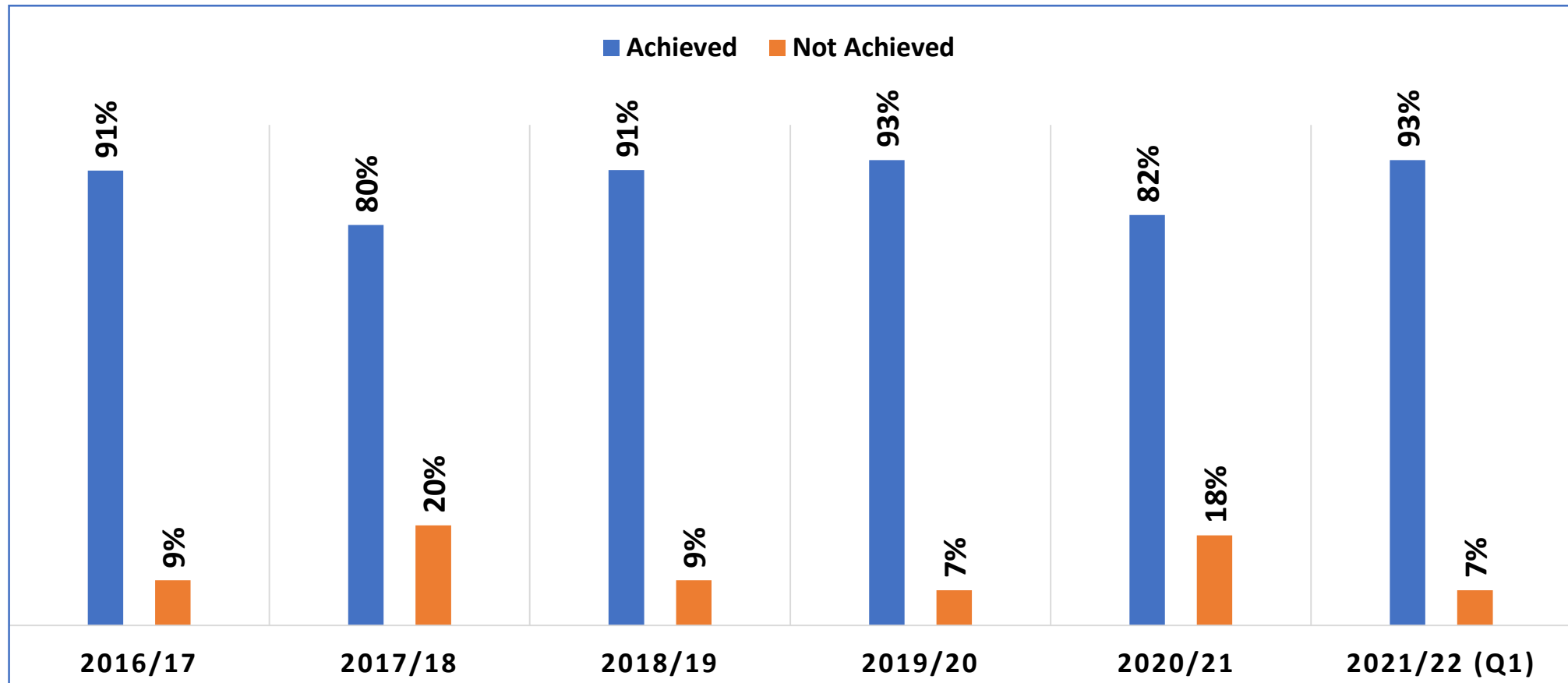


Finances for 2020/21

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Description of item	Budget for the quarter R'000	Actual expenditure for the quarter R'000	Variance for the quarter R'000	% Variance	Year to date Budget R'000	YTD Actual expenditure R'000	YTD Variance R'000	Annual budget R'000	Year-end Forecast R'000	Year-end Variance R'000
Compensation of Employees	0	24 853	(24 853)	0%	0	24 853	(24 853)	0	24 853	-24 853
Goods and Services	8 402	5 335	3 067	36.5%	8 402	5 335	3 067	8 402	5 335	3 067
Households	0	20	(20)	0%	0	20	(20)	0	20	0
Machinery and Equipment	0	0	0	0%	0	0	0	0	0	0
TOTAL	8 402	30 208	21 806	259.53%	8 402	30 208	21 806	8 402	30 208	(21 786)

Organisational Performance Record



- *Performed consistently well - Average 87,4% against the Annual Performance Plan (APP)*
- *Milestones not achieved had external dependencies, such as SITA processes*

Source: Commission

B-BBEE Context, Frameworks & Status

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- ❑ B-BBEE Act was passed in 2003 (Act 53 of 2003) pursuant to the equality clause in the Constitution, and amended in 2013 (Act 46 of 2013) effective from 24 October 2014. B-BBEE Commission was established to oversee the implementation of B-BBEE, including to act against fronting and misrepresentation.
- ❑ B-BBEE is defined as a 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.
- ❑ These include increasing the number of black people who own, manage and control enterprises and productive assets, including communities, workers, co-operatives and other collective enterprises, human resource and skills development, equitable representation in all occupational categories and levels in the workforce, preferential procurement from black owned and managed enterprises and investment in enterprises that are black owned and managed.
- ❑ B-BBEE is about real and meaningful participation of black people in the ownership of the economy to achieve substantial change in the racial composition of ownership and management structures of existing and new enterprises and provide financial and non-financial to skill and develop sustainable black entrepreneurs and suppliers.

B-BBEE Context, Frameworks & Status 10

- ❑ B-BBEE implementation and measurement is guided by the Codes of Good Practice (generic codes and the 10 approved sector codes) and measures ownership (100), management control (200), skills development (300), enterprise and supplier development (400) and socio-economic development (500).
- ❑ The public sector (organs of state & public entities) are measured using the specialised scorecard (004) which excludes the ownership element while the private sector applies the normal scorecard. Public sector must also comply with section 10 for procurement, licences, sale of state assets, public private partnerships and incentive scheme.
- ❑ Multinationals may apply for Equity Equivalent Investment Programme (EEIP) (Statement 103) at **the dtic**, which if approved means the multinational makes a financial contribution under the EIP programme instead of entering into an equity/shareholding transaction to meet the ownership target.
- ❑ Ownership can also be achieved through the sale of assets or business to black people and this is guided by Statement 102 with the primary requirement being that the business or asset sold must be viable and vest in the hands of black people. Thus some structured sale and lease-back arrangements do not qualify for recognition under the ownership.

B-BBEE Context, Frameworks & Status

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- ❑ Currently South Africa is the most unequal society in the world according to the World Bank. StatsSA population estimates for 2019 showed that Black people were at 92.1% and White people at 7.9% of the population. Further, economically active population (EAP) reflected Black people at 91.3% and White people at 8.7%.
- ❑ The *National Status & Trends on B-BBEE* report of the B-BBEE Commission shows overall black ownership in 2020 to be at 31% (27%: 2017) with black women ownership at 15% (9%: 2017), while the 100% black owned entities on the JSE have regressed to 0% in 2020 from 3.3% in 2019 (1%: 2017). Over 90% black people own only about 30% of the economy while white people who account for less than 10% of the population own about 70%.
- ❑ In 2020 black management control on the JSE was at 28% while the public sector was sitting at 65.8%, indicating the public sector as more reflective of the demographics of the country than the private sector. The figures regressed for the private sector when compared to previous periods.
- ❑ For the 2020 calendar year, overall contribution towards Skills Development recorded an increase to 60% (37%: 2017), which in real terms translated to R11,2 billion spent by JSE entities and R1,8 billion by public sector in the one year alone. Also increased are contributions made towards Enterprise and Supplier Development at 61% (44%: 2017) and Socio-Economic Development at 90% (88%: 2017), which should assist with economic recovery.

B-BBEE Context, Frameworks & Status

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- ❑ Through B-BBEE, there is potential for ownership patterns to change but increased opportunities and funding for black people to make acquisitions or create new black owned businesses must be made available to accelerate the pace.
- ❑ Based on the *Major B-BBEE Transactions Analysis Report* of the B-BBEE Commission, 95 black ownership deals filed in 2018/19 FY amounted to R 111,938 billion in transaction value while 272 filed in 2017/2018 accounted for R188,7 billion. As at 2020/21 financial year, a total of 528 transactions had been filed.
- ❑ These deals are made possible by the B-BBEE Act to facilitate the transfer of ownership to black people. To fund these deals, private sector entities contributed over 30% to vendor-finance the acquisitions, about 18% was financed by banks and 2.8% funded by government funding institutions, with 10% done as share swaps, and the rest in other mixed forms of funding. New entrants have, however, decreased possibly due to lack of funding.
- ❑ Of the 528 deals filed as at 2020/21, 148 (28%) were rejected for not complying with filing requirements and 380 were registered, however, 113 (29,7%) of the 380 registered were found to not meet the ownership test and were referred for investigation for possible fronting and misrepresentation as they failed to remedy the deals. Fronting continues to threaten the success of black economic empowerment.

B-BBEE Context, Frameworks & Status

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- ❑ Evidence on fronting in investigations show that some ownership deals that purport to facilitate the transfer of ownership in fact end up stripping black shareholders of participation rights, economic benefits and the ability to ultimately own the stake/asset purported to be for black people, with indicators such as reduced voting rights, non-existent dividend flow and perpetual re-financing resulting in over-indebtedness.
- ❑ As the B-BBEE Commission was set up to also investigate fronting, as at 2020/21, it handled 909 complaints and has issued findings in 423 (47%) cases, resolved 22 (2%) through Alternative Dispute Resolution (R 105 467 839.36 paid to black partners) , issued non-investigation notices in 276 (30%), which amounts to a breakthrough in about 79% of the cases handled over the period. 83% of cases handled is still on fronting.
- ❑ The complaints numbers fluctuated each year, with the highest numbers recorded in 2016/17 at 222 and 2019/20 with 243, the other years were below two hundred each. Noted though is that the quality of the complaints has improved with less notices of non-investigation being issued.
- ❑ Some entities show the upfront wish to correct alleged violations resulting in remedial recommendations that are monitored by the B-BBEE Commission. Annual compliance reporting has declined further and over 50% of JSE entities and public sector organs were referred for investigation to improve reporting.

B-BBEE Context, Frameworks & Status

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- ❑ B-BBEE Policy and the B-BBEE Act are inherently flexible to enable efficient contributions towards economic empowerment without undue additional regulatory cost and burden on the basis of the following:
 - ❑ Balanced Score Card
 - ❑ Target based
 - ❑ B-BBEE Level 1-8 compliant status
 - ❑ Sector Codes to cater for unique features of certain sectors
 - ❑ Options of ownership recognition, including sale of assets and private equity funds
 - ❑ Equity Equivalent Investment Programme in lieu of ownership for multinationals
 - ❑ Exemption from verification for certain categories
 - ❑ Exemptions/Deviations/Permission to Exceed
 - ❑ Contributions determined on % of Net Profit After Tax and Leviable Amount
 - ❑ B-BBEE Facilitator status

Strategic Objectives

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Programme 1: To safeguard the outcomes of inclusive economy

Strategic objective	Output	Achievement per Financial year					Total
		2016/17	2017/18	2018/19	2019/20	2020/21	
Guide the implementation of B-BBEE Act	Advisory Opinions	48	46	37	34	27	192
	Clarifications	391	1212	1335	1603	1613	6154
	Practice Notes / Guideline	3	4	2	3	2	14
	Brochures	0	2	5	4	5	16
	Education & Awareness	174			86	40	300
Assess B-BBEE Transactions and provide advice	Received	272		95	109	52	528
	Registered	183		70	83	44	380
	Involve Trust	95		20	21	12	148
	Rejected	89		25	26	8	148

Strategic Objectives

Programme 1: To safeguard the outcomes of inclusive economy

Strategic objective	Output	Achievement per Financial year					Total
		2016/17	2017/18	2018/19	2019/20	2020/21	
Assess Compliance Report & provide feedback	Received	202	270	205	166	Av. 211 PA	
	Assessed	191	156	196	163	Av. 177 PA	
	JSE Listed	181	147	158	126	Av. 153 PA	
	Public Entities & Organs of State	21	21	47	37	Av. 32 PA	
	SETAs	0	2	3	3	Av. 2 PA	

Strategic Objectives

Programme 2: To implement corrective enforcement to achieve compliance

Strategic objective	Output	Achievement per Financial year					Total
		2016/17	2017/18	2018/19	2019/20	2020/21	
Conduct both proactive and reactive Investigation	Investigation findings	371				52	423
Facilitate and guide resolution of dispute through ADR	ADR Agreements [r15(11)]	22				0	22
Referral to other regulatory entities & for prosecution	Notice of referral [s13J (6)] & [s13J (5)]	24				2	26

Strategic Objectives

Programme 3 & 4: Researching, analysing and reporting on state of transformation & Collaborating with relevant stakeholders to advance transformation

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

Strategic objective	Output	Achievement per Financial year					Total
		2016/17	2017/18	2018/19	2019/20	2020/21	
Report on National Status and Transformation	National Status Annual Report	1	1	1	1	1	5
	Major B-BBEE Transaction Report	0	0	1	1	0	2

Programme 4: Collaborating with relevant stakeholders to advance transformation

Strategic objective	Output	Achievement per Financial year					Total
		2016/17	2017/18	2018/19	2019/20	2020/21	
Build Mutual relationships with selected stakeholders	Memoranda of Cooperation	1	3	3	2	1	10

2020/21 Performance against APP Programme 1 & 2

Strategic Outcomes-Oriented Goal	Strategic Objective/ Output	Performance Indicator/ Measure	Targets	Report for 2020/21 FY
			2020/21	
Safeguarding the outcomes of an inclusive economy	Guide implementation of the Act	Number of days taken to provide advice to clients	30 days	27 Advisory Opinions 1613 Written Clarifications
		Number of practice notes/guides developed and issued	2 annually	2 practice guides/notes (B-BBEE Service Standards; and Completion of S13G compliance matrix)
		Number of brochures developed and published	2 annually	5: Loss or sale of shares; Sale of asset; Private equity Fund; updated enterprise and supplier development; and Joint venture requirements
	Assess B-BBEE transactions and provide advice	Number of days taken to assess B-BBEE transactions and include on the register	90 days	52 transactions received 8 rejected for non-compliance 0 Pending 44 issued with registration certificates 12 Trusts involved 44 assessed
Assess Compliance Reports and provide feedback	Number of days taken to assess compliance reports	90 days	166 compliance reports received 163 Assessed and 3 within time	

Strategic Outcomes-Oriented Goal	Strategic Objective/ Output	Performance Indicator/ Measure	Targets	Report for 2020/21 FY
			2020/21	
Implementing corrective enforcement to achieve compliance	Conduct both proactive and reactive investigations	Percentage of reports produced on investigations conducted within 12 months upon receipt of complaint	On average 80% reports produced on investigations conducted within 12 months upon receipt of complaint	145 complaints handled – 81,4% fronting 46 Issued notices of investigations 88 Non-investigations 3 summons issued
		Encourage and guide resolution of disputes	100% identified cases for ADR analysed and investigated. 80% of the referred cases resolved within 6 months.	0 cases resolved through ADR – redress to complainants
		Percentage of ADR conditions monitored	100% of ADR conditions monitored	None
		Percentage of cases referred to other Regulatory entities within six (6) months	100% of identified cases referred	2 cases referred
	Refer for prosecution when necessary	Number of cases finalised and referred for prosecution	100% of the identified cases if any	0 cases referred to National Prosecuting Authority & South African Police Services

2020/21 Performance against APP Programme 3,4 & 5

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Strategic Outcomes-Oriented Goal	Strategic Objective/ Output	Performance Indicator/ Measure	Targets	Report for 2020/21FY
			2020/21	
Researching, analysing and reporting on the state of transformation	Collect and analyse data by economic sectors	Number of Sector Reports produced and data analysed	2 Sector reports produced annually and 100% of data tracked from the B-BBEE portal system	2 sector reports produced
	Report on National Status and Transformation Trends	Number of 'National Status' Annual Report produced	1 National Status annual report	1 National Status and Trend Report produced

Programme 4: Relationship Building /Stakeholder Relations

Strategic Outcomes-Oriented Goal	Strategic Objective/ Output	Performance Indicator/ Measure	Targets	Report for 202021 FY
			2020/21	
Collaborating with relevant stakeholders to advance transformation	Build mutual relationships with selected partners	Number of Memoranda of Understanding and Agreements concluded and published	Monitor relationship and Monitor Agreements with reports produced	Relationships monitored, agreements implemented and report produced MoUs concluded with: Companies Tribunal; Companies, Public Protector South Africa , Companies and Intellectual Property Commission and Commission of Employment Equity (last two were renewals)

Strategic Outcomes-Oriented Goal	Strategic Objective/ Output	Performance Indicator/ Measure	Targets	Report for 2020/21 FY
			2020/21	
Developing capability and capacity of the Commission to deliver on its mandate	Develop an ICT strategy and infrastructure	Develop Integrated data base (data warehouse) for the B-BBEE Commission	Implement and monitor integrated data-base (data warehouse)	Integrated database implemented
	Develop and maintain support systems	Number of systems developed, implemented and monitored	3 systems implemented (BBBEE Certificate & Report Portal, One Stop Portal, Events and Management System)	Implementation of the OneStop-Portal delayed due to delays in the installation of servers. Procurement of Events Management system on final stages currently finalising SLA. B-BBEE Certificate Portal system implemented and maintained
	Staff the B-BBEE Commission and develop a talent pipeline	Average percentage of officials trained	60% officials trained	95% of staff trained on the ownership element of the B-BBEE Act,
		Number of graduates on Internship and Trainee programme	1	1 Graduate recruited and trained

Highlights on Compliance

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- ❑ Production and publication of *National Status and Trends on B-BBEE* and *Major B-BBEE Transactions Analysis Reports*.
- ❑ Independent *Impact Assessment Study by DNA Economics* - found that with only 45% of the required budget and 16% of the staff required, the entity has operated effectively with 74% of complaints finalized within 12 months, and 59% of verification agencies confirming that the existence of the entity has brought the much needed alignment in B-BBEE.
- ❑ B-BBEE Annual Conference on Skills Development reaching 500 people, with 11 000 views on social media platforms. Additionally, 40 outreach sessions were held with GP 32, WC 4 and NW, KZN, NC and EC with one session each. Interviews were conducted on SABC radios and TV, Newsroom Africa and ENCA with print media reach.
- ❑ Recognition awards for exemplary skills initiatives to *Association of B-BBEE Professionals (ABP)*, *M&C Accounting (Pty) Ltd*, *Ikusasa Student Financial Aid Programme (ISFAP)* and *Entsika Consulting*.
- ❑ 7 brochures/practice guides were developed and published, with two specifically guiding on *Sale of Assets* and *Private Equity Funds*, to simplify the Act.
- ❑ Concluded MOUs with Public Protector SA, Competition Commission, Commission for Employment Equity, Companies and IP Commission and Companies Tribunal.
- ❑ Issued briefing note and media statement on High Court Ruling in PPPFA Regulations against Finance Minister regarding pre-qualification in procurement processes.

Outreach & Awareness Sessions

The B-BBEE Commission directly and also in partnership with other government institutions managed to reach the following rural and underdeveloped areas:

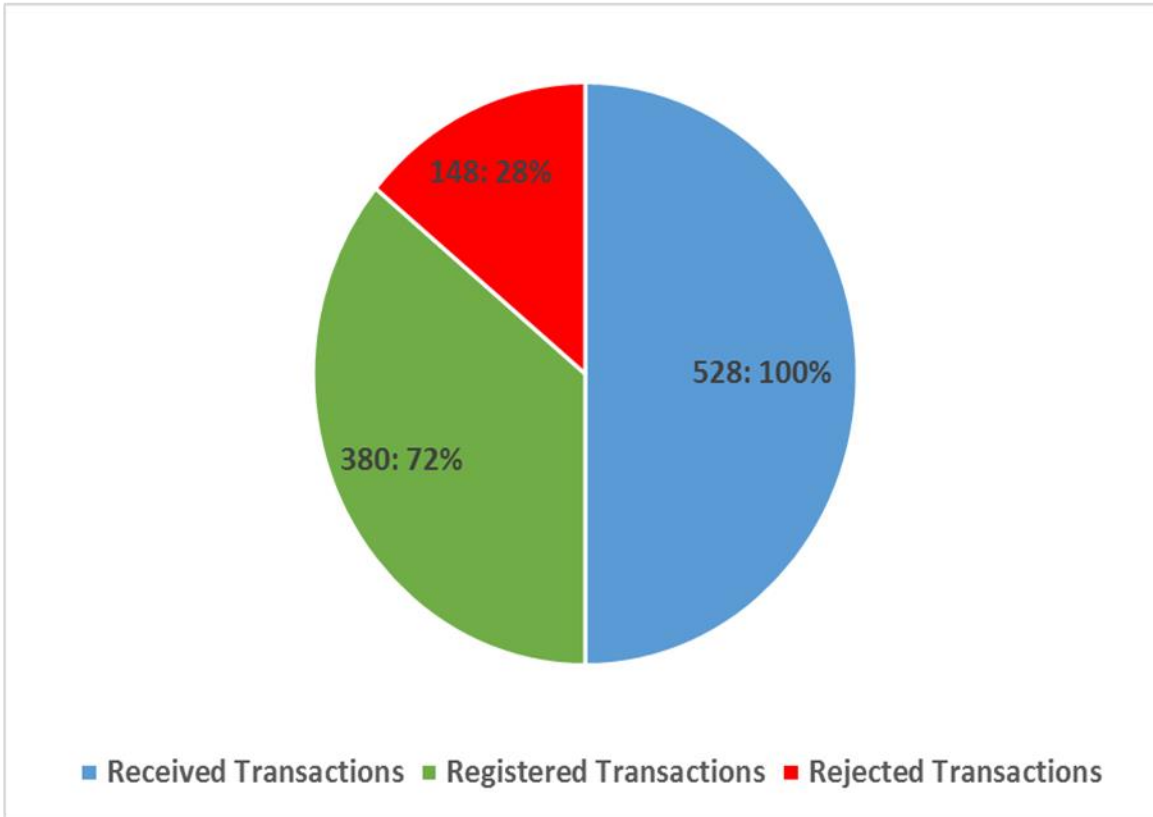
Province	Area
Northern Cape	<ul style="list-style-type: none"> • John Taolo Gaetswe District • Pixley District • ZF Mgcawu District • Frances Baard District
Gauteng	<ul style="list-style-type: none"> • Springs • Khutsong • Wedela • Vooslorus
Eastern Cape	<ul style="list-style-type: none"> • Bisho • King William Town • Mdantsabe • Pedi
North West	<ul style="list-style-type: none"> • Ramotshere Moila Local Municipality (LM) • Moses Kotane LM • Dr Kenneth Kaunda LM • Madibogo • Dr Ruth Segomotsi LM
Western Cape	<ul style="list-style-type: none"> • Kayelitsha • Gugulethu • Langa

The B-BBEE Commission directly and also in partnership with other government institutions managed to reach the following rural and underdeveloped areas:

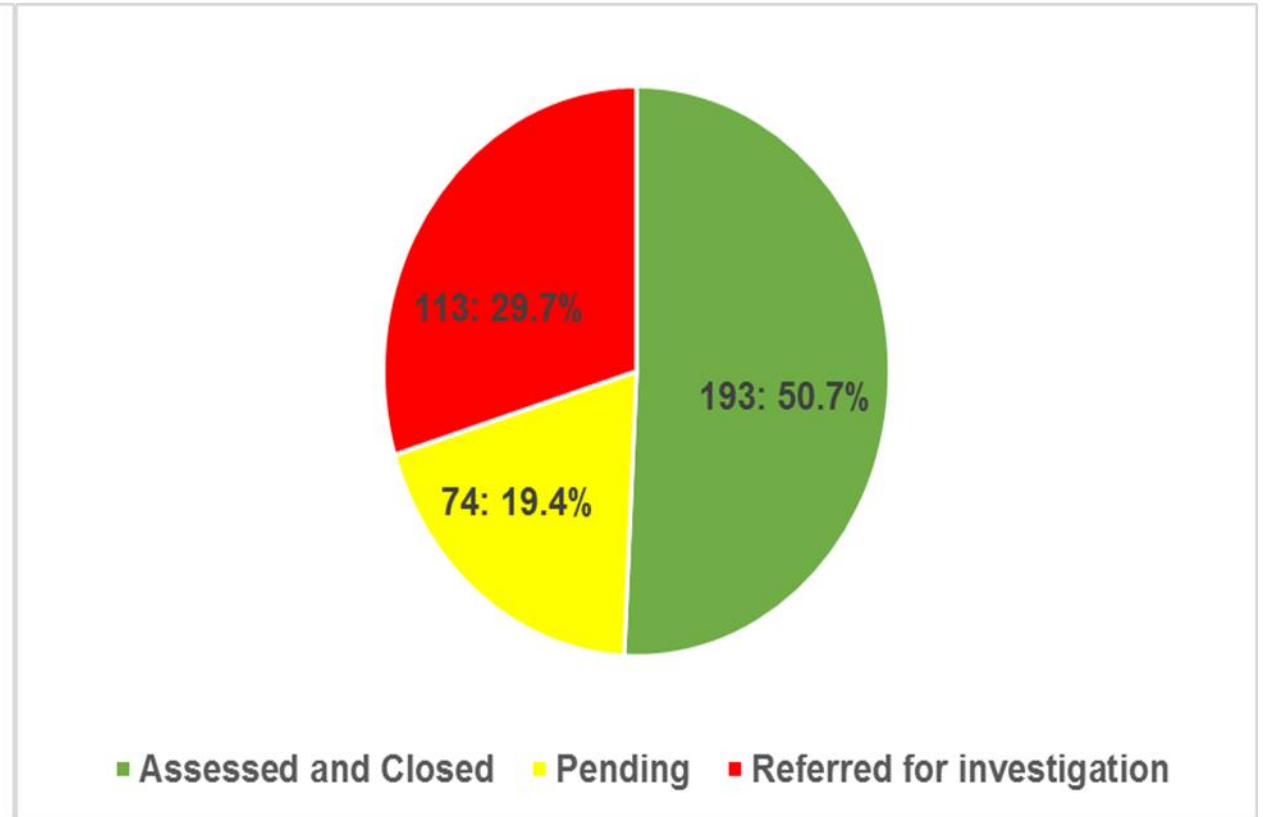
Province	Area
Mpumalanga	<ul style="list-style-type: none"> • Gert Sibande Region • Nkangala Region • Ehlanzeni Region • Govern Mbeki Municipality: Secunda
Limpopo	<ul style="list-style-type: none"> • Sekhukune District • Tzaneen • Vhembe District
Free State	<ul style="list-style-type: none"> • Bethlehem • Kroonstad • Westende
KwaZulu Natal	<ul style="list-style-type: none"> • Umfolozi LM • Abaqulusi LM • Umzimkhulu LM • Umkhanyakude LM • Kwadukuza Municipality • Ray Nkonyeni LM • Umhlabuyalingana Municipality • Kwayuswa

Compliance Statistics for major transactions

Transactions received and handled



Status of registered transactions 2017/18-2020/21



- **52 transactions received in 2020/21 with 100% assessed and 3 referred for investigation**
- **Improved quality and alignment in transactions registered, less transactions being rejected**
- **List of registered transactions updated regularly on the website**

Source: B-BBEE Commission

Compliance Statistics for Mandatory Annual Compliance Reports

National Status and Trends on B-BBEE Report Summary		2017	2018	2019	2020
Submitted Reports	JSE	51% (401)	43% (371)	42% (356)	33% (314)
	Organs of State & SOEs	1% (290)	10% (290)	15% (290)	9% (290)
	B-BBEE Certificate Portal	2861	1674	5818	1241
B-BBEE Rating Level 4 - Level 1	JSE	41%	51%	49%	55%
	Organs of State & SOEs	N/A	45%	33%	33%
B-BBEE Rating Level 5 - Non-Compliant	JSE	48% (12% No data)	45% (5% No data)	51%	45%
	Organs of State & SOEs	N/A	55%	67%	67%

Source: B-BBEE Commission

- **Compliance levels dropped in 2020/21, perhaps due to Covid-19 and other factors**
- **Over 50% of non-compliant entities and organs of state referred for investigation**
- **8 site visits to entities conducted to verify compliance with feedback provided**

Compliance Statistics for Mandatory Annual Compliance Reports

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National Status and Trends on B-BBEE Report Summary		2017	2018	2019	2020
Overall Ownership <i>(Overall include B-BBEE Certificate data information)</i>		27%	25%	29%	31%
Overall Black Women Ownership <i>(Overall include B-BBEE Certificate data information)</i>		9%	10%	12%	15%
JSE Listed Entities Average Black Ownership		29%	25%	31%	28%
100% black owned entities on the JSE		1%	1%	3%	0%
Management Control <i>(Overall include B-BBEE Certificate data information)</i>	JSE	38%	38%	44%	28%
	Organs of State & SOEs	N/A	79%	68%	65.8%
	Overall Management Control	43%	45%	39%	57%
Skills Development <i>(Overall include B-BBEE Certificate data information)</i>	JSE	35%	63%	59%	64%
	Organs of State & SOEs	N/A	64%	41%	32%
	Overall Skills Development	37%	49%	49%	60%
Enterprise and Supplier Development <i>(Overall include B-BBEE Certificate data information)</i>	JSE	47%	70%	59%	67%
	Organs of State & SOEs	N/A	47%	59%	68%
	Overall Enterprise and Supplier Development	44%	60%	51%	61%
Socio-Economic Development <i>(Overall include B-BBEE Certificate data information)</i>	JSE	79%	92%	89%	93%
	Organs of State & SOEs	N/A	65%	53%	33%
	Overall Socio-Economic Development	88%	71%	68%	90%

Highlights on Complaints Handling and Investigations

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- ❑ As at 2020/2021, a total of 909 complaints handled, with only 210 (21%) carried over to the next financial year, in 2020/21 specifically 145 complaints were recorded and findings issued in 52 cases with 88 notices of non-investigation issued.
- ❑ Constant monitoring of the mining, construction, transport, information and communication technology, and manufacturing sectors which recorded the highest number of the 83% fronting complaints.
- ❑ Successfully defended the High Court review application by *CRRC E LOCO (Pty) Ltd* on the Commission's decision that there was fronting practice in the joint venture arrangement between the Chinese owned shareholder and MBC Consortium for the Transnet locomotive contracts – matter also referred to SARS
- ❑ Referred to Department of Agriculture, Forestry and Fisheries a fronting practice found in the case of *Phephe Khekhe // African Tuna Traders CC & Others* where two white males engaged in fronting of black employees for purposes of obtaining fishing rights allocation, with one expiring in 2032 – this report to be tabled in Parliament for further deliberation and action, if necessary.
- ❑ Filed legal papers in defense of the review applications brought by *Cargo Carriers Limited, Sasol Oil (Pty) Ltd* and *Astra Group and Others* seeking to set aside findings of fronting made by the B-BBEE Commission.
- ❑ Publications recently were issued on cases against *Vicky Adey Consulting CC* and others as summarized in the next slide for misrepresentation.

Highlights on Complaints Handling and Investigations

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❑ *B-BBEE Commission // Vicky Adey Consulting CC*

The close corporation misrepresented its B-BBEE status using the credentials of a Nigerian national Olufunsho Adebayo Ademoye. The entity had obtained CIDB grading using the false credentials and also got placed on panels of 4 organs of state for procurement purposes.

❑ *B-BBEE Commission // Forklift Parts World (Pty) Ltd*

The company misrepresented B-BBEE status using the credential of two Chinese nationals who are just permanent residents. The entity agreed to implement remedial recommendations.

❑ *B-BBEE Commission // FRS Warehousing CC t/a EPS Courier Services*

Mr Evert Philip Serfontein, a white male misrepresented his close corporation as 100% black owned entity arguing that he was informed by his mother before passing that his real father was a coloured man, but failed to substantiate the claim with any evidence.

❑ *B-BBEE Commission // Stellar Events (Pty) Ltd & Others*

Stellar Events (Pty) Ltd, Finsolve Solutions CC and GNL Management Services CC misrepresented B-BBEE status from the credentials of Ms. Marion Mbeiza Kafuko, a permanent resident of the Republic of South Africa. Finsolve Solutions CC and GNL Management Services CC failed to conduct proper verification.

Successfully Completed Investigations 2020/2021

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Complainant	Respondent
Solomon Motsepe	Mega Food Supplies (Pty) Ltd
Kommandant Ligman	Total Inventions & Others
Vincent Clarens Voges	African Executive Imports and Export Agency cc and Another
Pallo Mcdonald Zita	MRCJ Distributor Services CC and Another
Anna Mabelane and another	Lydenburg Auto Clinic (Pty) Ltd and another
Mfanafuthi Masondo	Isizwe Hospitality (Pty) Ltd
Enos Sithole and another	Sizabantu Plumbing Contractors CC
Samuel Mabhengu	Sizabantu Plumbing Contractors CC
Phephe Khehe Elias	African Tuna Traders cc, Umbhalo Trading (Pty) Ltd and Homotsego Trading (Pty) Ltd and Others
Williams Steven	3Q Mahuma Concrete (Pty) Ltd

Complainant	Respondent
William Magagula	Inkululeko Solutions (Pty) Ltd & SP Mine
Juris Mekgwe	Interwaste Proprietary Limited
Moses Khumalo	Wilkhum Engineering and Tooling Supplies cc
Wendy Sukazi	BTS Electrical & Mechanical Services
B-BBEE Commission	Cochrane Projects (Pty) Ltd
Jackson Taba	In The Vault 33 T/A Filerman
David Disoloane	AF Gatony & CO Chartered Accountants & Auditors
Felix Tjaone	Bradabri (Pty) Ltd
Nomonde Sosibo and Patricia Mohlobane	Zevoli Industries Suppliers
Lazarus Swarts and Jeffrey Twala	Zevoli Industries Suppliers

- *Other cases on the list have adverse findings while no evidence of wrongdoing was found in others*
- *Entities marked in bold are in the process of reviewing Commission's decision in courts, and are being defended*

Successfully Completed Investigations 2020/2021

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Complainant	Respondent
Jabulani Cossa	Ceprotech (Pty) Ltd
Keziah Fisher	Hatch (Pty) Ltd
B-BBEE Commission	Marisimo BEE Professional Verification and Services
Andries Masilela	KMA Workforce (Pty) Ltd
Roy Potelwa	Ixia Trading 74 T/A Total Idutywa
B-BBEE Commission	Masiwilange Corridor Construction CC
B-BBEE Commission	Comperio Group of Companies (Pty) Ltd
Kenneth Leonardo Diedricks	Safcrete Construction (Pty) Ltd
Lucas Mankge	AGWJ (Pty) Ltd and Another
Simphiwe Alert Simelane	Josafa Mining Construction CC

Complainant	Respondent
Debbie Wintermeyer	SVA International (Pty) Ltd
Bhekizenzo Promise Masinga	Stefanutti Stocks (Pty) Ltd
Daphne Mashile-Nkosi	Cell C Ltd and Others
Mandlenkosi Aaron Vilane and 4 others	Rula Bulk Material Handling (Pty) Ltd
Sipho Leslie Mahlangu	Sand Shifters Africa Pty (Ltd) and others
Sebongile Josephina Msimanga Almoguera	Acrow Limited and Others
Sarah Mabu Mahlaule	Advidata Trading 70 CC
Armstrong Sthembiso Ngcobo	Tiestanetix (Pty) Ltd t/a My Glass
Yugesh Pillay	Botes & Kennedy Manyano (Pty) Ltd

- *Other cases on the list have adverse findings while no evidence of wrongdoing was found in others*
- *Entities marked in bold are in the process of reviewing Commission's decision in courts, and are being defended*

Legislative Gaps

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Strengthen Legislative and institutional framework

- Over criminalized – cases to be referred to SAPS /NPA – lengthy and no remedy for prejudiced parties
- No administrative provisions to make fronting practices & misrepresentation a prohibited practice e.g. Competition Act , Companies Act, National Credit Act – need this in addition to criminal offences to be effective
- No provisions empowering the B-BBEE Commission to search for evidence or conduct raids to assist investigation process.
- Close loopholes for abuse of enhanced recognition, modified flow through, etc. and provide powers to issue compliance notices to curb unacceptable conduct

Provide for a dedicated or special Tribunal for B-BBEE matters

- All matters are handled on normal courts which then become detrimental to black people who have been victims of fronting.
- Proposal to amend the Act to have provision for referral to Companies Tribunal for quick adjudication.

No consequences for non-compliance by organs of state and private sector

- There is no express consequence for non-compliance with s10 and s13G such as fines or imprisonment.

Conclusion & Way Forward

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- ❑ *Challenges* remain as there is no budget for compensation of employees, no adequate office space & human resources, all of which are due to the failure to list the B-BBEE Commission as a public entity under the PFMA, and these largely affect wellbeing of staff.
- ❑ Year under review was affected by COVID-19 pandemic restrictions which resulted in *remote operation*, with systems not ready, thus affecting delivery timelines. Employees of the entity have demonstrated *commitment beyond the call of duty* and performed their best to achieve above 80% performance.
- ❑ With increased concerns on *Owner-Driver Schemes*, the B-BBEE Commission will hold a formal hearing prior to finalizing the investigations on this matters for a more systemic approach to the concerns raised. Focus will also be on worker or employee schemes given the abuses identified in cases such as the G4S Secure Solutions (SA) (Pty) Ltd.
- ❑ A *panel of investigating service providers* has since been appointed as a mitigation measure, which will offer additional capacity to expedite cases referred for investigation.
- ❑ The impact of B-BBEE is evident from increased contributions towards B-BBEE targets and in the case of fronting practices redress to prejudiced parties and prosecution pursued for blatant criminality are critical indicators.
- ❑ B-BBEE Act should be amended to give more administrative powers to issue compliance notices, block non-compliant transactions and create a dedicated Tribunal or court for prosecution of prohibited practices for effective consequence management, in addition to the current criminal process that is not fully effective.

POWER 98.7 @Pow... · 20 Oct 20
[ON AIR]: Moipone Kgaboesele, Executive Manager of Investigations & Enforcement at the **B-BBEE Commission** joins @tumisangndlovu now to unpack the Fronting and Misrepresentation of B-BBEE Status Cases.

#POWERBusiness

BL BusinessDay



Carol Paton Editor at Large



NATIONAL

Tenders can still be pre-qualified, B-BBEE Commission says

Criteria for government tenders can still be set by the minister of trade & industry, even though the court struck down the Treasury regulation that enables this, the commission says

BL PREMIUM

14 NOVEMBER 2020 12:14 by CAROL PATON
UPDATED 07 NOVEMBER 2020 19:59



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[Read] The **B-BBEE Commission** has noted the ruling by the Supreme Court of Appeal that declared the PPPFA Regulations of 2017 invalid and confirms that the ruling has no effect on the B-BBEE Act, as amended, and its requirements tinyurl.com/y482z2kz



Gauteng High Court dismisses application to set aside BBEE Commission's investigative report

7th July 2021 BY: SIMONE LIEDTKE
WRITER

The Broad-Based Economic Empowerment (BBBEE) Commission has welcomed the decision by the Gauteng High Court to dismiss, with costs, the application by CRRC E Loco Supply to set aside a decision of the commission and interdict the publishing and

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Bongani Bingwa @bonglez

B-BBEE fronting reportedly rife as companies misrepresent their transformation credentials. Some submit fraudulent certificates or co-opt unsuspecting employees to get tenders or deals. B-BBEE Commission investigating more than 400 cases. #702Breakfast

Fronting rife in SA, says B-BBEE Commission

By Sophelele Dlodla Oct 21, 2020

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JOHANNESBURG - Fronting and the misrepresentation of black economic empowerment (BEE) status by companies in various sectors remains rife in South Africa, according to the B-BBEE Commission.

The commission said yesterday that it was investigating more than 400 cases of fronting.

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Department of Employment and Labour Relations @deptoflabour

Join the B-BBEE Commission and the Commission for Employment Equity for the Management Control and the status of women in transformation webinar today at 10:00-12:00. Media organisations wishing to join the webinar can register on: us02web.zoom.us/webinar/register...



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The **B-BBEE Commission** has warned private & public sectors to refrain from including foreign nationals as beneficiaries of B-BBEE.

This after a Nigerian-born man misrepresented his co's BEE credentials to benefit from govt tenders.

#TheGlenzitoSuperDrive



8 12

Thank You!
“An Inclusive economy for all, together”