

# Real Estate Workshop with Property Sector (Real Estate Sector)

## EE AMENDMENTS & SECTOR EE TARGETS

21 February 2024



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Department:  
Employment and Labour  
**REPUBLIC OF SOUTH AFRICA**





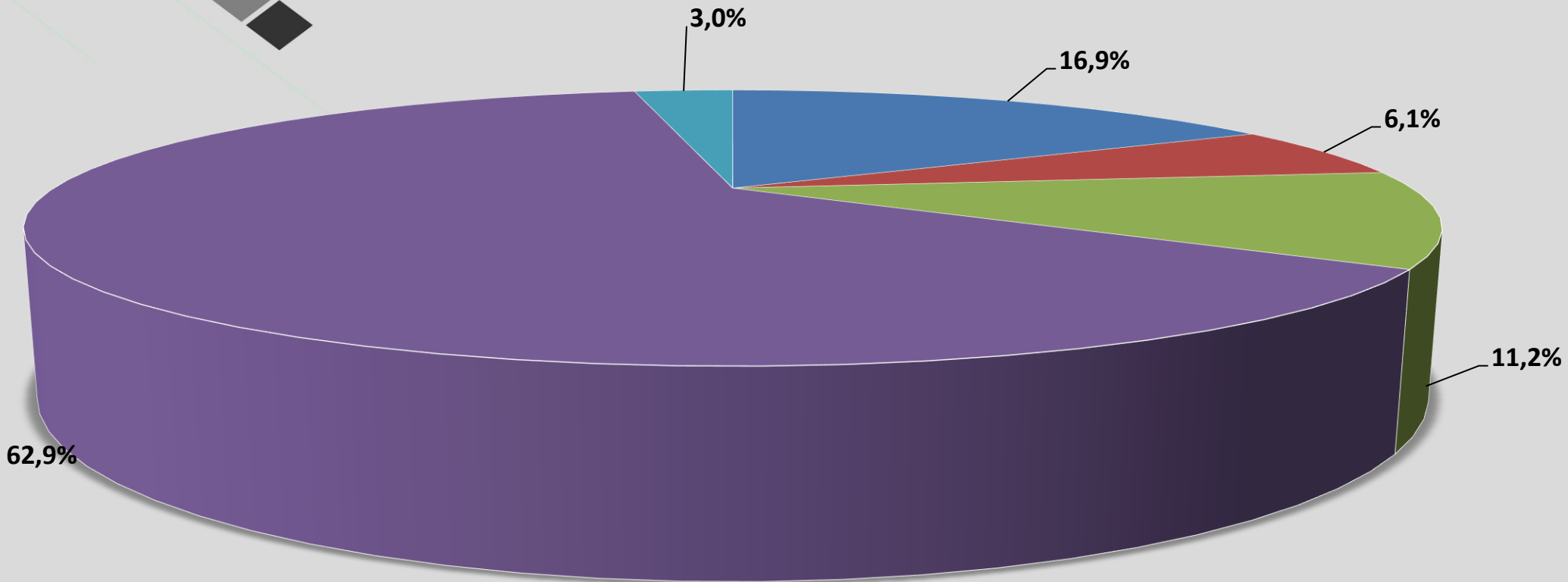
## **OVERVIEW OF THE PRESENTATION – KEY AREAS**

- **23<sup>rd</sup> Commission for Employment Equity Report**
  - **Employment Equity Amendments & Sector EE Targets**
  - **Real Estate Sector EE Targets**
  - **Way-Forward**
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# NATIONAL ECONOMICALLY ACTIVE POPULATION (EAP) (STATS SA QLFS, 3 2022)

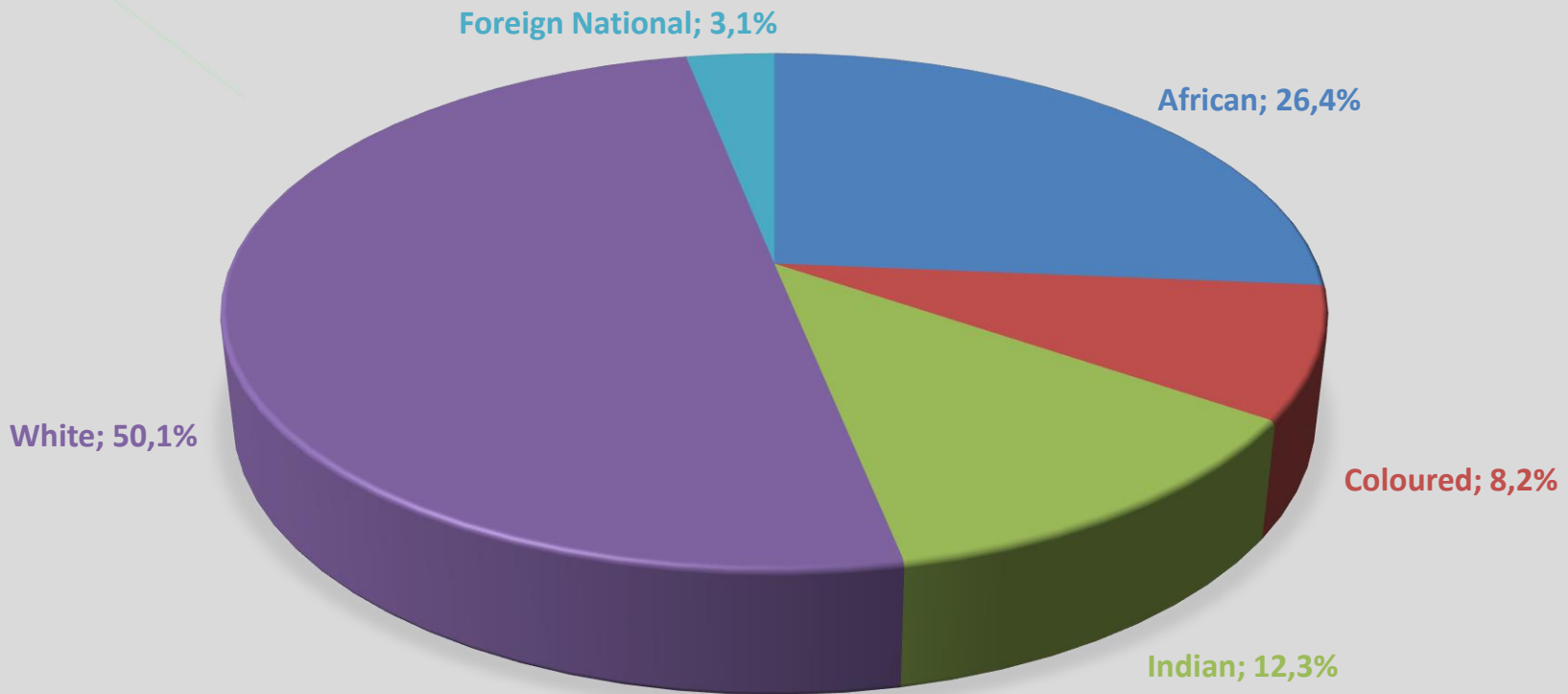
MALE			FEMALE			TOTAL
AM	African Male	43.4%	AF	African Female	36.6%	80.0%
CM	Coloured Male	4.9%	CF	Coloured Female	4.4%	9.3%
IM	Indian Male	1.7%	IF	Indian Female	1.0%	2.7%
WM	White Male	4.5%	WF	White Female	3.5%	8.0%
Total		54.5%			45.5%	100.0%

# TOP MANAGEMENT BY POPULATION GROUP



■ African ■ Coloured ■ Indian ■ White ■ Foreign National

# SENIOR MANAGEMENT BY POPULATION GROUP



# EE Amendments & Sector Targets



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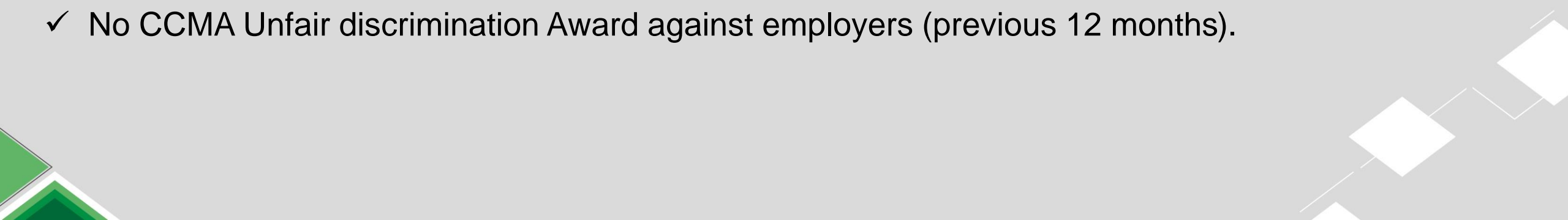


# Key objectives of EE amendments

- **Key objectives of the amendments are to:**
    - ✓ **To reduce the regulatory burden on small business** (those who employ 1-49 employees) – not to be regarded as designated employers.
    - ✓ **Empower the Minister to regulate sector specific EE numerical targets** in order to ensure the equitable representation of suitable qualified people from designated groups;
    - ✓ **To promulgate section 53 of the EEA for the issuing of the EE Compliance Certificate** as a prerequisite for access to state contracts – doing business with any organ of state.
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# CRITERIA FOR EE COMPLIANCE CERTIFICATE (section 53)


- **Criteria for non-designated employers (1-49 employees):**
    - ✓ Comply with the NMW/ exemption granted not to pay NMW (previous 12 months);
    - ✓ No CCMA Unfair discrimination Award against employers (previous 12 months)
  
  - **Criteria for designated employers (50 or more employees):**
    - ✓ Submit Annual EE Report (EEA2 & EEA4 forms);
    - ✓ Comply with own Annual EE Targets towards the 5-year Sector EE Target;
    - ✓ Comply with the NMW/ exemption granted not to pay NMW (previous 12 months);
    - ✓ No CCMA Unfair discrimination Award against employers (previous 12 months).
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# Quotas vs Sector EE targets

- Difference between Quotas and Sector EE targets – constitutionality of Sector EE targets:
  - ✓ **Quotas** are rigid and not flexible (mandatory & no option of justifiable reasons if not met) – these are prohibited by section 15(3) of the EEA.
  - ✓ **Sector EE targets are benchmarks/ milestones** - there is flexibility built in two ways:
    - ❖ designated employers still maintain power to consult employees & self-regulate their annual EE targets toward achieving the 5-year sector EE target (regulated by the Minister); and
    - ❖ If employers fail to achieve their own annual EE targets – the law permits employers to raise a justifiable ground/ reason for non-compliance (certificate of compliance will be issued to the employer – section 53(6) of EE Amendment Act).



## Justifiable reasons/ grounds for failure to comply with EE targets

- **Justifiable reasons/ grounds to be considered for failure to comply with the Annual EE targets – regulation 16 read with EEA15 form in Draft EE Regulations, 2018 (Agreed by NEDLAC social partners):**
  - ✓ **Insufficient recruitment opportunities;**
  - ✓ **Insufficient promotion opportunities;**
  - ✓ **Insufficient target individuals from the designated groups** with the relevant qualifications, skills and experience;
  - ✓ **CCMA/ Court Order;**
  - ✓ **Transfer of business;**
  - ✓ **Merger/ Acquisitions;**
  - ✓ **Impact on business economic circumstances**, e.g. impact of COVID pandemic on business, load- shedding, etc.



# Information on Sector EE targets

- **Sector Stakeholder engagements/ consultation process** commenced from June 2019 until February 2023 (over 3 years) – written submissions done by sector stakeholders to inform sector EE targets.
- In determining the sector EE targets, various factors were taken into account such as:
  - ✓ **national and the provincial Economically Active Population (EAP)** stats as provided by StatsSA (QLFS, Quarter 3, 2022) - section 42 of the EEA;
  - ✓ **various Sector Charters & Sector Codes** published under BBBEE Act;
  - ✓ **2022 EE workforce profile status of each economic sector** as reported by designated employers in their 2022 EE Reports; and
  - ✓ **unique sector dynamics** (e.g. skills availability, economic & market forces, ownership, etc) raised by sector stakeholders – hence different sector EE targets are proposed.
- Transformation must take place through **natural attrition & availability of opportunities** - **not by dismissals/ retrenchments** of any group, including the Coloured, Indian & White population groups.

# REAL ESTATE SECTOR EE TARGETS

		REAL ESTATE ACTIVITIES
DESCRIPTION	GENDER	DESIGNATED GROUPS
Top management	Male	25.0%
	Female	20.0%
	Total	45.0%
Senior Management	Male	27.0%
	Female	23.0%
	Total	50.0%
Professionally Qualified & Middle Management	Male	30.0%
	Female	35.0%
	Total	65.0%
Skilled Technical	Male	33.0%
	Female	37.0%
	Total	70.0%
Disability only		2%OF TOTAL WORKFORCE



# Re-publication of Draft Regulations on Sector EE targets published on 1 Feb 2024

## CHANGES IN THE RE-PUBLISHED DRAFT REGULATIONS ON PROPOSED SECTOR EE TARGETS

### 1<sup>ST</sup> Draft Regulations (12 May 2023)

### 2<sup>ND</sup> Draft Regulations (1 Feb 2024)

1. Proposed **sector targets distributed in terms of race** (i.e. African; Coloured; and Indian) per occupational level.

1. **No racial distribution** of sector targets – **one sector target** for **designated groups** per occupational level

2. **No clarification on factors** taken into account when setting sector targets

2. **Clarification provided on factors taken into account** when setting sector targets (see **paragraph 3** of Draft Regulations)

3. **No clarification** on implementation of **EE and Affirmative Action measures**.

3. **Clarification provided on implementation of EE and Affirmative Action measures** (see **paragraph 4** of the Draft Regulations on contents of Settlement Agreement between DEL & Solidarity).

4. **No Justifiable/ reasonable grounds** for non-achievement/ non-compliance with sector targets.


4. **Justifiable/ reasonable grounds** for non-achievement/ non-compliance with sector targets provided in **paragraph 4.5** of the Draft Regulations.

5. **No clarification provided on termination of contract of employment/ dismissals** due to sector targets.

5. **Clarification provided that no employee will be dismissed/ contract of employment terminated** due to sector targets (see **paragraph 4.7** of the Draft Regulations).



## WAY FORWARD

- Upon proclamation of the effective date of EE Amendment Act No.4 of 2022 – Amended EE Regulations (with revised forms) & final sector EE targets will be published for implementation.
  - National EE Awareness Campaigns / Roadshows to raise awareness on EE amendments and sector EE targets in all nine provinces will be conducted.
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Thank You...



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