

Eastern Cape

EE ROADSHOW 2020

16/ 10/2020



employment & labour

Department:
Employment and Labour
REPUBLIC OF SOUTH AFRICA



Workshop Agenda

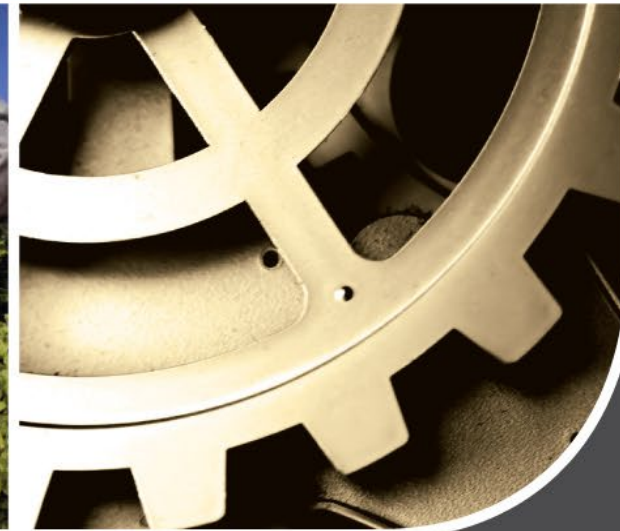
➤ Part 1: 10h00 – 11h00

- Draft Code of Good Practice for the Prevention and Elimination of Violence and Harassment in the World of Work published for Public Comment

➤ Part 2: (11h00 – 12h00)

- 2019 EE Status for Eastern Cape (20th CEE Annual Report)
- 2020 EE Reporting

Draft Code of good practice on the prevention and elimination of violence and harassment in the world of work



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Draft Code presentation outline

➤ Draft Code covers the following key elements, but not limited to:

- ✓ **Definitions**
- ✓ **Scope** and application
- ✓ **Legal framework** on violence and harassment
- ✓ **Objectives** of Draft Code
- ✓ **Guiding principles**
- ✓ **Categories** of violence and harassment
- ✓ **Main forms** of violence and harassment
- ✓ **Tests for the main forms** of violence and harassment
- ✓ **Elimination** and management strategies
- ✓ **Prevention** and awareness
- ✓ **Treatment, Care and support**
- ✓ **Privacy** and consent
- ✓ **Procedures** to manage violence and harassment
- ✓ **Monitoring** and evaluation

Key definitions

- Some key definitions in the Code, but not limited to:
 - ✓ Bullying;
 - ✓ Discrimination;
 - ✓ Intimidation;
 - ✓ Mobbing;
 - ✓ Online violence;
 - ✓ Psychological violence and harassment
 - ✓ worker

Scope and application of Draft Code

- Owners and Employers
- Managers and Supervisors
- Workers, including suspended and terminated
- Persons in training, including interns, apprentices and learnerships
- Volunteers, Job seekers and job applicants
- Clients
- Suppliers
- Contractors; and
- others having dealings with the organisation.

Legal framework

- **South African labour laws on violence and harassment in the workplace:**
 - **Constitution** – Bill of rights (Section 9: Equality clause read with Section 23: Fair Labour practices)
 - **EEA - Chapter II** (Sections 5; 6(1); 6(3); 10; & 60)
 - ✓ Code of Good Practice on the **Handling of Sexual Harassment Cases** in Workplaces (2005) focused on sexual harassment and workplaces only.
 - ✓ Code of Good Practice on the **Integration of EE into HR Policies and Practices** – **“Harassment”** (2005)
 - **LRA** – violence is a form of **Misconduct**
 - **OHSA** – violence and harassment is a **health and safety occupational hazard**.

Objectives of the Draft Code on violence & harassment

- **Objectives of draft Code are to:**
 - ✓ **Align SA existing labour laws with the ILO Convention 190, and its Recommendation;**
 - ✓ **Provide a framework on the interpretation and implementation of EEA pertaining to violence and harassment, including gender-based violence in world of work; and**
 - ✓ **Provide guidelines to employers, employees, employers organisations and unions on how to deal with violence and harassment in the world of work.**

Guiding principles

- Workplaces should be free of V & H. Employers have a duty to remove all forms of unfair discrimination in terms of s 5 of the EEA.
- All Employers, employees, employer organisations and trade unions are required to proactively refrain from committing acts of V & H, including Gender based V & H.
- All employers, employees, employer organisations and trade unions have a role to play in contributing towards creating and maintaining a working environment in which V & H, including gender-based V & H is regarded as unacceptable.

Categories of violence and harassment

- **Violence and Harassment generally falls into the following three broad categories:**
 - a) **Self-directed Violence** (violence against oneself).
 - b) **Interpersonal Violence** (violence against another person); and
 - c) **Collective Violence** (group or community violence).
- **Violence and harassment may include, but not limited to:**
 - ✓ **Physical assault** as well as a range of verbal or non-verbal threats;
 - ✓ **Discrimination** based on race, gender, sex, sexual orientation, etc.;
 - ✓ **Gender-based violence** – both women and men;
 - ✓ Violence and harassment that takes place **outside traditional workplaces**, e.g. social events, conferences, training, workshops, etc.
 - ✓ **Working with clients** or public exposure; and
 - ✓ **Domestic violence and harassment.**

Main Forms of Violence and Harassment

- **Main forms of violence and harassment covered in the Draft Code, includes:**
 - ✓ **Sexual** violence and harassment
 - ✓ **Racial, ethnic or social origin** violence and harassment
 - ✓ **Workplace** bullying
 - ✓ Violence, and harassment related to **protected disclosure**
- **Under each main form** – Code covers: **different types** of each incident and how it may manifest; the **nature, impact** and **test to be applied** in each type of incident of violence and harassment.

Test on Sexual V & H

- Subjective feelings of complainant should be evaluated against objective standard of a *'reasonable person/complainant'*
- Sexual attention becomes sexual violence and harassment when:
 - ✓ Behaviour is **persistent**; and/or
 - ✓ Recipient made it clear **behaviour** is considered **offensive**; and/ or
 - ✓ Perpetrator **knows or ought to have known** the behaviour is regarded as unacceptable.

Test on Racial, Ethnic or Social Origin

- Racial harassment to be assessed objectively with reference to reaction of normal or reasonable person.
- Establish racial violence and harassment based on race, ethnic or social origin – it has to be established on a balance of probabilities that the conduct complaint of:
 - ✓ was unwanted conduct, which was persistent or serious;

Test on Racial, Ethic or Social Origin Cont...

- It has to be established on a balance of probabilities that the conduct complained of:
 - ✓ **Demeaned, impaired dignity, humiliated,** or created a hostile or intimidating environment or
 - ✓ Was calculated to induce submission by actual or threatened adverse consequences and
 - ✓ Was related to race, ethnic or social origin, or a characteristics with such group.
 - ✓ Whether a perpetrator would have spoken the words or behaved in the manner complained of towards the complainant, etc.

Test for workplace bullying

- **The test to be applied for Workplace bullying includes:**
 - (a) **To establish workplace bullying** the test for workplace bullying is that of “*stringent intolerability*” about what is considered serious intentional infliction of a hostile work environment, on consideration of probability that the employer, its agent or both, intentionally subjected the complainant to a hostile work environment.
 - (b) A **hostile environment**, not to be endured, is one that is deemed to be hostile by both the complainant and by a reasonable person in the complainant’s situation.

Elimination and Management of Violence & Harassment

- Employers are under legal obligation to take **proactive and remedial steps** to prevent and eliminate all forms of Violence and Harassment in the World of Work.
 - ✓ Employers are required to have **clear rules, policies and procedures** prohibiting all forms of Violence and Harassment and other forms of unfair discrimination in the world of work.
 - ✓ **Policies and procedures** adopted by an employer should provide a clear understanding of the employer's position regarding the prevention and elimination of the various forms of Violence and Harassment in the world of work.
 - ✓ Employers should ensure the **policy and procedures are communicated effectively to all workers.**

Prevention and Awareness

- **Employers must adopt prevention and awareness programmes that include the following:**
 - ✓ **Awareness and training initiatives** to educate workers at all levels about Harassment and Violence in the WoW.
 - ✓ **communication campaigns** must clarify the understanding of the different forms of Violence and Harassment using appropriate methods and relevant expertise in accessible formats.
 - ✓ **occupational health and safety measures** to adopted and implemented, including harm-reduction strategies
 - ✓ **effective measures to reduce or mitigate the risk** of Violence and Harassment from occurring in the world of work.

Treatment, Care and Support

- **Treatment, care, and support programmes must be clear on the interventions required and the procedures to be followed to address the different forms of Violence and Harassment.**
 - ✓ **Records of available security, police, health and safety** and other support services must be kept
 - ✓ **appropriate referrals, for counselling** and any other appropriate interventions are made.
 - ✓ programmes on **treatment, care and support are clearly communicated.**
 - ✓ programmes of **care and support including measures to reasonably accommodate** those who are negatively impacted be made available.

Privacy and Consent

- Respecting the **sensitivity of information on record** and being recorded.
- Keeping of records in a **safe and secure place**.
- **Acquiring consent**, preferably in **writing**, for the sharing of private information.
- Developing, communicating, and implementing a **clear policy on privacy and confidentiality**.
 - ✓ **Monitoring, evaluation and review** of policy governing privacy and confidentiality.

Procedures in managing V & H

- **Employers must develop clear procedures (included in violence and harassment policy) to deal with incidents of violence and harassment**
 - ✓ **Reporting channels** and mechanisms
 - ✓ **Obligations of the employer** in dealing with the complaint;
 - ✓ **Advise to the complainant** on how to deal with the incident;
 - ✓ **Informal and formal** procedures;
 - ✓ **Disciplinary sanctions/ remedies** to be imposed for incidents of violence and harassment.

Monitoring and Evaluation

- **Monitoring and evaluating systems should provide the required information and need not be complicated and should consider the following:**
 - ✓ design and implementation plan for monitoring and evaluation of strategies, policies, and programmes to eliminate Violence and Harassment in their environment involving the world of work
 - ✓ Identification of key elements needed for a monitoring and evaluation system.
 - ✓ selection and use of indicators that are specific, measurable, attainable, relevant, and time-bound; and
 - ✓ gather and analyse both qualitative and quantitative information; and ensure effective communication thereof with stakeholders.

Way forward

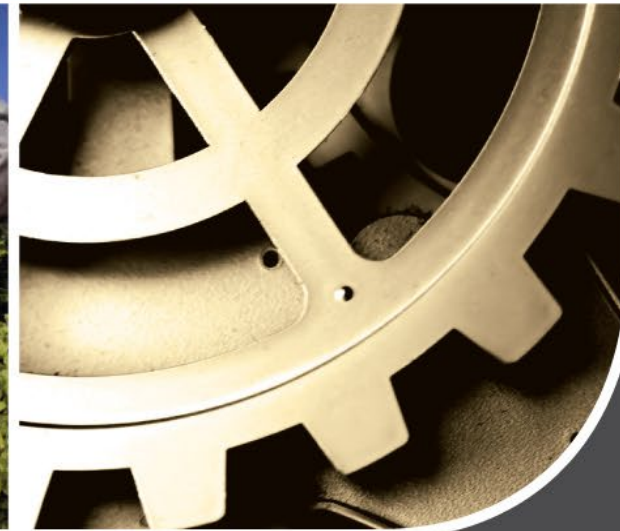
- Draft Code submitted to NEDLAC on 2 September 2020 for tabling in relevant Chamber for discussion.
- Written Public comments on Draft Code to be send to:

jullian.mohale@labour.gov.za

Innocent.Makwarela@labour.gov.za

- Deadline/ closing date: **21 October 2020**

2019 EE STATUS (20TH CEE ANNUAL REPORT) Eastern Cape



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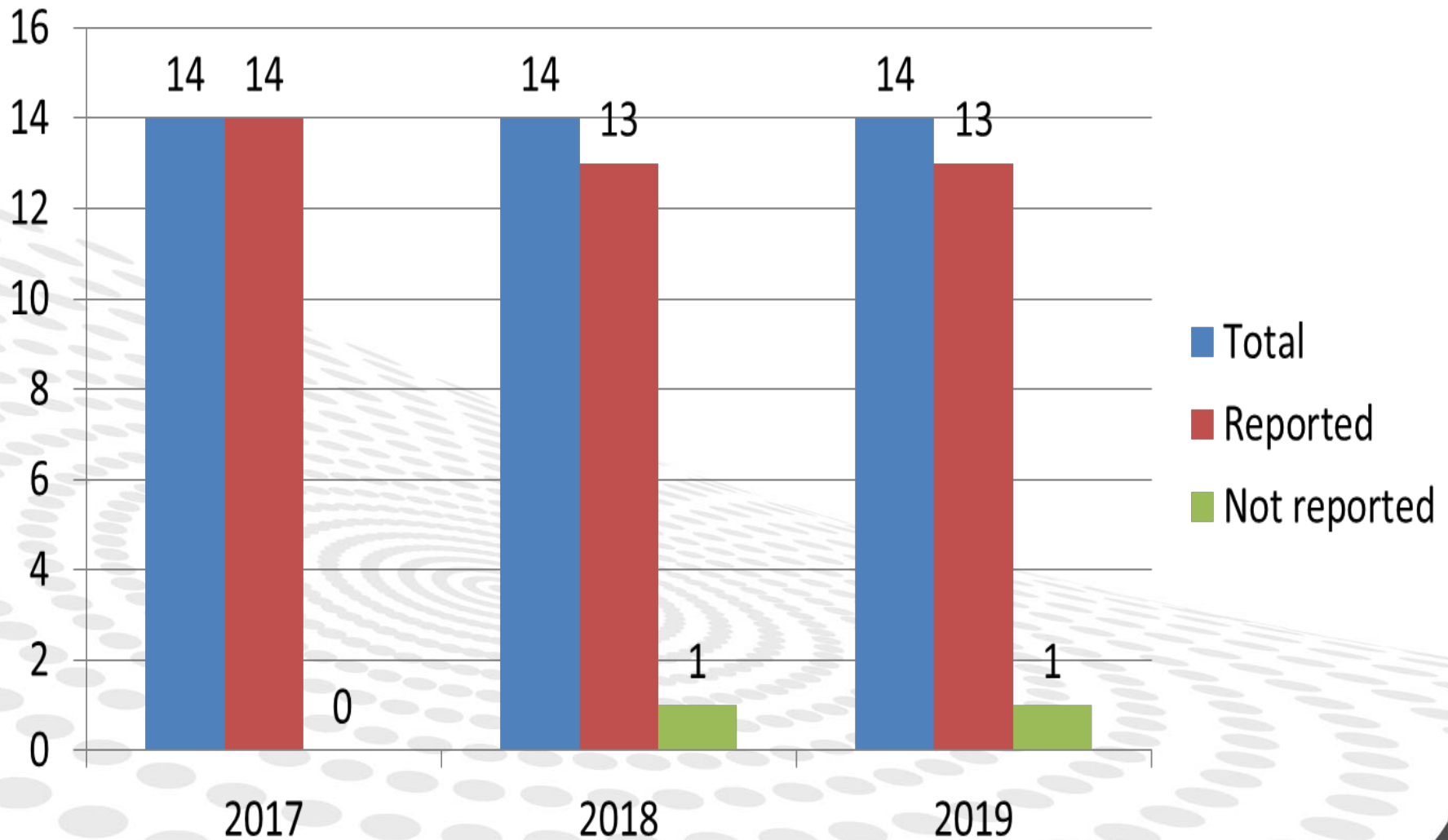
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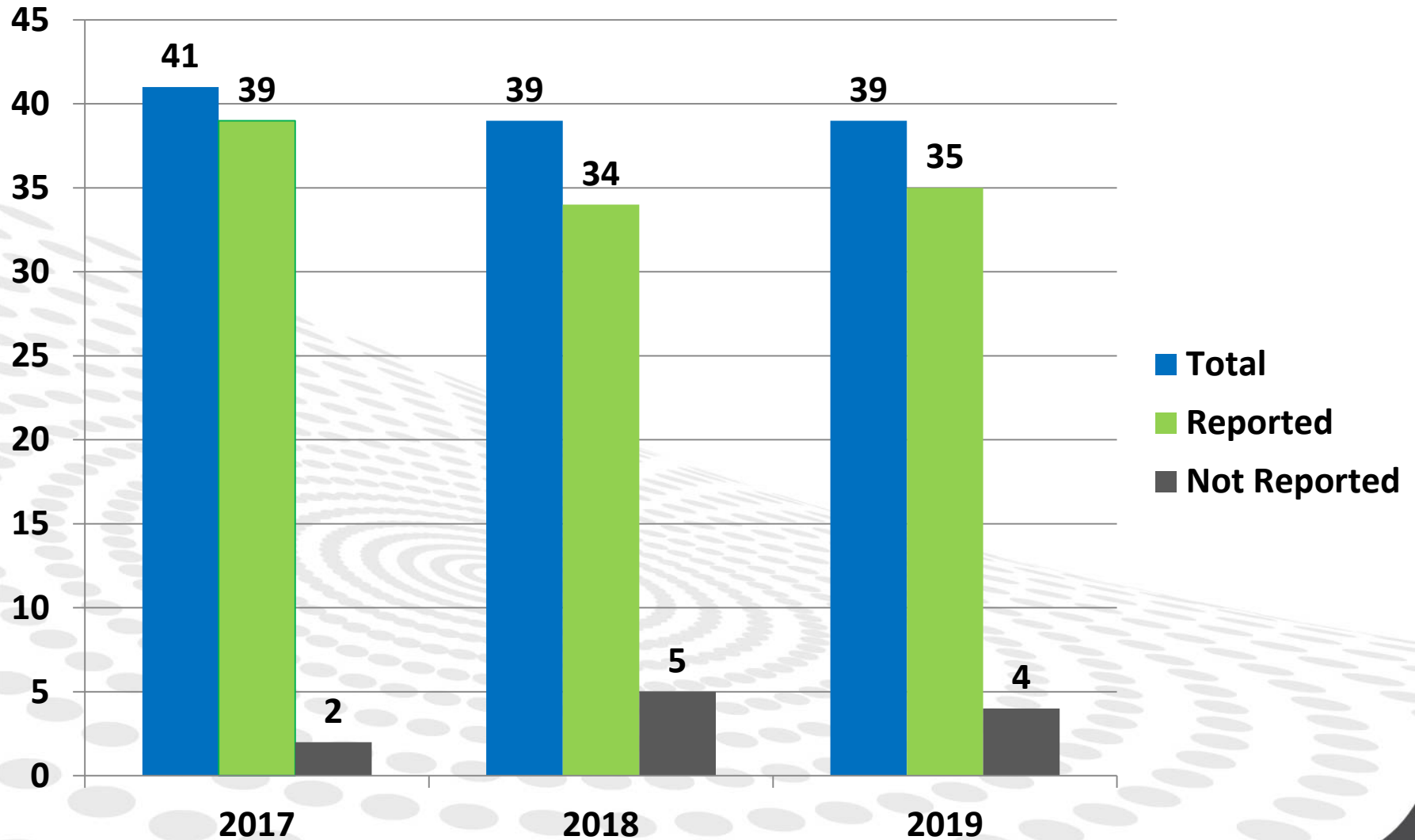
2019 EE status- Eastern Cape

- Total of 27 127 EE reports (from both Private and Public sectors) covering 7 332 072 employees were successfully submitted and analysed for 2019.
- ✓ Total of 1438 (5.3%) EE reports were successfully submitted by the designated employers in the Eastern Cape for 2019 EE Reporting period.
- ✓ Total of 357678 (4.9%) employees were covered in the 2019 EE Reports received and analysed from Eastern Cape

2019 EE status in Eastern Cape (Provincial Departments)



2019 EE status in Eastern Cape (Municipalities)

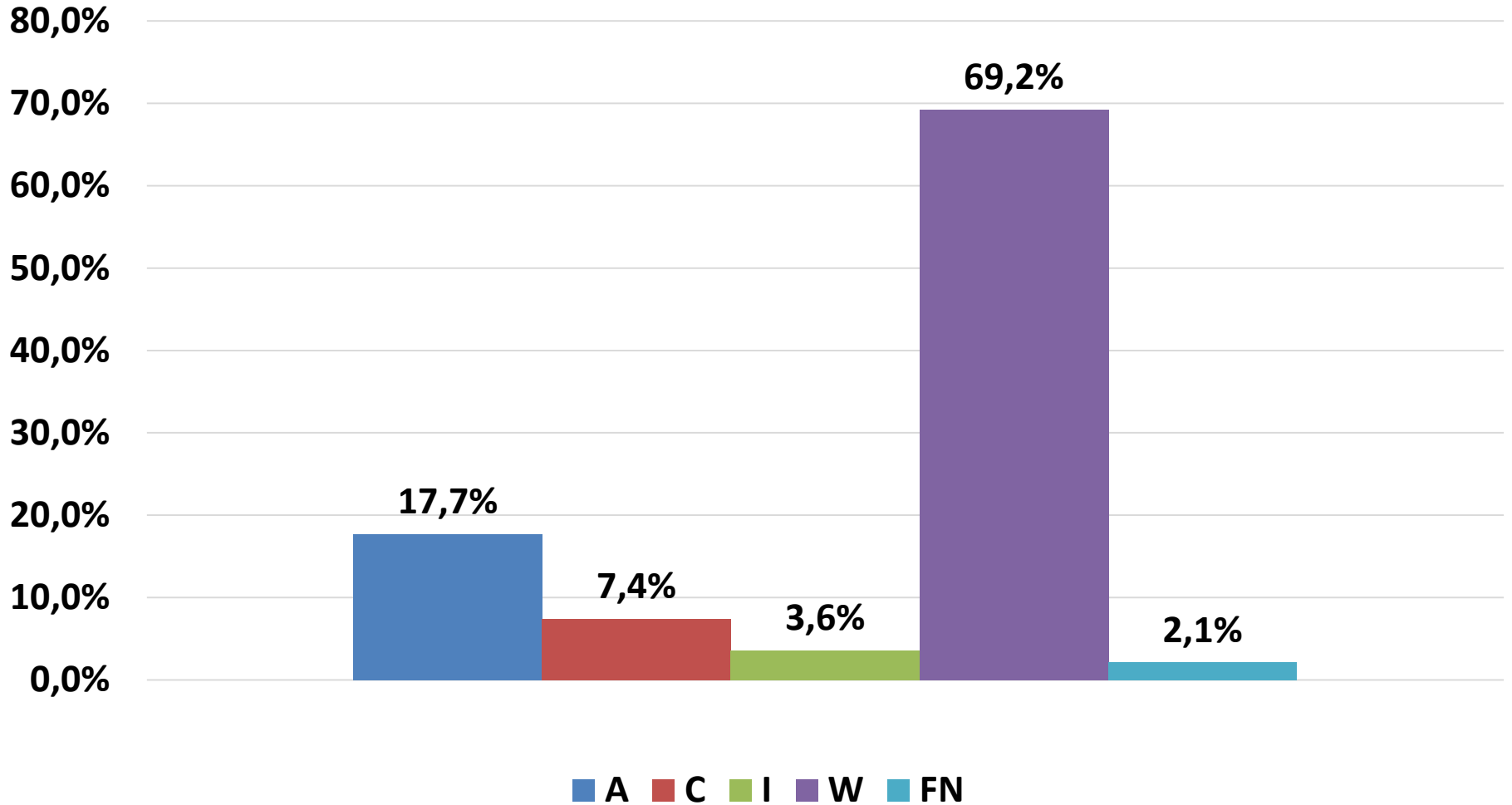


Eastern Cape EAP

MALE			FEMALE			TOTAL
AM	African Male	41.5%	AF	African Female	40.3%	81.8%
CM	Coloured Male	6.0%	CF	Coloured Female	5.7%	11.7%
IM	Indian Male	0.7%	IF	Indian Female	0.2%	0.9%
WM	White Male	3.1%	WM	White Female	2.4%	5.5%
		51.3%			48.6%	100%

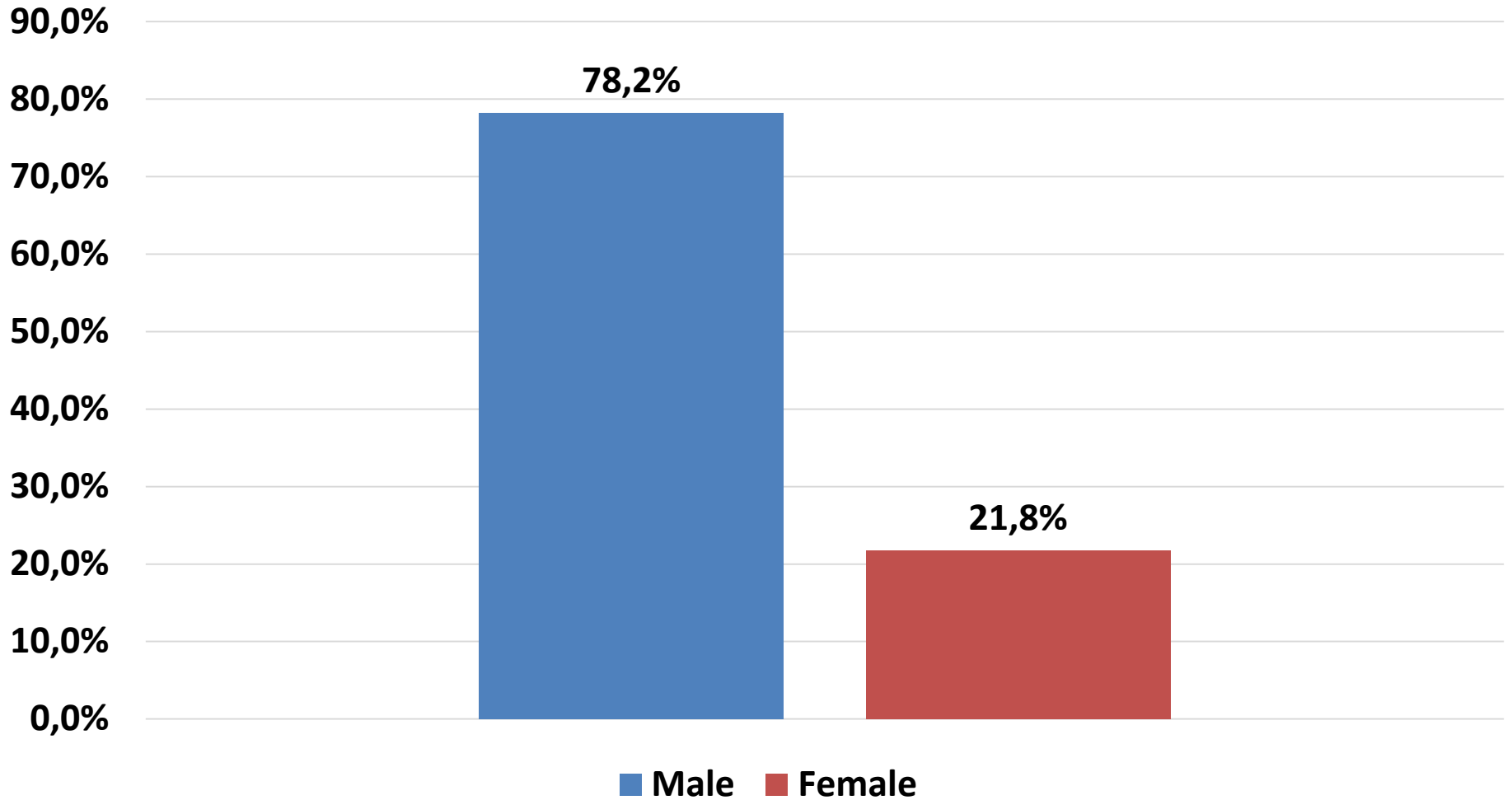
Top management by population group

Top Managment - Population group



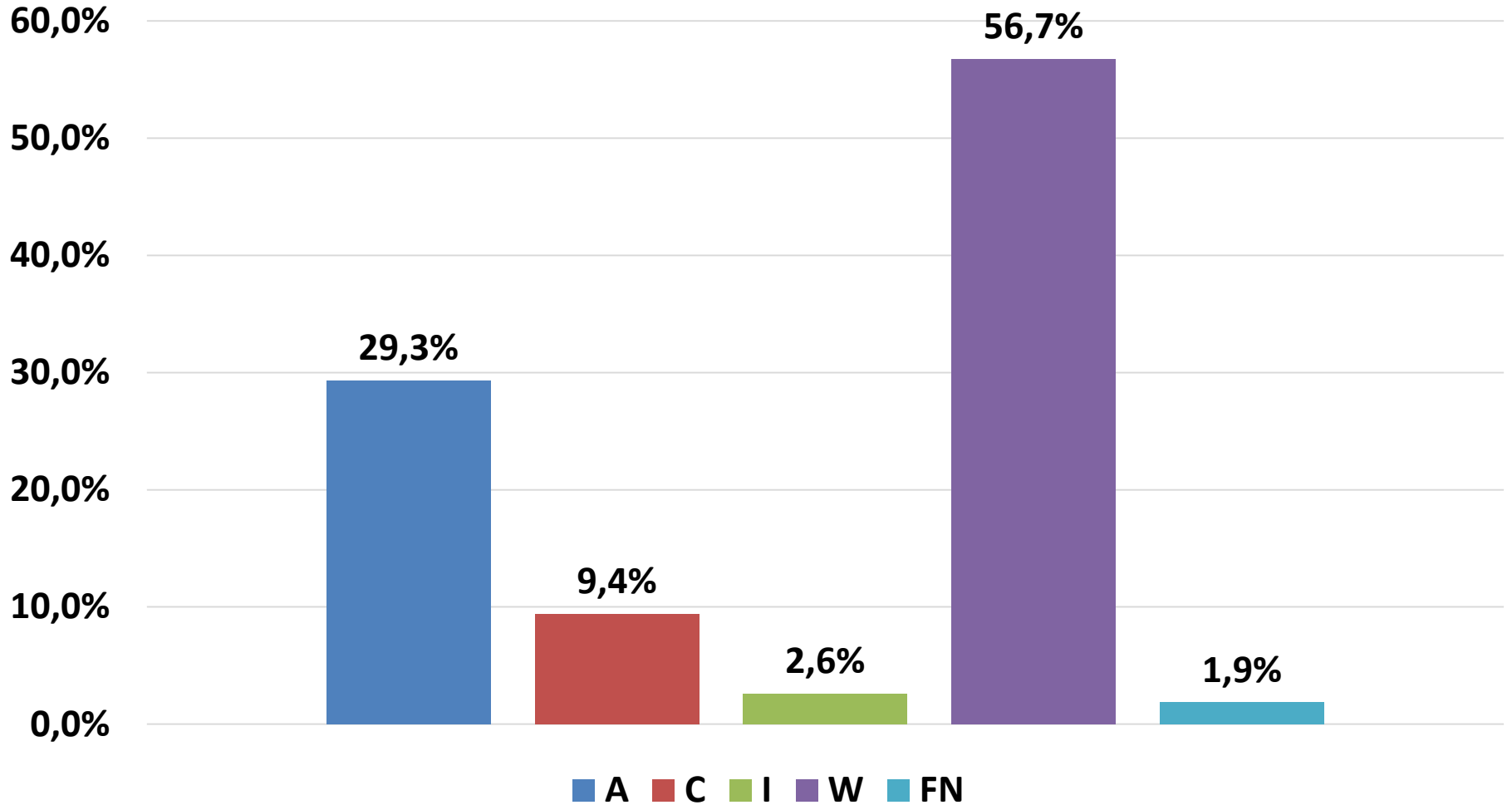
Top management by gender

Top Managment - Gender



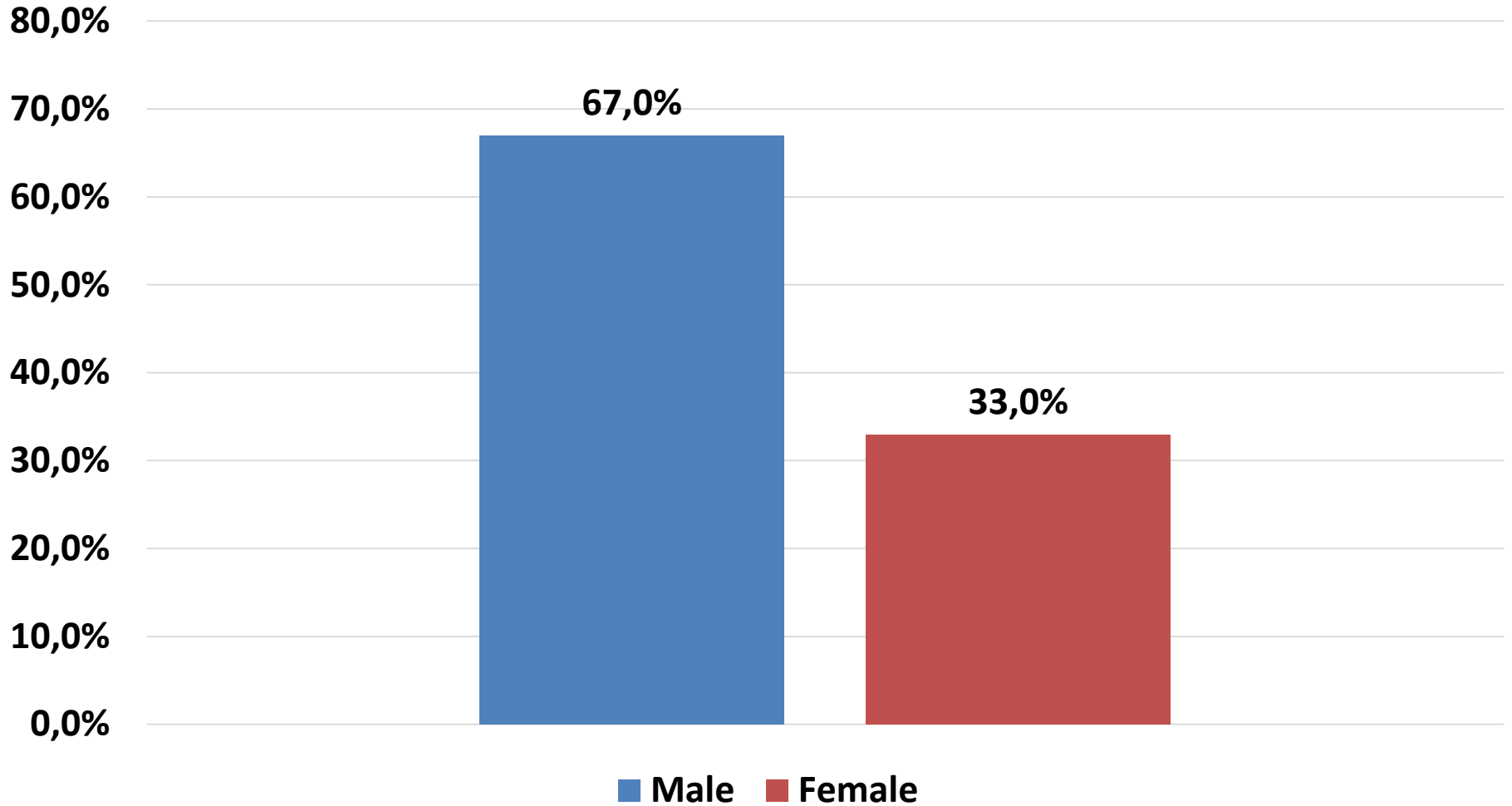
Senior management by population group

Senior Management - Population group



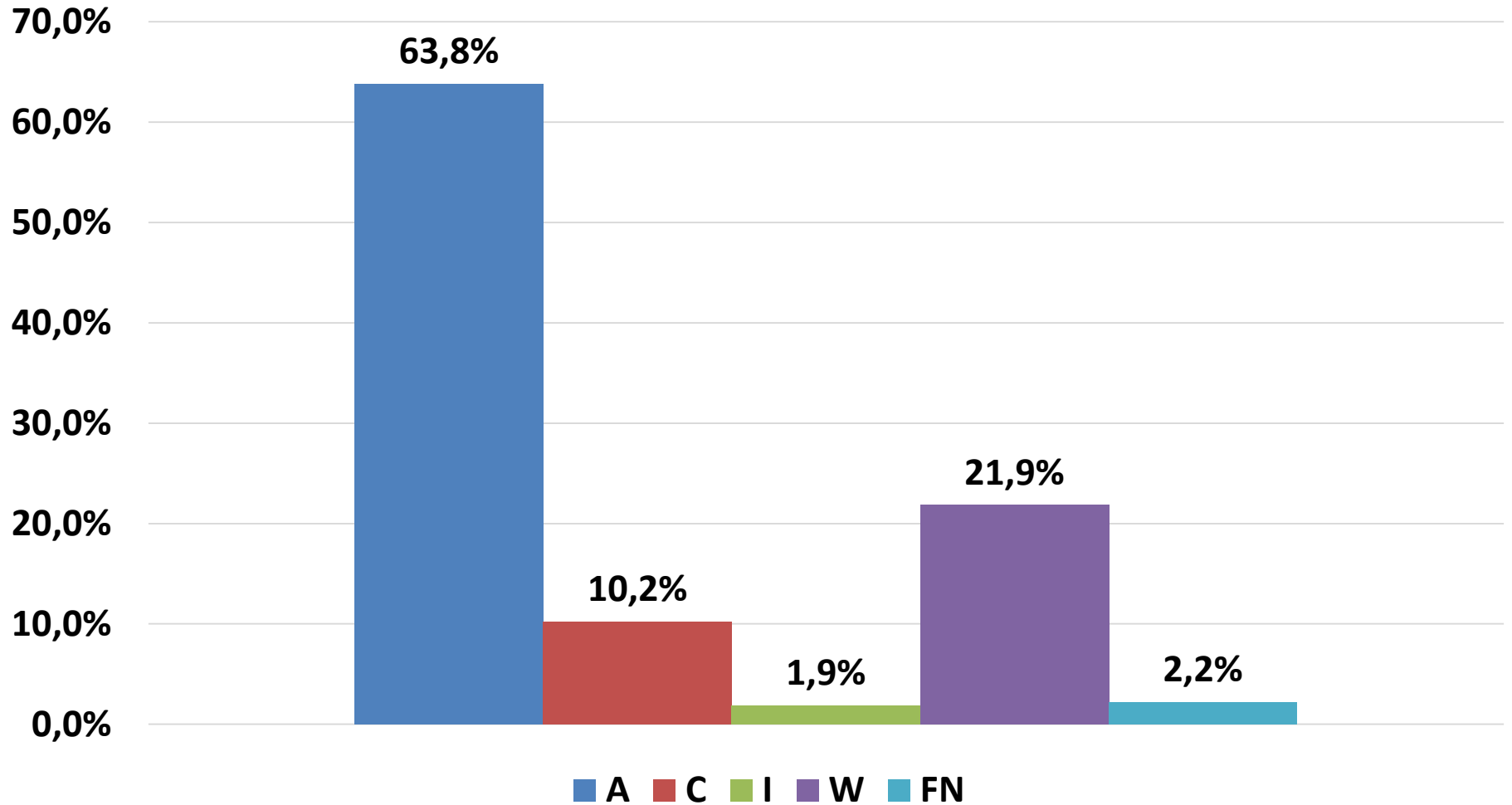
Senior management by gender

Senior Management - Gender



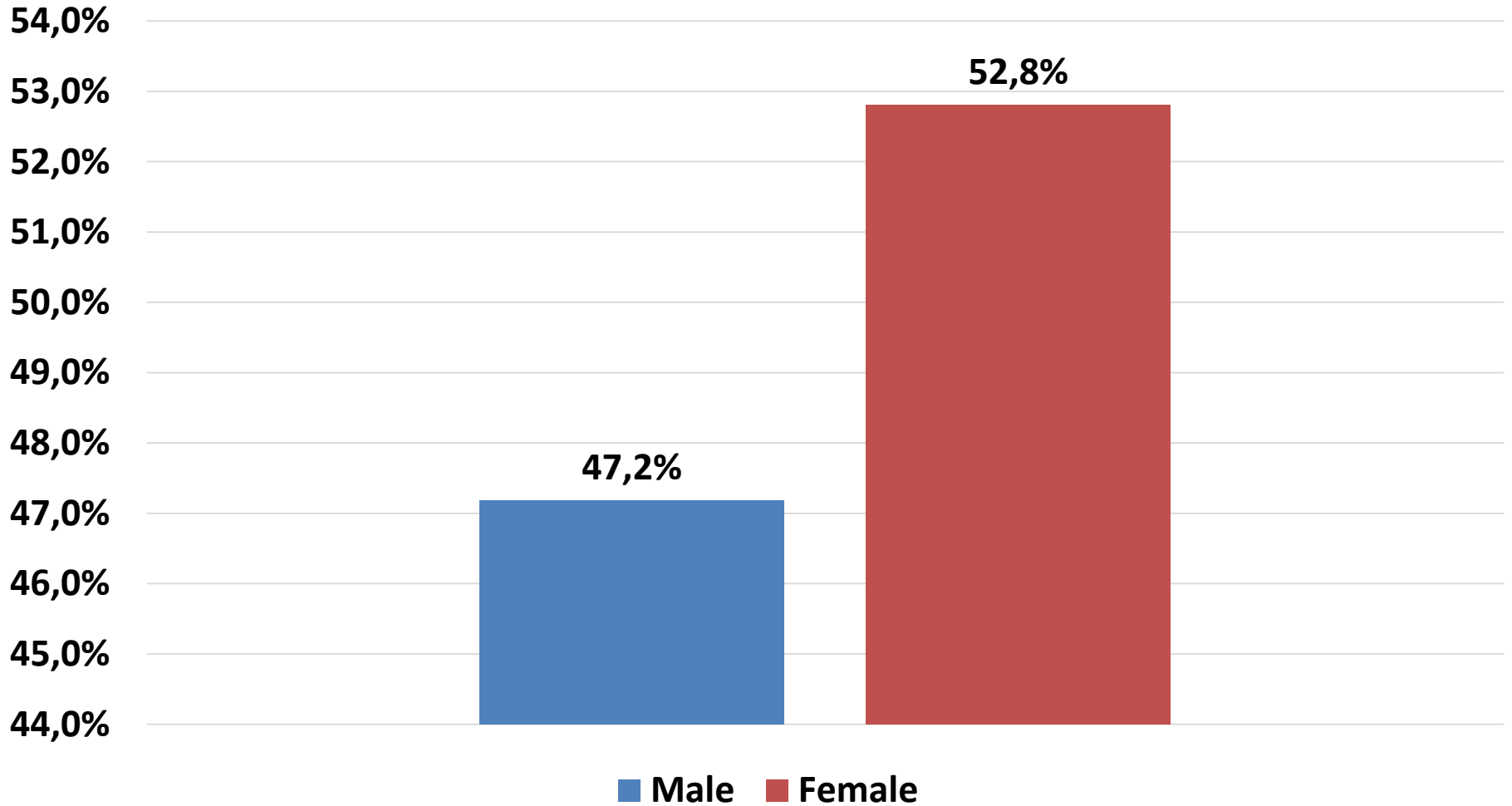
Professionally qualified by population group

Professionally Qualified - Population group



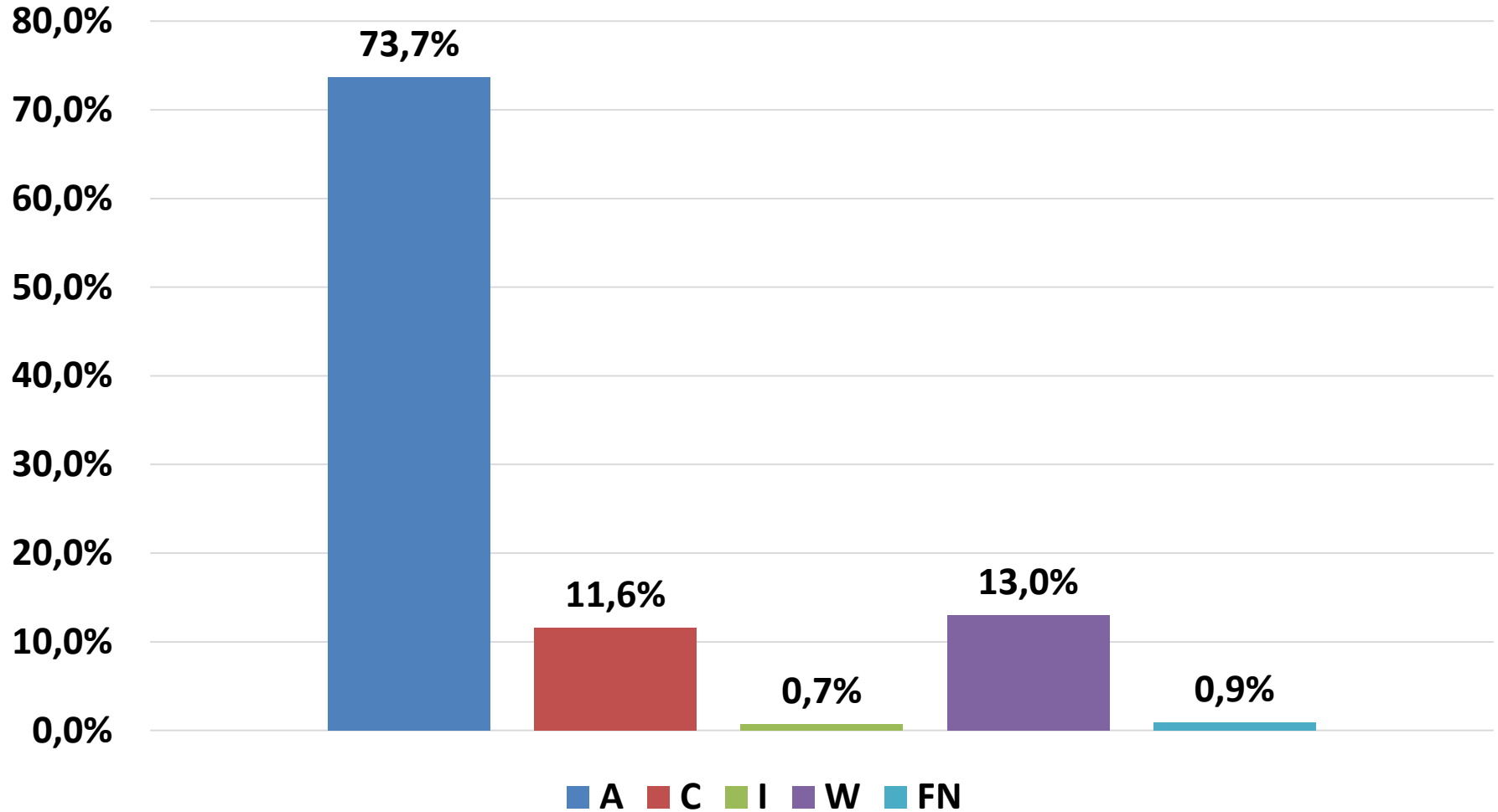
Professionally qualified by gender

Professionally Qualified - Gender



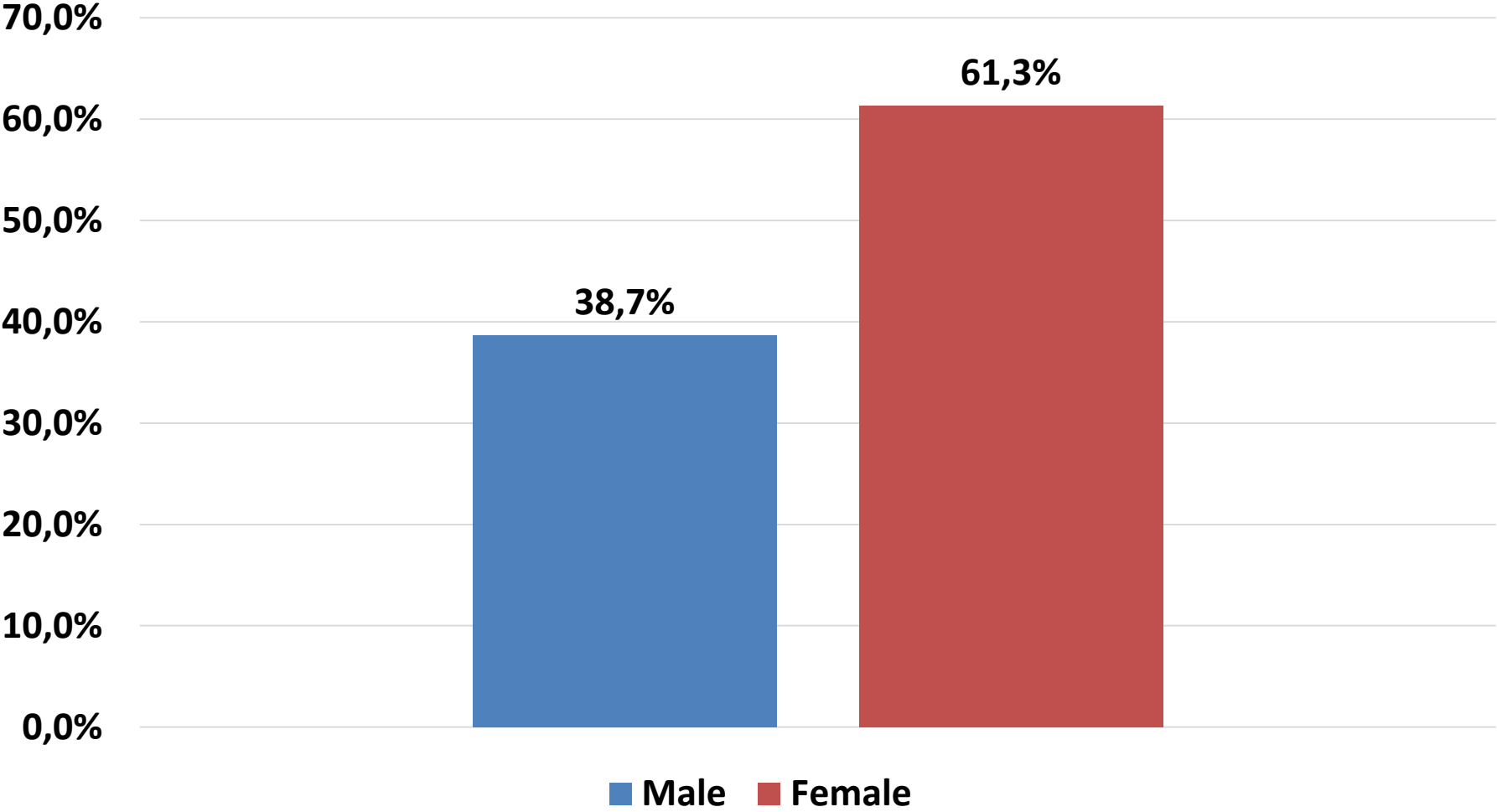
Skilled Technical by population group

Skilled - Population group



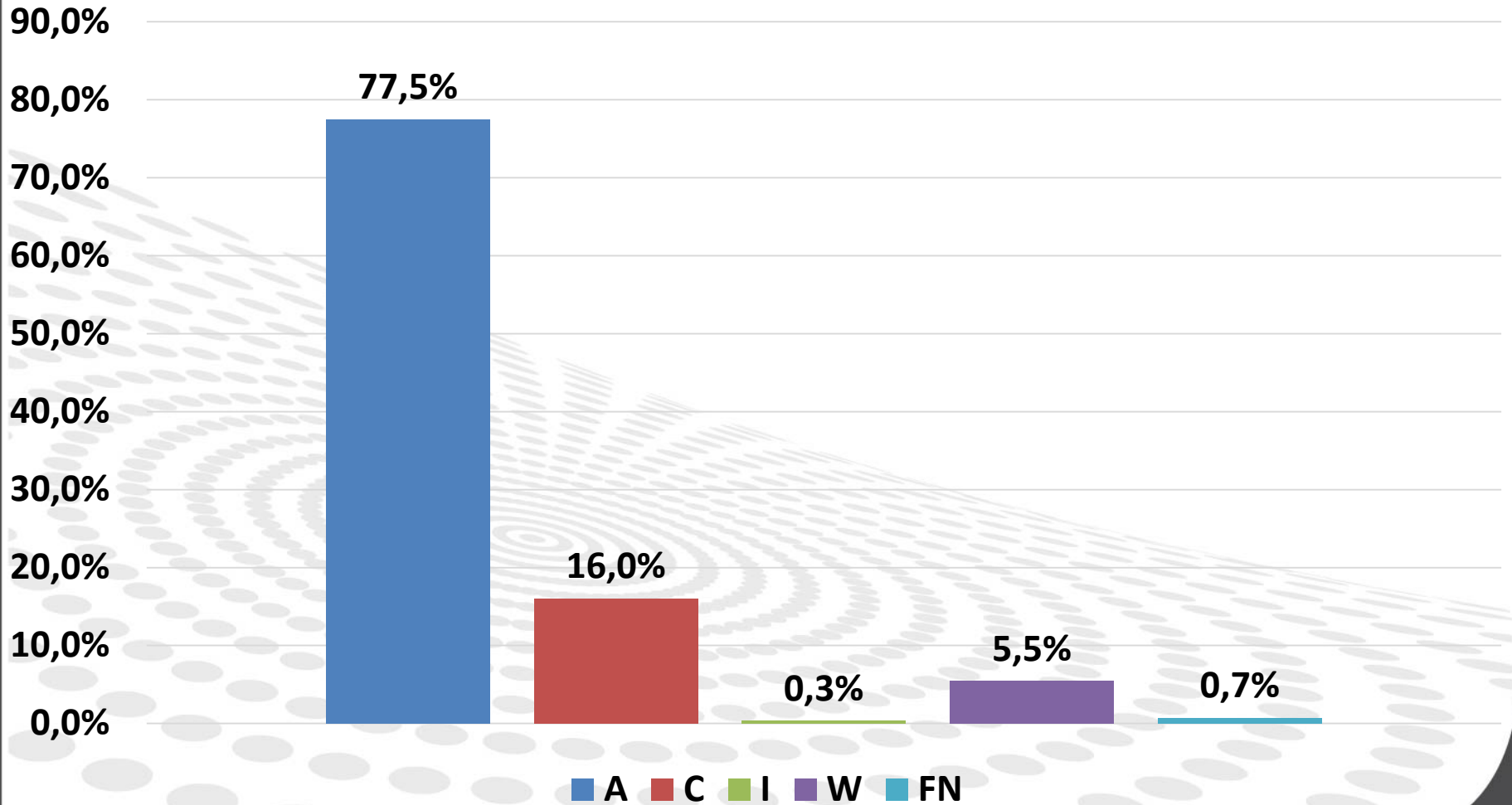
Skilled Technical by gender

Skilled - Gender



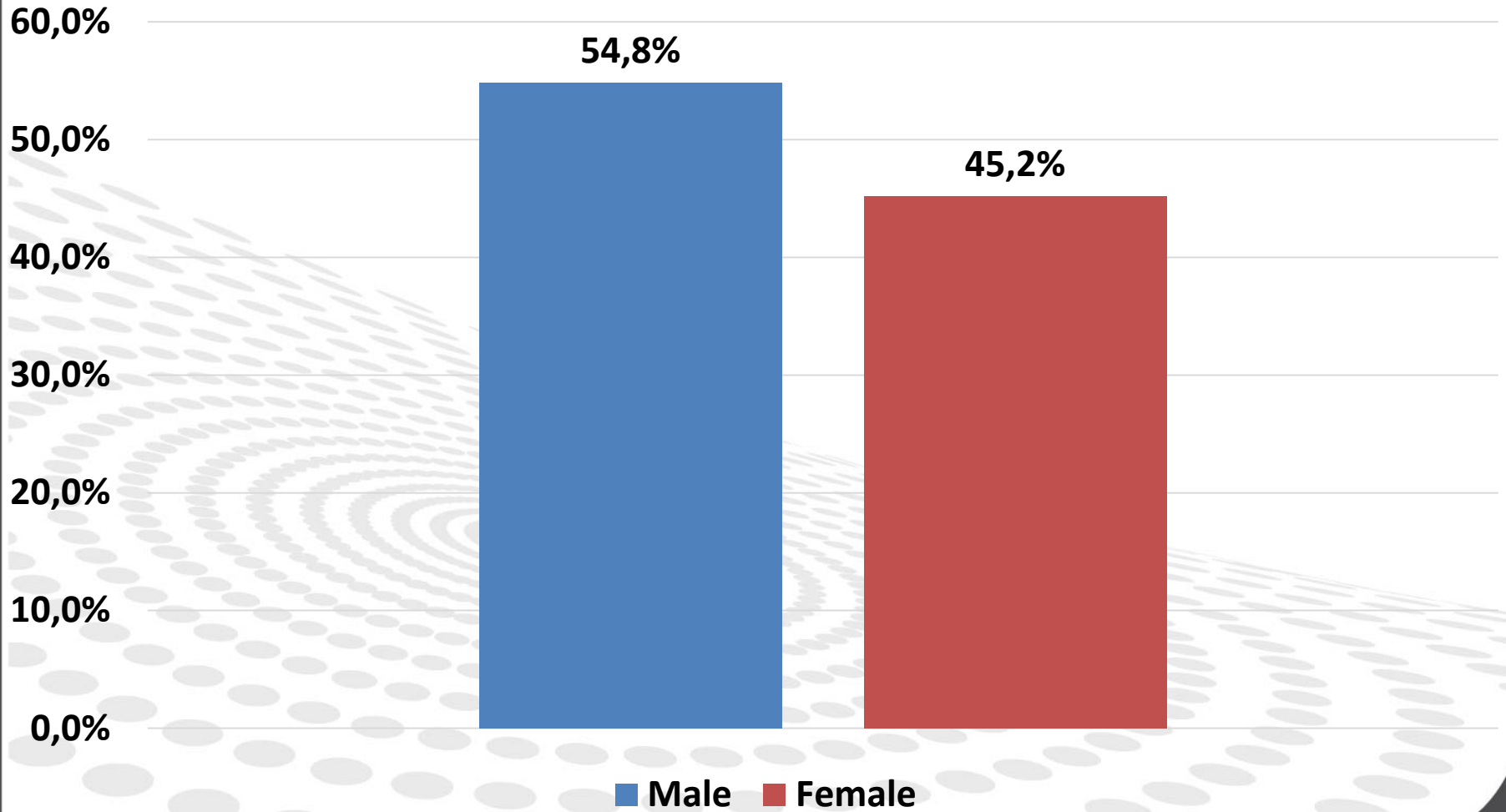
Semi- skilled by population group

Semi-skilled - Population group



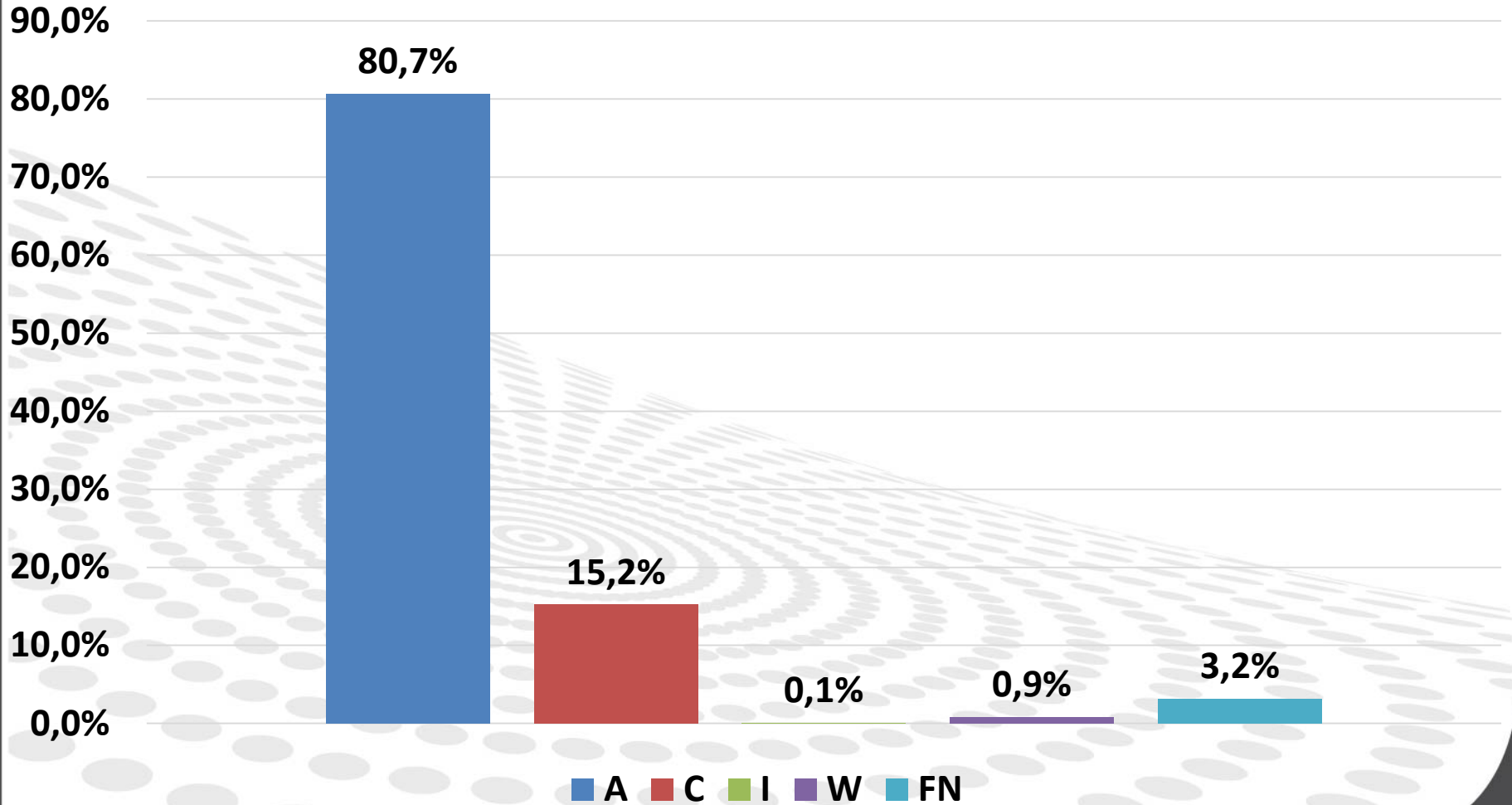
Semi-skilled - Gender

Semi-skilled - Gender



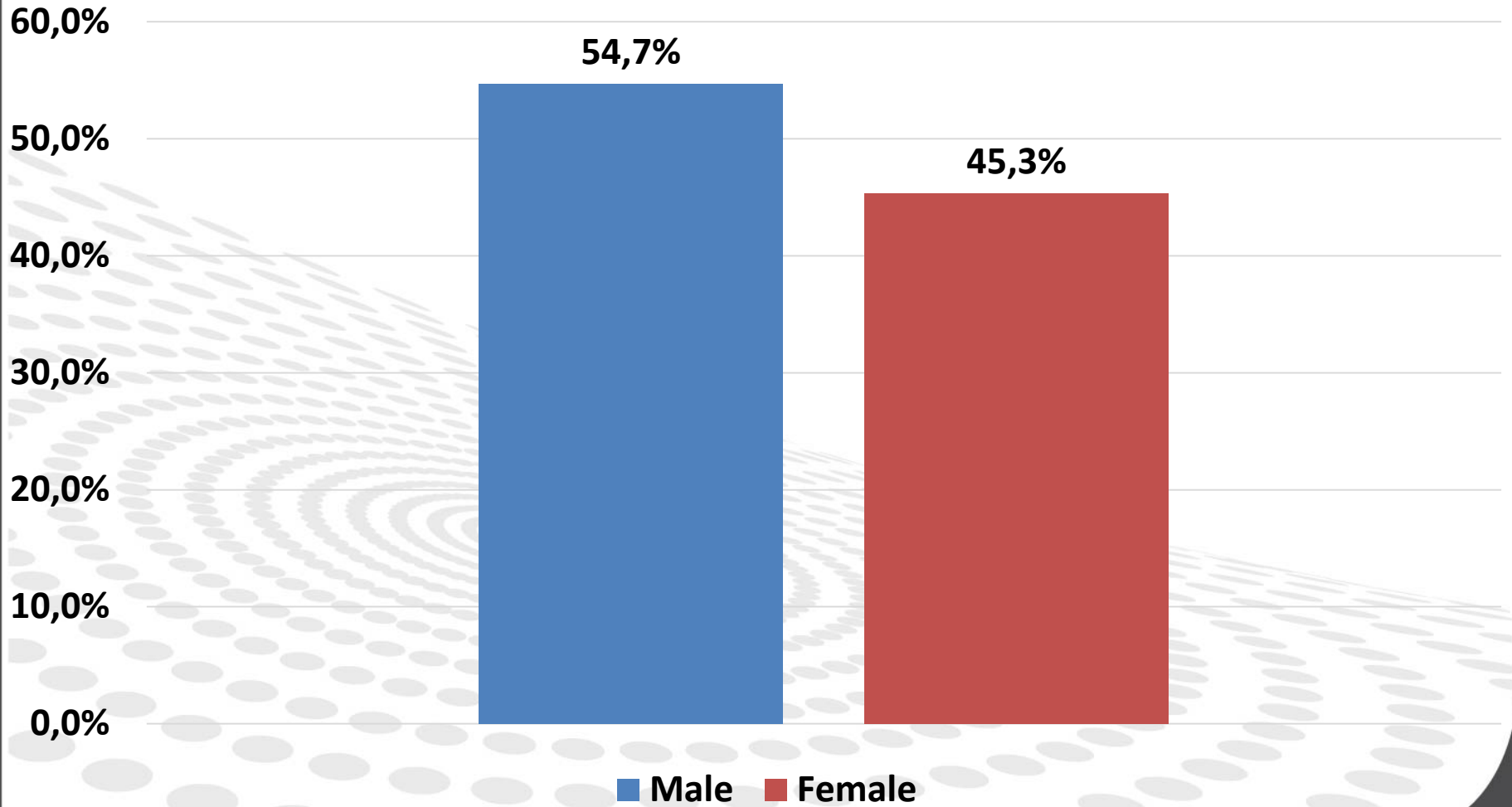
Unskilled by population group

Unskilled - Population group



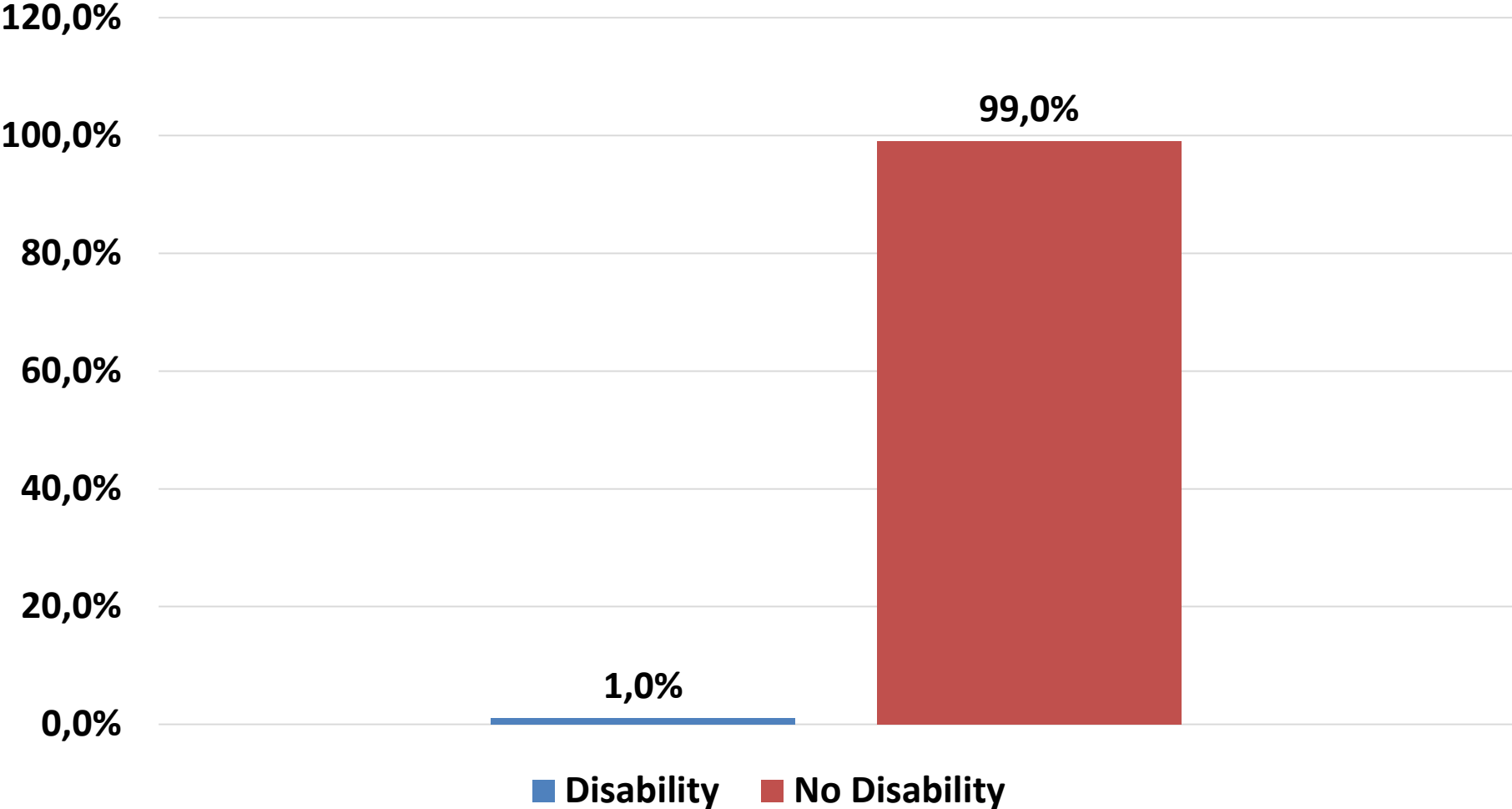
Unskilled - Gender

Unskilled - Gender

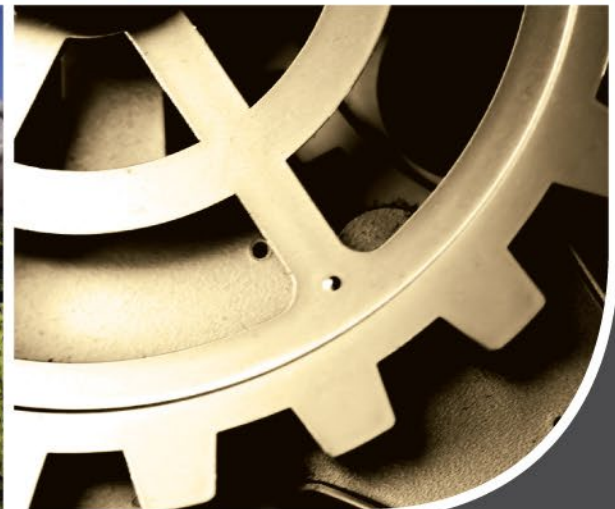


Disability

Total Workforce - Disability



2020 EMPLOYMENT EQUITY REPORTING



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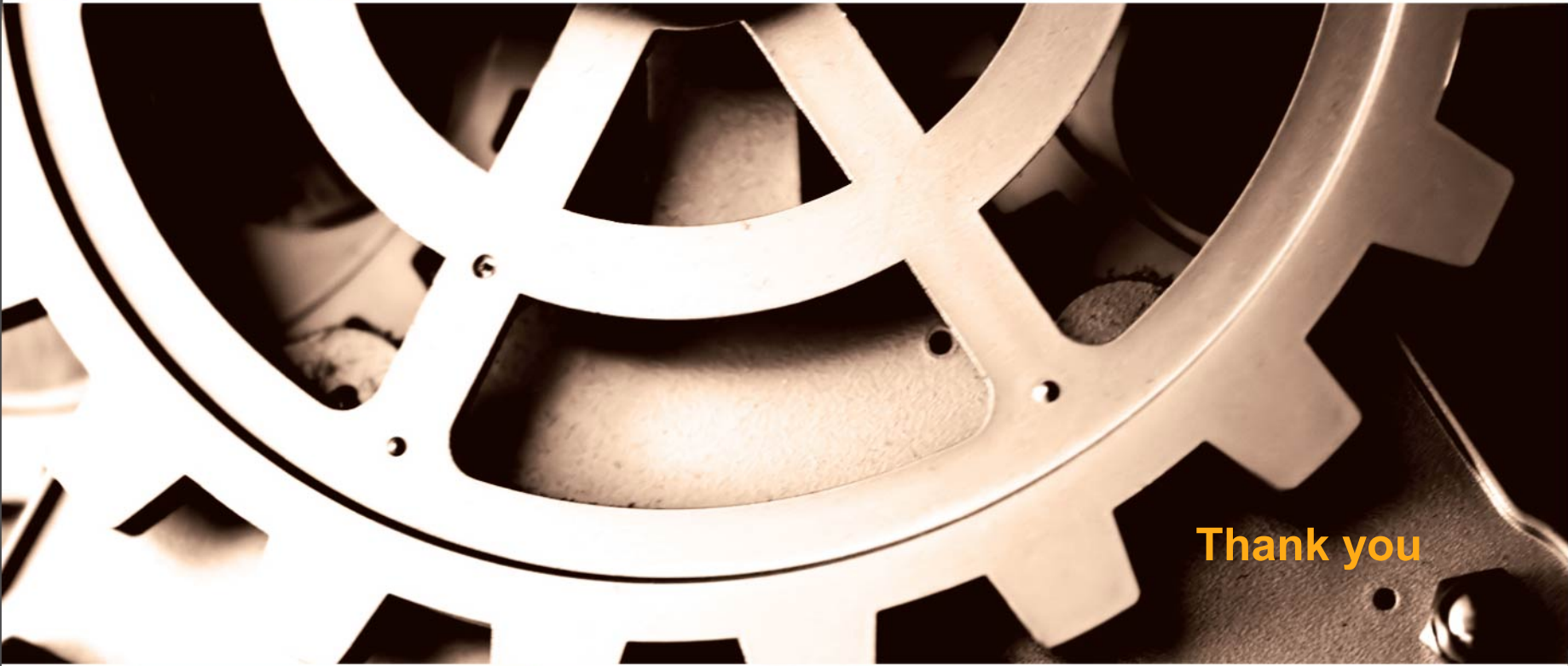


2020 DG notifications & EE Reporting deadlines

- ✓ **EEA14 form for DG notification, together with supporting documents, must reach the DG before the last working day of August 2020.**
- ✓ **Reporting opens on 1 September 2020 (EEA2 & EEA4 Forms) – both for Manual and EE Online reporting.**
- ✓ **Manual submissions closes on 1 October 2020 and EE online reporting closes on 15 January 2021 (midnight).**

2020 EE System Reporting

- ✓ **Select relevant Industry Sector; Industry Sub-sector; and bargaining council on Section A (employer details).**
- ✓ **EEA4 Section E: If an employer indicated that they do not have policy to address the vertical gap, the second question for remuneration-gap between the highest and lowest paid worker in your organisation aligned to your policy will be greyed out.**
- ✓ **Employers are only required to select one key reason for differentiation in the remuneration gap that applies to their organization.**



Thank you