



**NEDLAC
FOUNDING
DOCUMENTS
AND
PROTOCOLS**

CONTENTS

04

Nedlac Founding Declaration

16

Nedlac Act

26

Nedlac Constitution

44

Nedlac Protocols







NEDLAC FOUNDING DECLARATION



FOUNDING DECLARATION OF NEDLAC

Growth, equity and participation

1. The democratic election of 1994 opened a new era for South Africa. It was the decisive step in the transition to democracy. Now our country must meet the challenges of social development and economic growth.
2. South Africa is a land rich in resources, with a strong and diversified economy. It has a people eager to make the democracy work. It has a well-developed physical and financial infrastructure, such as transport, telecommunications and the banking system.
3. South Africa is also characterised by severe inequality in incomes, skills, economic power, ownership, and a skewed pattern of social development. This, together with large-scale unemployment and inadequate economic performance, has created major problems in our society.
4. Government, organised labour, organised business and community-based organisations need to develop and strengthen cooperative mechanisms to address the challenges facing our new democracy. Our three defining challenges are:
 - 4.1 Sustainable economic growth - to facilitate wealth creation; as a means of financing social programmes; as a spur to attracting investment; and as the key way of absorbing many more people into well-paying jobs.
 - 4.2 Greater social equity - both at the workplace and in the communities - to ensure that the large-scale inequalities are adequately addressed, and that society provides, at least, for all the basic needs of its people.
 - 4.3 Increased participation - by all major stakeholders, in economic decision-making, at national, company and shop floor level - to foster cooperation in the production of wealth, and its equitable distribution.
 - (a) Meeting these challenges is critical to the success of the Reconstruction and Development Programme.

- (b) The National Economic Development and Labour Council (Nedlac) is the vehicle by which government, labour, business and community organisations will seek to cooperate, through problem-solving and negotiation, on economic, labour and development issues, and related challenges facing the country.
- (c) Nedlac will conduct its work in four broad areas, covering:
 - (i) Public finance and monetary policy.
 - (ii) Labour market policy.
 - (iii) Trade and industrial policy.
 - (iv) Development policy.

5. Nedlac is established in law through the National Economic Development and Labour Council Act, Act 35 of 1994, and will operate in terms of its own constitution.

Minister Tito Mboweni ON BEHALF OF GOVERNMENT	Mr John Gomomo ON BEHALF OF COSATU, NACTU AND FEDSAL	Mr David Brink ON BEHALF OF ORGANISED BUSINESS
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Saturday, 18 February 1995
 Midrand., Gauteng

FOUNDING DOCUMENT OF THE NATIONAL ECONOMIC DEVELOPMENT AND LABOUR COUNCIL (Nedlac)

1. INTRODUCTION

- 1.1. South Africa has in the past faced many challenges with respect to economic and labour policy matters. More recently bodies such as the National Manpower Commission (NMC) and the National Economic Forum (NEF) have been utilised to facilitate co-operation particularly between organised business, organised labour and government on industrial relations and other labour policy issues in the case of the former, and in order to achieve consensus on general economic policy issues, in the case of the NEF, The NMC is a statutory body. whilst the NEF is a non-statutory body.
- 1.2. South Africa will continue to face many important challenges on economic and labour matters. Organised business, organised labour and government have key roles to play in developing effective policies to promote economic growth, increased participation in economic decision-making and social equity in South Africa on a sustained basis.
- 1.3. Organised labour, organised business and government believe that it is now appropriate to establish one statutory co-operative body (incorporating the NMC and NEF) to address economic, labour and development issues. The present situation particularly requires this with respect to the implementation of the Reconstruction and Development Programme (RDP). Through such a body the three parties, as well as those involved in developmental issues, will strive to jointly promote the goals of economic growth, increased participation in economic decision-making and social equity in South Africa.
- 1.4. The body shall be called the National Economic Development and Labour Council (Nedlac).

2. FUNCTIONS

- 2.1. The Council shall seek to reach consensus and make agreements on matters pertaining to economic policy. This includes areas such as fiscal and monetary policy, socio-economic programmes, trade and industrial policy and all aspects of labour policy, including training and human resource development.
- 2.2. The Council shall consider all proposed labour legislation, i.e. legislation affecting the world of work, as well as all significant changes to social and economic policy before it is implemented or introduced in parliament. The Council needs to develop conventions for its functioning which are sensitive to the requirements of efficient and effective government.
- 2.3. Nothing in the constitution of the Council should constrain the Council from considering any matter within its terms of reference.
- 2.4. The Council shall take over all the functions of the NMC and NEF. It shall be the constitutional successor to the NMC.
- 2.5. The Council shall develop mechanisms for interacting with other relevant bodies, for example the Finance and Fiscal Commission.
- 2.6. The Council shall see it as a responsibility to build the capacity of its participants within the activities of the Council.

3. STATUS AND CHARACTER

- 3.1. The Council shall be established by an enabling statute.
- 3.2. The government, organised business and organised labour shall be represented in equal numbers on all chambers and on the executive council. Organisations representing community and development interests shall be represented on the Development chamber and on the executive council, provided that their combined representation will not exceed that of any of the other parties in the executive council.
- 3.3. The Council shall be a representative and a consensus-seeking body where the parties to the Council will seek to reach agreement through negotiation and discussion based on proper mandates. If agreement cannot be reached, each party shall retain its freedom of action within its own sphere of responsibilities.
- 3.4. In terms of the agenda of the Council, the parties to the Council shall themselves develop an agreed agenda and shall also consider issues referred to the Council by the legislature, the executive of government and other bodies.
- 3.5. Agreements, reports and findings of the Council shall be made public, unless the Council decides otherwise.
- 3.6. The statutory framework of the Council shall specify that the Council shall have the right to determine its constitution and structures.

4. RELATIONSHIP WITH GOVERNANCE AND LEGISLATURE

- 4.1. The Minister of Labour will be the responsible Minister within government and will act as the link between government and the Council.
- 4.2. The Council shall interact with any ministry in respect of issues that fall within that ministry's jurisdiction.

- 4.3. Government representation on the Council would include a core of Ministers and Deputy Ministers with their Directors General (Finance, Trade and Industry, Labour, Public Works and the Minister without Portfolio in the Office of the President.)
- 4.4. In addition to the standing government representatives on the Council, various ministries, government departments, provinces and other authorities will become involved in the activities of the Council as and when the issues under consideration require such involvement.
- 4.5. The South African Reserve Bank should also be involved in the Council, and shall in particular be represented in a non-voting capacity on the Public Finance and Monetary Policy Chamber.
- 4.6. The annual report of the Council shall be tabled in Parliament. All other reports shall be tabled in Parliament, through the relevant Minister, unless the Council decides otherwise.

5. REPRESENTATION

- 5.1. Equal representation shall be accorded to, organised business, organised labour and government. The combined representation by organisations representing community and development interests shall not exceed that of any of the other parties.
- 5.2. Organised labour and organised business shall each decide on the allocation of seats among the various employer and employee organisations.

- 5.3. Organised business and organised labour shall each set objective criteria and procedures for the admission to the Council of organisations which represent organised business and organised labour. Such criteria and procedures shall be tabled in the Council by organised business and organised labour, shall be publicly available, and shall among others include the objective of inclusivity of all major co-ordinating organisations representing national interests.
- 5.4. The parties to the Council shall themselves decide their own representatives to the Council in accordance with the allocation of seats. They should also decide on alternate representatives; Representatives to the Council shall be subject to the right of recall by their constituencies.
- 5.5. The executive council meetings will be chaired on a rotational basis by constituency-based Chairpersons. The chairing of the chambers shall be by agreement of the parties.

6. STRUCTURES AND ACTIVITIES

6.1 National Summit

The Council shall convene an annual national summit to be chaired by the President or Executive Deputy President or such equivalent person as the Constitution of (the Republic of South Africa may provide for. (Further summits may be convened at the discretion of the Council should the need arise.) While the summit will not form part of the Council itself, its function would be to involve as many relevant groups and forums as possible in order to give feedback on Council activities in a transparent manner, to obtain inputs from

organisations or persons not normally involved and to establish broader ownership of the Council. It should not involve more than 300 persons. If the President, Executive Deputy President or such equivalent persons are not available to chair the session, the parties on the Council will themselves decide on a replacement chairperson.

- 6.2 The structures of the Council should be representative.
Functions for the different structures shall include the following;

6.2.1. Executive Council

The executive council shall meet at least quarterly with a view to receiving report-backs from the various chambers, review progress, reach consensus and conclude agreements between the parties. The executive council shall define the broad mandates of the Council's structures. Consideration will be given to developing an overall macro-economic strategy.

6.2.2. Chambers

- a) The following chambers should be established:
- (i) Public Finance and Monetary Policy chamber;
 - (ii) Trade and Industry chamber. This chamber should also consider matters relating to agriculture, mining, etc., and its name might change in due course to represent its true nature;
 - (iii) Labour Market chamber; and
 - (iv) Development chamber.
- b) The functions of the chambers would be to consider issues relevant to that chamber,

- to draft reports or make recommendations for agreements. Consensus recommendations made by any chamber shall be ratified by the executive council, except where by full consensus the executive council decides to amend such recommendation.
- c) The core membership of all chambers will be organised labour, organised business and the government, represented on the basis of parity. Between five and ten representatives of each should be appointed.
 - d) Broader community representation should be the objective in the Development chamber, and this will entail a fourth element of representation (i.e. in addition to government, organised business and organised labour), the “Development actor constituency”. Such representation should be from organisations that have a direct interest in the issues being debated, but they should represent an organised national constituency and be able to obtain mandates. They should be in a position to reach agreements and to ensure that their members adhere to such agreements.
 - e) The various chambers, should, with the concurrence of the executive council have access to experts in such a manner as they deem fit, e.g. appointment for a term or on ad hoc basis, involvement as advisers or on contract, etc.
 - f) Each constituency (i.e. the government, organised labour, organised business and the development component) should designate a convenor and alternate for its constituency in each chamber. The terms of

reference of each chamber will be decided by the executive council.

- g) The chambers shall interact with any functional department in respect of issues that fall within that department's jurisdiction.

6.2.3. Management Committee

The management committee shall be responsible for overseeing and co-ordinating the work of the Council. The core membership shall be the overall convenors of the three social partners as well as the convenors of the constituents on each of the chambers. This implies a maximum of 16 members if there is no overlapping of functions. If deemed necessary not more than four additional members can be appointed to the management committee. It shall meet at least monthly.

7. SECRETARIAT

- 7.1. The Council shall appoint its own secretariat and determine its terms and conditions of employment.
- 7.2. Decisions shall be recorded in the form of memoranda of understanding that can be made public, except if the Council decides otherwise.
- 7.3. The Council shall be a successor to both the NMC and the NEF and shall incorporate the functions of both bodies.
- 7.4. The organised business and organised labour caucuses as well as the development component may each appoint one person of their choice to perform the role of assisting in co-ordinating the involvement of their constituency within the Council. It should be located within their constituency rather than in the Council secretariat, but will be publicly funded.

8. RESEARCH

- 8.1 The Council should have access to research capacity. This should be ensured through the establishment of a limited research capacity within the secretariat and through linkages with existing research bodies (e.g. Central Economic Advisory Services (CEAS)). In addition, maximum use should be made of existing and future research capacity within government departments and within constituencies.
- 8.2. An allocation should be made in the budget for research work. Any research work which implies additional funding will be decided by the Council in the light of the importance of such work and the availability of funds or the possibilities of raising additional funds.
- 8.3. Any decision to undertake research work which is funded by the Council's budget should be made jointly by the parties and the results of such research should be publicly available. Information on such research should be included in the annual report of the Council for the purposes of performance, review.

9. FUNDING

- 9.1. The activities of the Council, including the provision of secretariat and research services, should be funded from the budget of the Department of Labour.
- 9.2. The transport and accommodation costs of representatives from organised business, organised labour and other representatives on the Council shall be funded by government. Similar expenses incurred by alternate members shall only be funded if the primary member is unable to attend a meeting.
- 9.3. An amount should be made available in the budget for the cost of the national summit.
- 9.4. There should be full report-backs at executive council meetings on financial matters.

A pair of ornate silver scales of justice is positioned on a wooden table in a courtroom. The scales are the central focus, with their pans hanging from a central pillar. The background is a blurred view of a courtroom with wooden benches and a wooden table. A semi-transparent dark brown banner is overlaid on the left side of the image, containing the text "NEDLAC ACT". A vertical red bar is located on the right side of the image, partially overlapping the scales.

NEDLAC ACT

The Nedlac Act

Act No. 35 of 1994: National Economic Development and Labour Council Act, 1994

ACT

To provide for the establishment of a national economic, development and labour council; to repeal certain provisions of the Labour Relations Act, 1959; and to provide for matters connected therewith.

(English text signed by the President.)

(Assented to 23 November 1994.)

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

1. Definitions

In this Act, unless the context otherwise indicates-

- (i) “Council” means the National Economic, Development and Labour Council established by section 2; (ix)
- (ii) “Minister” means the Minister of Labour; (v)
- (iii) “National Manpower Commission” means the Commission established by section 2A of the Labour Relations Act, 1956 (Act No. 28 of 1956); (vi)
- (iv) “national summit” means the annual meeting of representatives of organised business, organised labour, organisations of community and development interests, the State and interested parties convened by the Council in terms of section 7; (vii)
- (v) “organisations of community and development interests” means those non-governmental organisations identified by the Minister without Portfolio in the Office of the President in terms of section 3(5) as representing community interests relating to reconstruction and development; (viii)
- (vi) “organised business” means business represented by those employer and business associations and federations of such associations that are the founding parties of the Council and any association that is admitted thereafter; (ii)
- (vii) “organised labour” means the federations of trade unions that are the founding parties of the Council and any association that is admitted thereafter; (i)

- (viii) “socio and economic policy” includes financial, fiscal and monetary policy, socio-economic programmes, trade and industrial policy, reconstruction and development programmes and all aspects of labour market policy, including training and human resource development; (iv)
- (ix) “this Act” includes any regulation made under section 10. (iii)

2. Establishment of National Economic, Development and Labour Council

- (1) There is hereby establish a council to be known as the National Economic, Development and Labour Council.
- (2) The Council shall be governed by an executive council and shall in addition consist of four chambers, namely-
 - (a) a public finance and monetary policy chamber;
 - (b) a trade and industry chamber;
 - (c) a labour market chamber; and
 - (d) a development chamber.
- (3) The Council shall be a juristic person.

3. Membership of Council

- (1) The Council shall consist of-
 - (a) members who represent organised business;
 - (b) members who represent organised labour;
 - (c) members who represent organised community and development interests;
 - (d) members who represent the State.
- (2) The members referred to in subsection 1(a) shall be appointed by the Minister on nominations made by organised business.
- (3) The members referred to in subsection 1(b) shall be appointed by the Minister on nominations made by organised labour.
- (4) The members referred to in subsection 1(c) shall be appointed by the Minister without Portfolio in the Office of the President from persons nominated by the organisations of community and development interest identified by the Minister without Portfolio in

the Office of the President in terms of subsection (5).

- (5) The Minister without Portfolio in the Office of President shall in consultation with the executive council identify organisations of community and development interest that
 - (a) represent a significant community interest on a national basis;
 - (b) have a direct interest in reconstruction and development; and
 - (c) are constituted democratically.
- (6) The President shall appoint the members referred to in subsection (1)(d).
- (7) The members appointed in terms of subsections (2), (3), (4) and (6) shall hold office in accordance with the constitution of the Council.

4. Constitution of Council

Subject to the provisions of this Act, the constitution of the Council shall provide for-

- (a) the manner in which organised business may nominate persons for appointment as members and the manner in which members may be removed;
- (b) the manner in which organised labour may nominate persons for appointment as members and the manner in which members may be removed;
- (c) the criteria by which and manner in which organised business shall admit employers and business associations or federations of such associations;
- (d) the criteria by which and manner in which organised labour shall admit federations of trade unions;
- (e) the appointment of alternates to members;
- (f) the appointment of ex officio members of the council in either a representative or expert capacity;
- (g) the removal of members;
- (h) the appointment, removal, duties and powers of the chairpersons, office-bearers and officials;
- (i) the establishment, composition, and functions of the executive council;
- (j) the establishment, composition, powers and functioning of the chambers;

- (k) the establishment, composition, powers and functioning of committees, including a management committee, of the Council;
- (l) the convening of, quorum for and conduct of meetings of the executive council, chambers and committees;
- (m) the convening of, the chairpersonship of, and the criteria for the participation of organised business, organised labour, organisations of community and development interest and other interested parties in, the national summit;
- (n) the keeping of minutes;
- (o) the manner in which decisions are taken;
- (p) the amendment of the constitution;
- (q) any other matters necessary for or incidental to the performance of its functions.

5. Objects, powers and functions of Council

- (1) The Council shall-
 - (a) strive to promote the goals of economic growth, participation in economic decision-making and social equity;
 - (b) seek to reach consensus and conclude agreements on matters pertaining to social and economic policy;
 - (c) consider all proposed labour legislation relating to labour market policy before it is introduced in Parliament;
 - (d) consider all significant changes to social and economic policy before it is implemented or introduced in Parliament;
 - (e) encourage and promote the formulation of co-ordinated policy on social and economic matters.
- (2) For the purpose of subsection (1), the Council-
 - (a) may make such investigations as it may consider necessary;
 - (b) shall continually survey and analyse social and economic affairs;
 - (c) shall keep abreast of international developments in social and economic policy;
 - (d) shall continually evaluate the effectiveness of legislation and policy affecting social and economic policy;
 - (e) may conduct research into social and economic policy;
 - (f) shall work in close co-operation with departments of State, statutory bodies, programmes and other forums and non-governmental agencies engaged in the formulation and the implementation of social and economic policy.

- (3) Nothing in this section shall preclude the Council from considering any matter pertaining to social and economic policy.

6. Powers of executive council

- (1) The powers of the executive council shall be-
 - (a) to exercise and perform the powers and functions referred to in section 5;
 - (b) to agree to the constitution of the Council and amend it from time to time subject to the provisions of this Act;
 - (c) to establish the chambers referred to in section 2(2);
 - (d) to establish committees, including a management committee, to assist it in the exercise of its powers and the performance of its functions and to delegate or assign such powers and functions as it deems appropriate to such committees, and the chambers contemplated in paragraph (c);
 - (e) to conduct enquiries in the performance of its functions and the exercise of its powers;
 - (f) generally, but subject to this Act, to exercise those powers and perform those functions as are necessary to realise the objectives of the Council.
- (2) The executive council may under its constitution authorise any committee or person to conduct enquiries and exercise the powers and perform the functions conferred on the executive council under this Act.
- (3) The executive council shall develop conventions and regulate its relationships with Parliament and its standing committees and the Ministries and Departments affected by the decisions of the Council.
- (4) The executive council shall develop rules and protocols for the conduct of relations with other institutions engaged in the formulation or implementation of aspects of social and economic policy.
- (5) The executive council may develop codes of conduct to regulate the conduct of members and representatives.

- (6) The executive council shall appoint a secretariat on such terms and conditions as it may determine.

7. Duties of executive council

- (1) The executive council shall annually convene a national summit of interested parties, to report on and to consider the activities of the Council.
- (2) The executive council shall as soon as possible after 31 December in each year furnish the Minister with a report, including an audited financial account and balance sheets of the Council, in respect of its activities and the state of social and economic matters in the Republic during the year ending on that date.
- (3) The Council shall be publicly funded and the executive council shall prepare an annual budget for the financing of the Council for submission to the Minister by 1 September in each year for his or her approval and the concurrence of the Minister of Finance.

8. Reports

Any report of the Council, including the annual report or a report on any proposed legislation or policy relating to or affecting social and economic matters shall be submitted to the Minister and every such report shall as soon as practicable be laid upon the Table of the Senate and of the National Assembly.

9. Amendment of laws and transitional measures

- (1) The Minister shall be the interim chairperson of the Council.
- (2) The interim chairperson shall for the purposes of subsection (6) convene an inaugural meeting of the Council by fixing a date, time and venue for such a meeting.
- (3) The Minister shall invite the representatives of the employer and business associations, federations or such associations and federations of trade unions represented on the National Manpower Commission and the National Economic Forum to attend the meeting.

- (4) The Minister, in consultation with the Minister without Portfolio in the Office of the President, shall invite persons who represent organisations of community and development interests to attend the meeting.
- (5) The President shall appoint the representatives of the State to attend the inaugural meeting.
- (6) The duties of the inaugural meeting of the Council shall be to-
 - a) adopt a constitution for the Council;
 - b) appoint the chairpersons in terms of the constitution and relieve the interim chairperson of his or her duties;
 - c) establish the chambers and the management committee and such other committees as are prescribed by the constitution and appoint the members to such committees;
 - d) confirm the appointment of a secretariat on such terms and conditions as it may determine.
- (7) The provisions of the Act mentioned in the Schedule are hereby repealed with effect from the date of the inaugural meeting referred to in subsection (2).
- (8) For the purposes of section 33(5)(b) of the Constitution, the Council shall replace the National Manpower Commission, which shall cease to exist with effect from the date of the inaugural meeting referred to in subsection (2), and from that date all rights, duties, assets and liabilities, whether contractually or otherwise obtained or accumulated in connection with matters entrusted to that Commission, shall pass to the Council.

10 Regulations

The Minister in consultation with the executive council may make regulations prescribing-

any matter which by this Act is required or permitted to be prescribed; and

(a) generally, all matters which he or she considers necessary or expedient to prescribe in order to achieve the objects of this Act.

11 Offences

- (1) Any person who, except when required to do so before a court of law or under any law, discloses any confidential information in regard to the financial or business affairs of any person, business or firm, or the State, acquired in the exercise of his or her powers in the performance of his or her duties under the Act or the constitution of the Council or its committees shall be guilty of an offence.

- (2) Any person who is convicted of an offence in terms of subsection (1) shall be liable to a fine not exceeding R1 000.

12 Short title and commencement

This Act shall be called the National Economic, Development and Labour Council Act, 1994, and shall come into operation on a date fixed by the President by Proclamation in the Gazette.

SCHEDULE 1

Labour Relations Act, 1956 (Act No. 28 of 1956): Sections 2A to 2D, and definition of “Commission” in section 1.

Terms of reference of the Chambers

Public finance and Monetary Policy Chamber

The Public Finance and Monetary Policy Chamber shall seek to reach consensus and make agreements for placing before the executive council on all matters pertaining to financial, fiscal, monetary and exchange rate policies, the coordination of fiscal and monetary policy, related elements of macroeconomic policy and the associated institutions of delivery.

Trade and Industry Chamber

The trade and Industry chamber shall seek to reach consensus and make arrangements for placing before the executive council on all matters pertaining to the economic and social dimensions of trade, industrial, mining, agricultural and services policies and the associated institutions of delivery.

Labour Market Chamber

The Labour Market chamber shall seek to reach consensus and make arrangements for placing before the executive council on all matters pertaining to the world of work and the associated institutions of delivery.

Development Chamber

The Development chamber shall seek to reach consensus and make agreements for placing before the executive council on all matters pertaining to development, both urban and rural, implementation strategies, financing of development programmes, campaigns to mobilise the nation behind the RDP and the associated institutions of delivery. The development chamber must operate within the broad framework set out in the RDP Base Document and the RDP White Paper.



NEDLAC CONSTITUTION

Nedlac Constitution

1. Definitions

In this constitution, unless the context otherwise indicates:

- 1.1. “Act” means the National Economic, Development and Labour Council Act, Act 35 of 1994;
- 1.2. “Auditor-General, Deputy President, and President”, means those bodies or persons as referred to in the Constitution of the Republic of South Africa Act, 1996;
- 1.3. “Constituent” means organised business, or organised labour, or the State or organisations of community and development interests, and “constituency” shall bear the same meaning;
- 1.4. “Council” means the National Economic, Development and Labour Council;
- 1.5. “Constitution” means the Nedlac Constitution as provided for in Section 4 of the Nedlac Act;
- 1.6. “Minister” means the Minister of Labour;
- 1.7. “Member” means the representative of any organisation save where the context indicates otherwise;
- 1.8. “National summit” means the annual meeting of Nedlac constituencies and interested parties called by the executive council in terms of clause 15;
- 1.9. “Organisations of community and development interest” means those non-governmental organisations identified by the Minister.
- 1.10. “Organised business” means business as represented by the federation of business associations and employer organisations that is the founding party of the Council and any new member that is admitted hereafter;
- 1.11. “Organised labour” means labour as represented by the federations of trade unions that are the founding parties of the Council and any federation that is admitted hereafter;
- 1.12. “Party to the Council” means any organisation which has members

representing it on the Council;

- 1.13 “Social and economic policy” includes financial, fiscal and monetary policy, socio-economic programmes, trade and industrial policy, reconstruction and development programmes and all aspects of labour market policy, including training and human resource development ;
- 1.14 “State” means the government of the Republic of South Africa.

2. Name, Legal Nature and Capacity

- 2.1. This is the constitution of the National Economic Development and Labour Council, in terms of section 2 of the Act.
- 2.2. The Council shall be a body corporate with perpetual succession constituted separately from its members, capable of acquiring rights and obligations, entering into legal transactions and to sue and be sued in its own name.
- 2.3. The Council alone is liable for its debt and commitments.
- 2.4. Any income or property of the Council shall be applied solely towards the promotion of its main or subsidiary objects and no proportion of the income or property shall be paid or transferred, directly or indirectly, to any members of the Council or any other person, provided that nothing herein contained shall prevent the payment in good faith of reasonable remuneration to any officer or employee of the Council or any member of it in return for any services actually rendered.

3. Composition of Council

The Council shall be composed of:

- 3.1. An executive council, which shall be the governing body of the Council;
- 3.2. Four chambers, namely:
 - a. the Public Finance and Monetary Policy chamber;
 - b. the Trade and Industry chamber;
 - c. the Labour Market chamber;
 - d. the Development chamber;

- 3.3 A management committee and
- 3.4 A secretariat.
- 3.5 Other committees may be established as may be required from time to time.

4. Objects, Powers and Functions of the Council

4.1 The Council shall –

- a. strive to promote the goals of economic growth, increased participation in economic decision making and social equity;
- b. seek to reach consensus and conclude agreements on matters pertaining to social and economic policy;
- c. consider all proposed labour legislation before it is introduced into Parliament;
- d. consider all significant changes to social and economic policy before it is implemented or, in the case of legislation, before it is introduced into Parliament;
- e. encourage and promote coordinated policy on social and economic matters, through social dialogue.

4.2 For the purposes of clause 4.1, the Council -

- a. may make such investigations as it may consider necessary;
- b. shall continually survey and analyse social and economic affairs;
- c. shall keep abreast of international developments in social and economic policy;
- d. shall continually evaluate the effectiveness of social and economic legislation and policy;
- e. may conduct research into social and economic policy;
- f. shall work in close cooperation with departments of State, statutory bodies, programmes and other forums and non-governmental agencies engaged in the formulation and the implementation of social and economic policy;
- g. shall propose amendments to new and amended legislation.

4.3 Nothing in this section shall preclude the Council from considering any matter pertaining to social and economic policy.

- 4.4 The Council shall consider all issues pertaining to social and economic policy referred to it by the legislature, the Executive of Government and other bodies represented on the Council.
- 4.5 The Council's financial powers in respect of public funds shall be restricted to the exercise of the necessary financial powers to execute its budget as approved by the Minister in terms of clause 14 and subject to any financial controls required by the Public Finance Management Act, as amended, Treasury Regulations, other applicable legislation and any other financial controls that may be required by the Auditor-General.
- 4.6 The council shall be subject to all the provisions of the Act and in the event of a conflict between the provisions of this constitution and any provisions of the Act, the Act shall prevail.

5. Powers of the executive council

The specific powers of the executive council shall be:

- a. to exercise the powers and perform the functions referred to in clause 4;
- b. to adopt the constitution of the Council and amend it from time to time but subject to the provisions of the Act;
- c. to establish the chambers referred to in clause 3(2) of this constitution;
- d. to establish the management committee referred to in clause 3(3) of this constitution and such other committees as may be necessary to assist it in the exercise of its powers and the performance of its functions and to delegate such powers and functions as it deems appropriate to such committees and the chambers contemplated in paragraph 5.1(c);
- e. to conduct enquiries in the performance of its functions and the exercise of its powers;
- f. to develop protocols to regulate its relationships with Parliament and provincial legislatures and their respective standing committees, ministries and departments affected by the decisions of the Council;

- g. to draw up rules and procedures for all meetings of the executive council, chambers, management committee and committees;
- h. to develop rules and protocols for the conduct of relations with other institutions engaged in the formulation or implementation of aspects of social and economic policy;
- i. to develop codes of conduct to regulate the conduct of members and representatives;
- j. to appoint a secretariat on such terms and conditions as it may determine;
- k. the staff complement and staff structure shall be approved by the executive council, including amendments thereto;
- l. to cooperate fully with the office of the Auditor-General appointed for purposes of annually auditing the accounts of the Council, and to monitor compliance with the recommendations made by the Auditor-General;
- m. to exercise any other powers and perform any other functions as may be necessary for the Council to achieve its objectives.

6. The Composition of the executive council

6.1 The executive council shall consist of:

- 6.1.1. not more than 18 members who represent organised business;
- 6.1.2. not more than 18 members who represent organised labour;
- 6.1.3. not more than 18 members who represent the State appointed by the Deputy President;
- 6.1.4. not more than 18 members who represent organisations of community and development interests, appointed by the Minister.

6.2. An equal number of members shall be appointed from each constituency save that the constituencies appointed in terms of clauses 6.1.1, 6.1.2

and 6.1.3 may exceed those appointed in terms of clause 6.1.4.

- 6.3. The responsibility for the chairing of meetings of the executive council shall be rotated, on a quarterly basis, amongst the constituencies.
- 6.4. The executive council shall meet at least four times in every financial year.
- 6.5. Any organisation may withdraw as a party to the Council by notice in writing delivered to the executive director. The effect of such resignation shall be that the organisation shall cease to have members representing it on the executive council.
- 6.6. The constituencies shall each appoint one of their members on the executive council as the overall convenor for that constituency on the Council.
- 6.7. Each constituency may appoint an alternate to a member. The appointments shall be done in terms of the criteria and procedures determined by each constituency. An alternate may only attend meetings of the executive council when the member to whom he/she is an alternate:
 - 6.7.1. is absent from the meeting;
 - 6.7.2. requests their participation, and such requests are approved by the constituency Overall Convenor.

7. The Chambers

- 7.1. Each chamber referred to in clause 3.2 shall be composed of the following members:
 - 7.1.1. not more than six members who are nominated by organised business;
 - 7.1.2. not more than six members who are nominated by organised labour;
 - 7.1.3. not more than six members who represent the State and are appointed by the Minister;

- 7.1.4. in the case of the representatives of community and interests in the Development chamber, such members as determined by the executive council and appointed by the Minister.
- 7.2. An equal number of members shall be appointed from each of the constituencies referred to in clauses 7.1.1, 7.1.2, and 7.1.3.
- 7.3. The meeting of each chamber shall be chaired by Constituencies on a quarterly rotational basis. If so requested by a chamber, the Secretariat may, on an ad-hoc basis, chair meetings of a chamber.
- 7.4. A chamber shall meet at least six times in every financial year, and as and when a need may arise.
- 7.5. A chamber shall consider issues relevant to that chamber, draft reports or make recommendations for agreements.
- 7.6. The chambers shall, with the concurrence of the management committee, be entitled to have access to experts.
- 7.7. Each constituency in a chamber shall designate a convenor.
- 7.8. Each constituency may appoint an alternate to a member. An alternate may only attend meetings of a chamber when the member to whom he/she is an alternate is absent from the meeting, unless a chamber or constituency convenor decides otherwise.
- 7.9. Each chamber shall have such further functions and terms of reference as may be decided by the executive council.
- 7.10. The chambers may interact with any government department in respect of issues that fall within that department's jurisdiction.
- 7.11. All reports, resolutions, policy documents and recommendations adopted by a chamber shall be submitted to the executive council. The executive council shall ratify consensus recommendations made by any chamber, except where by consensus the executive council decides to amend such recommendations.

8. Management Committee

- 8.1. The management committee shall, subject to clause 8.2, consist of 5 persons per constituency, which shall include:
 - 8.1.1. the four overall convenors;
 - 8.1.2. the convenors from each constituency in each of the chambers. may choose to replace any convenor with another member;
- 8.2. The management committee shall have the power to co-opt not more than four additional members from amongst the membership of the constituencies, if deemed necessary.
- 8.3. The management committee shall be responsible for overseeing and coordinating the work of the Council, subject to the authority of the executive council.
- 8.4. The management committee shall have the responsibility, but not the exclusive jurisdiction, to prepare the agenda and any notices for executive council meetings, in terms of this constitution.
- 8.5. The responsibility for the chairing of meetings of the management committee shall be rotated, on a quarterly basis, amongst the constituencies.
- 8.6. The overall constituency convenors and management committee members may attend any meeting of the chambers, subject to 8.7. below.
- 8.7. The management committee shall develop guidelines for flexibility in the attendance of chamber meetings by management committee members. Such attendance shall be aimed at enhancing the consensus-seeking process in the chamber concerned.

9. Overall convenors

The four overall constituency convenors shall:

- 9.1. Coordinate the participation of their respective constituency membership in respect of each of the chambers and task teams;

- 9.2. Undertake tasks delegated by the executive council and the management committee.

10. Admission of Members

- 10.1. The State, organised business and organised labour shall nominate not more than 18 representatives as members of the executive council and not more than six representatives as members of each chamber.
- 10.2. Unless otherwise agreed within each constituency, representation in the Council shall be determined as follows:
 - 10.2.1. for organised business, by Business Unity South Africa;
 - 10.2.2. for the State, by the Deputy President of the Republic of South Africa;
 - 10.2.3. for organised labour, by proportional representation according to paid-up membership of the founding trade union federations - Cosatu, Fedusa and Nactu;
 - 10.2.4. for the organisations representing community and development interests, by the Minister in consultation with organised business and organised labour.
- 10.3. Applications for admission to membership by organised business, organised labour and the State after the inaugural meeting shall be made to the executive director, in writing, in the form required by the executive council. Such applications shall be considered according to the process outlined in 10.4-10.6 below.
- 10.4. The executive director on receiving such an application shall submit such application to the overall convenor of the affected constituency on the executive council.
- 10.5. The overall convenor shall, within one (1) month of receipt of an application from the executive director, convene a meeting within the affected constituency to consider the application.
- 10.6. Applications for admission to membership by any organisation representing community and development interests after the inaugural meeting shall be made to the executive director, in

writing, on the application form required by the executive council. Such applications shall be considered according to the process outlined in 10.7-10.11 below.

- 10.7. The executive director shall submit such applications to the executive council.
- 10.8. The executive council shall, in accordance with the provisions of this constitution, take into account whether the applicant:
 - (a) represents a significant community interest on a national basis and
 - (b) has a direct interest in development and reconstruction and
 - (c) is constituted democratically and has a constitution which provides for democratic decision and
 - (d) is able to seek mandates from its own members and to obtain compliance from its members in regard to resolutions, procedures and policies of the Council.
- 10.9. After the executive council has approved the initial members of organisations representing community and development interests, any further applications from this constituency shall be considered by the members representing community and development interests. They shall submit their recommendation regarding the application to the Minister who shall, in consultation with the executive council, decide the following:
 - 10.9.1. whether to admit the nominees as parties to the Council and
 - 10.9.2. in that event, the reallocation of members from organisations representing community and development interests on the executive council and/or chamber to comply with clauses 6.1 and 7.1.

11. Termination of Membership

The membership of any member of any constituency may be terminated by that constituency in the following circumstances:

- 11.1 where member(s) who represent the organisation have failed to attend meetings of the executive council on three consecutive occasions without good cause, provided that where an organisation is represented by more than one member and the remaining members are not in default of this requirement, the executive council may request the secretariat to bring the matter to the attention of the affected constituency;
- 11.2. where the organisation no longer meets the criteria determined by each constituency, or
- 11.3. where the organisation has ceased to function as provided for in terms of its own constitution and/or the law.

12. Proceedings at Meetings

- 12.1. All meetings, in terms of this constitution, shall be conducted in accordance with the rules.
- 12.2. Unless otherwise provided for, decisions of any meeting shall be by consensus and procedures as determined or amended by the executive council.
- 12.3. All meetings shall be convened by the relevant structures acting in consultation with the constituency overall convenors.
- 12.4. The quorum necessary for meetings of the executive council or chambers shall be one third of the number of members of the executive council or chamber, provided that amongst those present, at least one third of the number of members representing each of the constituents are present.
- 12.5. The quorum necessary for the management committee shall be eight members provided that organised business, organised labour and the state shall each have at least two members present.

- 12.6. Organisations shall be entitled at any time, and entirely within their own discretion to replace any of the members representing them on the executive council or chambers by other persons, provided that due notice of such replacement is given in writing to the executive council through the executive director, and such replacements are ratified by the executive council prior to the replacement members being entitled to take a seat on the executive council or chamber.

13. Minutes

- 13.1. Written minutes shall be kept of all meetings of the executive council, management committee, chambers and committees and task teams. Once confirmed, such minutes shall be entered into a bound book and kept as a permanent record by the executive director.
- 13.2. An attendance register of all members who attend any meeting shall be kept.

14. Reports

- 14.1. All relevant reports of the Council, including the annual reports or reports on any proposed legislation or policy relating to or affecting social and economic matters shall be submitted to the relevant Ministers. Every such report shall as soon as practicable be submitted to the National Council of Provinces and of the National Assembly.
- 14.2. The Council shall, in accordance with the Public Finance Management Act, and as soon as possible after 31 March in each year, furnish the Minister with an annual report in respect of its activities.
- 14.3. The Council shall submit all Nedlac Reports to the relevant Ministers, the National Council of Provinces and the National Assembly.
- 14.4. The Council shall submit any other report to the relevant Ministers, the National Council of Provinces and the National

Assembly, subject to authorisation by the executive council.

- 14.5. A report, other than the annual report of the Council, shall not be deemed to be a report of the Council for the purpose of section 8 of the Act unless two thirds of each of the constituencies on the executive council, subject to clause 7.11 of this constitution, have endorsed such a report. In the event of dissenting views these shall be included in all reports.

15. Finances

- 15.1. The financial year end of the Council shall be 31 March.
- 15.2. The executive council shall prepare an annual budget for the financing of the Council, including the national summit, for submission to the Minister by 1 September in each year for his/her approval and the concurrence of the Minister of Finance.
- 15.3. The activities of the Council, including the national summit and the provision of the secretariat and research services, shall be funded from the budget of the Department of Labour.
- 15.4. The executive director shall ensure that proper records and books of account of the administration of the Council, consistent with generally recognised accounting practices, are kept in such manner and form as is necessary in order that, at all times, the records and books shall fairly reflect the position of the Council and may engage and pay for such services as may be required for such purposes.
- 15.5. The accounts of the Council shall be audited annually by the Auditor-General or such auditors as shall be appointed from time to time by the executive council.
- 15.6. The Auditor-General or his/her duly authorised representative shall be entitled to inspect the books of account of the Council, at all reasonable times.
- 15.7. The Council shall be entitled to receive monies from credible private or public bodies, other than the State, provided that

such funds are:

- (a) maintained in a separate bank account kept for that purpose;
- (b) accounted for separately in the books of the Council.

15.8. The executive director shall prepare quarterly income and expenditure statements to for consideration at executive council and management committee meetings.

15.9. Members of the executive council and management committee shall be entitled to receive copies of the annual and quarterly income and expenditure statements of the Council but only members of the management committee shall be entitled to other financial records of the Council.

15.10. The financial affairs of the Council shall be conducted strictly in accordance with the Public Finance Management Act, as amended, Treasury Regulations and any other applicable legislation.

16. National Summit

16.1. The executive council shall convene an annual meeting of members and as many interested parties as possible, called the national summit, to report on and consider the activities of the Council.

16.2. The national summit shall be a consultative forum and will not form part of the Council itself.

16.3. The function of the national summit will be to:

- 16.3.1. involve as many interested parties as possible in order to give feedback on Council activities;
- 16.3.2. obtain inputs from organisations or persons not normally involved in Council activities;
- 16.3.3. obtain broader consultation on issues being deliberated upon in the Council.

16.4. The annual summit shall be chaired by the President or Deputy President or a delegated person as the Constitution of the Republic of

South Africa may provide for. If the President or Deputy President are not available to chair a national summit, the parties on the executive council shall themselves decide on a replacement chairperson.

- 16.5. The executive council shall, from time to time, determine who shall be invited to attend the annual summit.
- 16.6. Records of the proceedings of the annual summit shall be kept by the executive director, and these shall be made available to members of the public.
- 16.7. Any resolution or policy adopted at the annual summit shall not be binding on the Council, unless expressly adopted by the executive council.

17. Secretariat

- 17.1. The Council shall, in terms of paragraph 5.1(j), appoint its own secretariat to perform the administrative work on behalf of the Council.
- 17.2. The executive council shall appoint an executive director to head the secretariat.
- 17.3. The executive director shall be accountable to the executive council and management committee.
- 17.4. The executive director, or his/her designate shall be a member of the executive council, the chambers and the management committee, but shall not have voting rights.

18. Amendment of Constitution

- 18.1. This constitution may only be amended by the executive council provided that any such amendments are endorsed by two thirds of each of the constituencies.
- 18.2. Not less than thirty days-notice of an amendment shall be given, which notice shall otherwise comply with the provisions of clause 12 and include the text of the proposed amendment.
- 18.3. No amendment to this constitution shall be valid to the extent that it is inconsistent with the Act.

19. Dissolution

- 19.1. The Council may be dissolved by Parliament repealing the Act.
- 19.2. Upon the winding up and dissolution of the Council, the assets of the Council remaining after the satisfaction of its liabilities, shall be given or transferred to:
 - 19.2.1. in respect of monies from the State, to the government department concerned;
 - 19.2.2. in respect of any monies received from any person other than the State, to any other association, society or institution or any combination of them, which shall be of a public character, in the Republic of South Africa, that is:
 - a) politically independent;
 - b) of a non-profit nature;
 - c) concerned with issues of social and economic policy.
- 19.3. Such organisation shall be determined by the members of the executive council at/or before the time of the Council's dissolution, or failing such determination, by the division of the High Court of South Africa, having jurisdiction in the place where the secretariat is situated.

TERMS OF REFERENCE OF THE CHAMBERS

Development Chamber

The Development Chamber shall seek to reach consensus and make agreements for placing before the executive council all matters pertaining to development, both urban and rural, implementation strategies, financing of development programmes, campaigns to mobilise the nation behind government associated institutions of delivery.

Labour Market Chamber

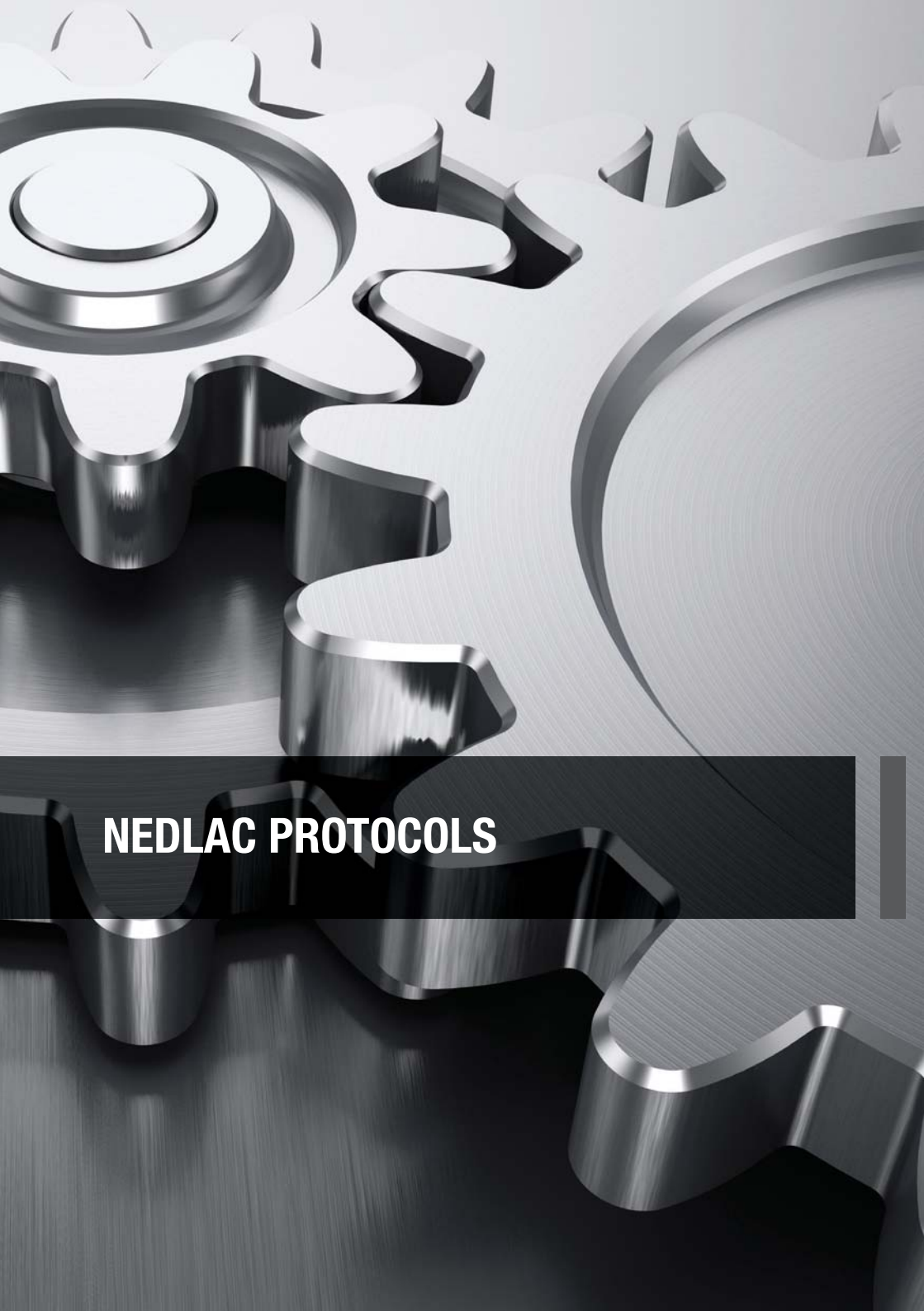
The Labour Market Chamber shall seek to reach consensus and make arrangements for placing before the executive council all matters pertaining to the world of work and the associated institutions of delivery.

Public Finance and Monetary Policy Chamber

The Public Finance and Monetary Policy Chamber shall seek to reach consensus and make agreements for placing before the executive council on all matters pertaining to financial, fiscal, and monetary and exchange rate policies, the coordination of fiscal and monetary policy, related elements of macroeconomic policy and the associated institutions of delivery.

Trade and Industry Chamber

The Trade and Industry Chamber shall seek to reach consensus and make arrangements for placing before the executive council all matters pertaining to the economic and social dimensions of trade, industrial, mining, agricultural and services policies and the associated institutions of delivery.



NEDLAC PROTOCOLS

PROTOCOL FOR TABLING AND CONSIDERING ISSUES AT NEDLAC

1. BACKGROUND

- 1.1 The National Economic Development and Labour Council (Nedlac) was established by statute in 1995.
- 1.2 The legislated objects, powers and functions of Nedlac are to:
 - 1.2.1 Strive to promote the goals of economic growth, participation in economic decision making and social equity;
 - 1.2.2 Seek to reach consensus and conclude agreements on matters pertaining to social and economic policy;
 - 1.2.3 Consider all proposed labour legislation relating to labour market policy before it is introduced in Parliament;
 - 1.2.4 Consider all significant changes to social and economic policy before it is implemented or introduced in Parliament;
 - 1.2.5 Encourage and promote the formulation of co-ordinated policy on social and economic matters.

2. PURPOSE OF THIS PROTOCOL

- 2.1 To guide participants at Nedlac on the process for considering issues at Nedlac by clarifying sequences of actions, roles and responsibilities and decision-making procedures.
- 2.2 To improve the efficiency and effectiveness of Nedlac by developing clear and uniform processes for participants to follow in considering issues.

- 2.3 To enable participants to focus on issues of substance by clarifying process issues.
- 2.4 To provide conflict resolution mechanisms that enable participants to avoid deadlock and make progress in productive engagement.

3. STRUCTURES OF NEDLAC AND OUTLINE OF NEDLAC PROCESS

- 3.1 The following four constituencies may participate in the Council's structures: organized business, community, organized labour and the government.
- 3.2 The Nedlac Secretariat comprises full time staff to support the work of the constituencies in Nedlac and the Executive Director is the head of the Secretariat.
- 3.3 The key structures of Nedlac are:
 - The Executive Council (Exco), a governance structure;
 - The Management Committee (Manco), a governance structure that reports to the Exco;
 - The Council's four chambers, forums for engagement that report to the Manco, namely:
 - The Public Finance and Monetary Policy Chamber;
 - The Trade and Industry Chamber;
 - The Labour Market Chamber; and
 - The Development Chamber;
 - Task teams, which may be established by Manco or a Chamber to focus on a single issue;
 - The Section 77 Committee, which considers notices brought in terms of section 77 of the Labour Relations Act.

- 3.4 The Nedlac constituencies consider an issue in the following three phases:
- Phase 1: A constituency must table an issue for consideration.
- Phase 2: The constituencies must produce a Nedlac report on the issue.
- Phase 3: Nedlac must submit that report to the relevant Minister and to Parliament.

4. **TABLING AN ISSUE**

4.1 Authority to table an issue

- 4.1.1. Any constituency may table an issue at Nedlac.
- 4.1.2. The Government should table relevant forthcoming policy, regulations and legislation.

4.2 Procedure to table an issue:

- 4.2.1. A Government department wishing to table a matter at Nedlac must do so via the Executive Director, who would then allocate that matter to a Chamber or combination of Chambers for engagement.
- 4.2.2. A constituency that seeks to table an issue must first inform the relevant chamber coordinator that they wish to table an issue and request that the coordinator place the issue on the chamber's agenda.
- 4.2.3. The constituency tabling an issue must indicate the anticipated timeframes within which Nedlac should conclude its discussion of this issue.
- 4.2.4. The coordinator must place the issue on the chamber's agenda.

4.2.5. The chamber must classify the issue for consideration into one of the following four categories:

- Category one are policies or legislation that require a mere tweaking of proposals, or minimal engagement;
- Category two are those policies or legislation that require extensive engagement;
- Category three are those policies or legislation that require further information or systematic research; and
- Category four are green papers.

4.2.6. The following time frames apply to the categories of issues for consideration:

- On category one issues, the constituencies can spend no more than three months considering the issues, thereafter Nedlac will consider the process concluded;
- On category two issues, the constituencies can spend no more than six months considering the issue, thereafter Nedlac will consider the process concluded;
- On category three issues, the constituencies must negotiate and agree upon timeframes; and
- On category four issues, the constituencies will engage the issue in a single meeting unless the Overall Convenors agree that the issue is sufficiently complex to require a longer period of engagement not exceeding three months.

4.3 Managing the chamber agenda

4.3.1. The Leader of Government Business in Parliament meets with the Overall Convenors of Nedlac twice a year for a briefing on the legislative programme for the forthcoming year.

4.3.2. The following sequence should be observed:

- (a) The constituencies should table and sign off on a policy document before engagement on the proposed legislation proceeds.
- (b) The constituencies must ensure that they synchronize the Nedlac and Parliamentary processes to ensure that an issue is finalized at Nedlac before it goes before Parliament.

4.4. Agenda oversight

4.4.1. The Executive Director, with the assistance of the Head: Programme Operations must inform the overall convenors, and chamber convenors, on a routine basis of matters that have been tabled at Nedlac.

4.4.2. The overall convenors should approve a schedule, with time frames, to deal with tabled matters, and ensure that the relevant Chamber has classified each matter into one of the four categories. If the relevant Chamber has failed to classify the matter, the overall convenors must determine the category of the issue.

4.4.3. If the overall convenors in a particular instance are unable to revert within agreed timeframes, the Executive Director and the Nedlac Secretariat may recommend an approach for dealing with a matter, in consultation with chamber convenors. In

such an instance, the overall convenors must finalise the recommended approach.

4.5. Green papers

4.5.1. Green papers may contain proposals that change substantially in subsequent policy or legislation. Engagement on green papers should therefore be less extensive and in-depth than on white papers or draft legislation.

4.5.2. The Nedlac constituencies will engage on a green paper as follows:

4.5.2.1. The standard procedure for engaging a green paper will be for constituencies to engage the Department that produced the green paper in one meeting.

4.5.2.2. The Overall Convenors may determine that a green paper is sufficiently complex to require consultation in more than one meeting and may propose a longer time frame for consultation that may not exceed three months.

4.5.2.3. Green papers are for consultation only and not negotiation.

4.5.2.4. The Overall Convenors will determine which chamber engages on a green paper or if a task team should be convened for the purpose.

4.5.2.5. Constituencies should not engage a green paper on a line-by-line basis but at the level of principle.

4.5.2.6. Nedlac will produce a Report based on its consultation on a green paper in line with the Nedlac Protocol but this will not be subject to

the Protocol for Tabling Reports in Parliament.

4.5.2.7 Should Nedlac consider any policy or legislation emanating from a green paper previously tabled at Nedlac, the Nedlac secretariat will make the Nedlac Report on that green paper available to the constituencies.

4.5.28. In the event that government indicates that giving effect to the policy requires legislation, government will table the draft Bill at Nedlac for consideration.

4.6 White Papers and Draft Legislation

4.6.1. The chamber must agree on a process and timeframes to expedite matters tabled at Nedlac. For example a specific task team may be established or the chamber may consider the matter itself.

4.6.2. In cases where the issue falls within the terms of reference of more than one chamber, a joint task team may be established.

4.6.3. There may be circumstances where an issue is escalated to the level of a senior task team (such as a Manco task team). In this case, the issue will not be referred back to the chamber for sign-off, but will be signed off by the senior parties involved.

4.6.4. There may also be instances where the intervention of the relevant Minister/s may be required. In this case the government Convenor will take the responsibility to facilitate the Minister's attendance.

4.6.5 The purpose of engaging on issues is to reach agreement, and to arrive at a report which minimises, or preferably eliminates areas of disagreement. All

engagements must be geared towards this objective, including ensuring the necessary timeframes and procedures to allow completion of a meaningful negotiation.

- 4.6.6. The chamber or task team may require technical assistance on issues. In this case the constituency will be able to bring experts into the negotiating team processes.
- 4.6.7. Once the process of engagement on the policy has been finalised, a Nedlac report will be prepared for consideration and ratification by the relevant Nedlac structures, namely the Chamber, Manco and Exco. The Nedlac Report, after sign-off by the relevant Nedlac structures, will be sent to the relevant Minister, who will in turn table it in Parliament.

5. NEDLAC ROLES

5.1. The Chamber Convenors

- 5.1.1. A chamber convenor must agree on the timeframe required to consider a matter that has been tabled with the other chamber convenors and ensure that the chamber members adhere to those time frames.
- 5.1.2. A chamber convenors must engage on the basis of a mandate from their constituency.
- 5.1.3. The chamber convenor must keep his or her constituency regularly informed and updated on chamber matters being considered.
- 5.1.4. The convenors are responsible for overseeing the work of the task teams.
- 5.1.5. A convenor should strive to maximise areas of

agreements and must be prepared to engage on issues beyond positional stances.

- 5.1.6. A convenors must ensure that their constituency representatives participate in the chamber's task teams and that the task teams complete their work within the agreed timeframes.
- 5.1.7. For each constituency, the convenor must appoint a task team convenor who will be responsible for facilitating the task team's work with the other task team convenors.
- 5.1.8. A convenor must ensure that when a task team has concluded a draft report, the chamber considers that report.
- 5.1.9. A convenor must respond to requests from chamber coordinators within the timeframes specified in the coordinator's correspondence.

5.2. The Secretariat

- 5.2.1. On receipt of an issue for tabling, the chamber coordinator will determine the timeframe within which the chamber should sign off on it and alert the chamber convenors that they have received the issue.
- 5.2.2. The chamber coordinator will agree on how to handle the matter in consultation with the convenors; for example, the coordinator and convenors may agree to wait for a chamber meeting to address the issue or agree to a process to be followed without waiting for a chamber meeting.
- 5.2.3. The chamber coordinator will call for the constituencies to nominate individuals to consider the matter by sending a request for

- nominations to the chamber convenor and the constituency office. If a joint task team has been established, the call for nominations will go to the convenor from either chamber.
- 5.2.4. The chamber coordinator will prepare a programme of meeting dates for the chamber to consider in the first meeting of the task team, taking into account the timeframes determined in
 - 5.2.5. Where a joint task team has been established, the Head: Programme Operations will assign responsibility for the task team to one of the chamber coordinators.
 - 5.2.6. A chamber coordinators will prepare meeting agendas, briefing documents to inform deliberations and a draft report from the discussions of each meeting. The coordinator must copy the correspondence to the representatives on the task team to the chamber convenors.
 - 5.2.7. The chamber coordinator must ensure that once the report has been approved by the chamber, it is placed on the agenda of the next Manco. If there is not enough time for Manco to consider the report, the coordinator must submit the report to the Overall Convenors for ratification. The Head: Programme Operations, and in his/ her absence, the Executive Director, together with the chamber convenors must monitor compliance with this requirement.
 - 5.2.8. Chamber coordinators must specify a timeframe within which a response is required for all correspondence where relevant.

- 5.3. Constituency Representatives
 - 5.3.1. A representative must have a mandate to participate in a discussion with a view to making progress at each meeting.
 - 5.3.2. A representative must ensure that they respond to correspondence from the secretariat within the specified timeframes.
 - 5.3.3. A representative must attend the meetings of the task team to which that representative has been nominated.
 - 5.3.4. Constituencies must identify alternates to attend task team meetings if the principal negotiator is unavailable.
 - 5.3.5. A representative must be prepared to engage on issues beyond a positional stance.
 - 5.3.6. A representative must respond to requests from chamber coordinators within the timeframes specified in the coordinator's correspondence.

6 TIME SCHEDULES FOR ACTION

- 6.1. The secretariat must distribute the agenda for a meeting to all members at least two working days before a task team meeting and five working days before a chamber meeting.
- 6.2. The secretariat must confirm the draft agenda for a chamber meeting with the chamber convenors prior to distribution.
- 6.3. The secretariat must distribute an action list based on decisions taken at any meeting within one working day of that meeting.
- 6.4. The secretariat must distribute minutes of a meeting within five working days of any meeting.
- 6.5. If the secretariat does not receive responses from all of

- the constituencies, the secretariat should send the constituencies a second request with a shorter deadline.
- 6.6. If the secretariat does not received responses from all of the constituencies by the second deadline, the secretariat must send a letter to the relevant chamber convenors, copying the overall convenor, for action.

7. THE NEDLAC REPORT

- 7.1. The Nedlac report is the official and public report on the consideration of a matter by Nedlac. It is therefore essential that this report be of the highest standard. Where appropriate, agreements should be captured in legal form. The report should comprise the following sections:
- 7.1.1. Background (a brief description of what the issues are and how the issue arrived at Nedlac)
- a) The Nedlac Process: A step-by-step account of the process, including the terms of reference of the task team, its meeting times and members
 - b) The agreement Any disagreements
Legal drafting where agreed Conclusion
- 7.2. The task team must approve the draft report which is then submitted to the following structures in this sequence for ratification: the relevant chamber; Manco; Exco. The report is only officially a Nedlac report once Exco ratifies it.
- 7.3. If, because of time or other constraints, Exco cannot consider and ratify the report, Manco may ratify it. If the Manco meeting cannot consider the report because of time

considerations, the Overall Convenors can ratify it. The chamber coordinators must alert the Head: Programme Operations as early as possible that a special process may be required. The Overall Convenors may only ratify a report if Manco has delegated this responsibility to them; or if the matter is sufficiently urgent in the view of constituencies or the Executive Directive to necessitate speedy ratification.

- 7.4. If one of the constituencies holds the opinion that the report is unlikely to be accepted at Manco, the chamber may recommend that the Overall Convenors make an attempt to resolve the matter.
- 7.5. When the Nedlac report has been ratified, the secretariat must send it with a cover letter signed by the Executive Director to the Minister of Labour and the Minister responsible for, or associated with, the issue to which the report refers.
- 7.6. The coordinator must track and monitor the consideration of the Nedlac report in the Parliamentary process. This includes:
 - 7.6.1 Ensuring that the relevant Portfolio Committee has access to the Report. The Report would however be tabled in Parliament via the relevant Minister.
 - 7.6.2. Liaison with the relevant Parliamentary Officer to find out the dates on which the issue will be considered by Parliament and the Portfolio Committee.

- 7.6.3. Seeking direction from the convenors on whether it is appropriate for the Nedlac constituencies to make a joint presentation of the report to the Portfolio Committee.
 - 7.6.4. Finding out what amendments, if any, the Portfolio Committee makes to the legislation.
 - 7.6.5. Obtaining copies of the amended and final Bill.
 - 7.6.6. When legislation on which a Nedlac report has been finalised is tabled in Parliament, facilitating the introduction of the report by a Nedlac delegation prior to public hearings as necessary (see 7.6.1. and 7.6.3.).
-
- 7.7. The chamber may request the coordinator to monitor the implementation of the bill to which the report refers and report back to the chamber. In this case, the chamber must make clear what the requirements for feedback on implementation are and ensure that it is within the capacity of the secretariat.



8. Check-List Managing Negotiations:

Task	Frequency	Responsibility
Determine terms of reference and time-table of task team (composition, objectives, agenda, outcomes, timeframes, process for ratification of report)	At the start of a process	Coordinator and chamber
Constitute task team	At the start of a process	Convenors to submit names of representatives
Determine chairing and reporting	At the start of a process	Coordinator with constituencies
Ensure distribution of documentation	Each meeting	Coordinator and administrator
Follow-up on action points from meetings	Each meeting	Coordinator
Liaise with task team members to ensure that they are kept up to date on progress	On a regular basis	Coordinator
Prepare draft reports on agreements	At the end of a process	Coordinator
Report to chamber convenors, the Executive Director and Head: Programme Operations	Each week and as required	Coordinator
Ratification of report	At the end of the process	Chamber • Manco • EXCO
Send report to Minister with letter from the Executive Director	At the end of the process	Coordinator
Ensure Report is available to the Portfolio Committee	At the end of the process	Coordinator and chamber
Find out dates on which the issue is to be considered by Parliament and the relevant Portfolio or Select Committee.	At the end of the process	Convenors to submit names of representatives
Check whether a joint presentation of the report to the Portfolio Committee is appropriate.	At the end of the process	Coordinator with Constituencies
Monitor the circulation of amendments in the Portfolio Committee	At the end of the process	Coordinator and administrator
Circulate amended and final Bill	At the end of the process	Coordinator
Monitor the implementation of the agreement, based on available capacity.	As needed after the process	Coordinator

9. SUBMISSION OF REPORTS

9.1. Protocol for Tabling the Nedlac Report in Parliament.

- 9.1.1. All Nedlac reports are submitted to the Minister of Labour and the Minister responsible for, or associated with the issue.
- 9.1.2. It is the Minister concerned who is responsible for tabling the Nedlac report in Parliament.
- 9.1.3. However, there may be cases where it is important for the social partners to jointly present the contents of the Nedlac report during the public hearings held by the relevant Portfolio or Select Committee at Parliament. These cases will tend to be issues where the social partners have reached consensus on substantive issues.
- 9.1.4. There will be a consideration by the convenors, on a case-by-case basis, of whether or not a joint presentation of the report by the social partners to Parliament is necessary. This consideration will take place at the time that the Nedlac report is being finalised.
- 9.1.5. Generally, where the Nedlac report deals with an issue that is technical in nature, the report will be submitted to the Minister and presented by the Minister in Parliament.

- 9.2. Raising Reservations about an Issue in Parliament
 - 9.2.1. Parties are bound not to re-open discussion in Parliament on any area where agreement was reached in Nedlac.
 - 9.2.2. Parties have the right to raise issues in Parliament on which there has been no agreement, or on which a Nedlac agreement was silent.
 - 9.2.3. However if parties raise issues during the Parliamentary process on which the Nedlac agreement was silent, or new issues, which go beyond the reservations captured in the Nedlac report, they should inform both Nedlac and the other parties for the record.
- 9.3. Monitoring the Passage of an Issue through Parliament
 - 9.3.1. The coordinator will liaise with the relevant Parliamentary Officers in order to monitor the passage of an issue through Parliament.
The Head: Programme Operations will provide such support as may be required.
 - 9.3.2. This liaison will include obtaining information about the dates and agendas of portfolio or select committee meetings.
 - 9.3.3. The coordinator will also obtain copies of a bill before it is tabled in Parliament and forward copies thereof to the convenors in order that the convenors may check the

bill's consistency with the agreements concluded in Nedlac. The Head: Programme Operations will provide such support as may be required.

- 9.3.4. Government departments are bound, as one of the parties, to accurately reflect the agreements that were reached at Nedlac in the drafts that they put before Parliament. Where detailed legal drafting was agreed, this must be submitted as agreed. Where specific legal drafting was not negotiated, the substance and spirit of the Nedlac agreement must be reflected in the legal drafting put before Parliament.
- 9.3.5. If the Bill is not consistent with the agreements reached in Nedlac, then a process must be triggered on an urgent basis to address Parliament, as well as the Leader of Government Business, should be officially notified by the Executive Director while the situation is rectified.

10. MONITORING IMPLEMENTATION OF THIS PROTOCOL

- 10.1. The Leader of Government Business should be requested to nominate someone in his or her office to coordinate in with Nedlac ensuring that the commitments in this protocol are effectively coordinated within government. This person should assist in the tracking of relevant processes within government, and addressing any bottlenecks in this regard. The responsibility to put forward government's views within Nedlac remains, however, with the government department responsible for co-ordinating the work of Government with Nedlac.

10.2. Manco must agree on a mechanism to monitor and ensure implementation of the commitments contained in this Protocol. As a transitional mechanism, Overall Convenors could act as an advisory committee to assist the Executive Director in this regard.



**PROCEDURE FOR CONSIDERING NOTICES
OF POSSIBLE PROTEST ACTION (“the Procedure”)
IN TERMS OF SECTION 77 OF THE
LABOUR RELATIONS ACT, 66 OF 1995 (“the Act”)**

**This Procedure is attached to the Code of Good Practice on
Consideration of Notices of Possible Protest Action in terms of Section
77 of the Labour Relations Act 1995 (The Code of Good Practice)**

1. Establishment of the Section 77 Standing Committee Of Nedlac

- 1.1 A Section 77 Standing Committee (“the Committee”) shall be established by Nedlac to consider section 77(1) (b) notices in terms of section 77(1) (c) of the Act.
- 1.2 The Committee shall comprise of five members: one member each nominated by the four Nedlac constituencies, plus the Executive Director.
- 1.3 An alternate should be nominated by the principal delegate as a replacement to attend the Committee meetings when the principal delegate is absent.
- 1.4 The Committee must nominate a high level panel of five individuals experienced in facilitation, mediation and arbitration or otherwise suitably qualified to facilitate the consideration of notices referred to it by the Committee

2. Confirmation of Notice in Terms of section 77(1)(b) of the Act

- 2.1 When Nedlac receives a notice contemplated in terms of section 77(1) (b) of the Act, the Executive Director must ascertain within two working days of receiving the notice, whether the notice complies with the administrative provisions of the Act.

- 2.2 Without limiting clause 2.1, the Executive Director must -
- 2.2.1 Ascertain whether the party that submitted the notice (the referring party) is a registered trade union or a federation of trade unions and
 - 2.2.2 Attempt to clarify any details which are not apparent from the face of the notice, such as the party issuing the notice (the referring party), the reason for the intended protest action and the nature of the protest.
- 2.3 The Executive Director must table a copy of the notice and any related correspondence before the Committee, the referring party and any respondent parties identified in the notice.
- 2.4 If the Executive Director is not satisfied that the notice complies with the administrative requirements of the Act, the Executive Director must advise the referring party forthwith in writing and request it to ensure compliance.
- 2.5 If the Executive Director is satisfied that the notice meets with the administrative requirements, the Executive Director must inform the Committee and the parties in writing forthwith of the first meeting.
- 2.6 The issue whether or not the matter is of a socio-economic nature shall be determined by the Committee

3. Convening a meeting of the Committee to consider the notification in terms of section 77(1)(c) of the Act

- 3.1 The Executive Director must convene a meeting of the Committee and the parties to the notice to consider the matter giving rise to the intended protest action, within ten calendar days of Nedlac receiving a notice that complies with section 77(1) (b).
- 3.2 The party at which the notice is directed (the responding party) should be given a minimum of 7 (seven) calendar days to consider the notice before the meeting.
- 3.3 If more than one notice is received in terms of section 77(1) (b) relating to the same matter, the notices may be dealt with simultaneously by the Committee in terms of this Procedure.
- 3.4 A record of all meetings of the Committee must be kept by the Secretariat.
- 3.5 In order for the Committee to consider the matter giving rise to the intended action in terms of section 77(1)(c):
 - 3.5.1 the referring party must be given an opportunity at the meeting to elaborate on the notice, motivate why it has called the intended protest action, and specify how it believes the matter can be resolved;
 - 3.5.2 the responding party must be given an opportunity at the meeting to respond to the referring party and to specify how it believes the matter can be resolved; and
 - 3.5.3 the Committee and the parties must discuss and respond to proposals made by either of the parties to the matter or by any member of the Committee.
- 3.6 The Committee may schedule further meetings with the parties.

- 3.7 The Committee must produce a Report, within five (5) days of the conclusion of the process listed in clause 3 of the Code of Good Practice issued in terms of Section 203 of the Labour Relations Act, 66 of 1995 setting out:
 - 3.7.1 the matter giving rise to the intended protest action;
 - 3.7.2 the process followed and the manner in which the matter has been considered in Nedlac for purposes of section 77(1)(c); and
 - 3.7.3 the outcome of the consideration.
 - 3.8 Upon finalisation of the written Report by the Committee, subject to Clause 5 below, the Executive Director must forward the said report to the parties concerned.
 - 3.9 The Committee may consider the notice as having been considered subject to the circumstances listed under clause 3 of the Code of Good Practice issued in terms of Section 203 of the Labour Relations Act, 66 of 1995
 - 3.10 The Committee may consider the notice as not having been considered subject to the circumstances listed under clause 4 of the Code of Good Practice issued in terms of Section 203 of the Labour Relations Act, 66 of 1995
4. Appointing a panellist to facilitate the consideration of a notice
 - 4.1 Subsequent to a decision by the Committee that the matter is of a socio-economic nature (see clause 2.6), and if requested by either one or more of the referring parties or one or more of the responding parties, the Committee must by consensus, appoint a member of the panel appointed in terms of clause 1.4 to facilitate the consideration of the notice unless the Committee unanimously agreed not to appoint a panellist.
 - 4.2 The referring party must attach a written request for the appointment of a panellist to its section 77(1)(b) referral notice should it elect to apply for a panellist

4.3 The responding party must submit its request for the appointment of a panellist within 3 (three) calendar days of receipt of the notice of the first meeting.

4.4 One or more of the referring parties and the responding parties may agree by consensus, during or subsequent to their first meeting that a panellist should be appointed.

4.5 The panellist –

4.5.1 must convene meetings of the parties to consider the matter giving rise to the intended protest action;

4.5.1 must attempt to assist the parties to resolve the matters in the notice;

4.5.3 must not later than 45 (forty five) days after the notice being served on Nedlac or at the conclusion of such longer or shorter period as the parties may agree, make a written report to the Committee;

4.5.4 may in exceptional circumstances:

a) extend the total period available for consideration of the matter in Nedlac by an additional 2 (two) weeks (resulting in an effective period of 60 (sixty) days from the date of the notice); or

b) subject to budgetary considerations, request the approval of the Committee to extend the total period available for consideration of the matter in Nedlac beyond 60 (sixty) days of the date of notice, or

- c) reduce the total period available for consideration of the matter in Nedlac by a shortened period of 2 (two) weeks (resulting in an effective period of 30 (thirty) days from the date of the notice).

4.6 The Panellist must in the Report referred to in 4.5.3, set out:

- 4.6.1 the matter giving rise to the intended protest action;
- 4.6.2 the process followed and the manner in which the matter has been considered in Nedlac for purposes of section 77(1) (c); and
- 4.6.3 the outcome of the consideration.

4.7 The Report mentioned in clause 4.6 must be produced by the Panellist within 5 (five) days of the conclusion of any of the processes set out in Clause 3 of the Code of Good Practice issued in terms of Section 203 of the Labour Relations Act, 66 of 1995.

4.8 Upon receipt of the written Report of the Panellist, the Executive Director must forward the said report to all members of the Committee as well as to the parties concerned.

5. Procedure to finalise the Report

Should the Committee (in terms of clause 3.7) or the Panellist (in terms of clause 4.7) fail to produce the Report within the prescribed time frames, the Executive Director shall produce such Report within 5 days after expiry of the prescribed timeframes.

6. Quorum and non-attendance of parties

6.1 A Committee meeting convened to consider a notice in terms of this Procedure is quorate and may consider the notice if should any (3) three of the 4 (four) constituencies are present. However a

quorum not be present at the scheduled meeting, an adjourned meeting shall take place within 3 (three) working days of the scheduled meeting, unless the Committee unanimously agrees to another date. Those present at the adjourned meeting will constitute a quorum.

- 6.2 If none of the referring parties or none of the responding parties as listed in the section 77(1)(b) notice attend any scheduled meeting to consider the notice after being duly notified, another meeting should be convened within 3 (three) working days of the failed meeting. Should any party, other than the referring party, fail to attend the subsequent meeting, the Committee or a panellist appointed in terms of clause 4 above, may proceed to consider the matter as if the absent party/ies were present. Notwithstanding the above, the Committee may agree to proceed with any scheduled meeting irrespective of whether any of the cited parties are present or not.

7. Section 77(1) (d) notice

- 7.1 Once the matter giving rise to the intended protest action has been considered in accordance with section 77(1)(c), a referring party that wishes to proceed with the protest action, must serve a notice on Nedlac in terms of section 77(1)(d) of its intention to proceed with the protest action.
- 7.2 When Nedlac receives a notice contemplated in section 77(1) (d), the Executive Director, after satisfying himself that the notice complies with the provisions of the Act, must forward the notice immediately to the Committee, and all the responding parties listed in the section 77(1) (b) notice.
- 7.3 Should any responding party intend to dispute the validity of a section 77(1) (d) notice, it shall forthwith advise the Executive Director of Nedlac who shall in turn advise the Committee thereof.
- 7.4 Should the notice not comply with the provisions of the Act, the referring party must amend its notice to ensure such compliance before proceeding with protest action.



**CODE OF GOOD PRACTICE ISSUED IN TERMS OF SECTION 203 OF
THE LABOUR RELATIONS ACT, 66 of 1995:**

**CONSIDERATION OF NOTICES OF POSSIBLE PROTEST ACTION IN
TERMS OF SECTION 77 OF THE LABOUR RELATIONS ACT, 66 of 1995**

1. Nedlac has issued this code of good practice in terms of section 203 of the Labour Relations Act, 66 of 1995 (“LRA”).
2. Any person who is required to interpret or apply the Act in order to determine whether a notice served on Nedlac in terms of section 77(1)(b) of the LRA has been considered by Nedlac in terms of section 77(1)(c) must take into account this code of good practice.

Circumstances in which the notice must be regarded as having been considered in compliance with section 77(1) (c)

3. A notice submitted in terms of the Act has been considered by NEDLAC in compliance with section 77(1) (c) if the Procedure has been followed and
 - 3.1 The matter has been resolved and this is recorded in writing by the Nedlac secretariat and confirmed by the parties; or
 - 3.2 The referring party and the responding party concur that the matter has been considered; or
 - 3.3 The majority of the Committee concurs that the matter has been considered by an appropriate structure other than Nedlac; or
 - 3.4 At any time during or after the first meeting of the Committee to consider the section 77(1)(b) notice, the majority of the Committee agrees that the issues giving rise to the notice are not resolvable and agrees that the matter has been considered; or
 - 3.5 One of the parties is no longer committed to resolving the issue

giving rise to the dispute or the majority of the Committee resolves, in the light of the surrounding circumstances, that a party is no longer committed to resolving the matter in dispute; or

- 3.6 Where a panelist has not been appointed and a period of 45 (forty five) days (or such longer period as the parties may have agreed to) has elapsed since the notice was submitted to Nedlac and a Report has been produced in terms of clause 3.7 or clause 5 of the Procedure; or
- 3.7 Where a panelist has been appointed and a period of 45 (forty five) days as provided in clause 4.5.3 of the Procedure (or the period as provided for in clause 4.5.4 of the Procedure) has elapsed since the notice was submitted to Nedlac and the Committee has received a Report in terms of clause 4.7. or clause 5 of the Procedure.

Circumstances in which the notice shall not be regarded as having been considered in compliance with section 77(1) (c)

4. A notice submitted in terms of the Act shall not have been considered by Nedlac in compliance with section 77(1) (c) if:
 - 4.1 the referring party has failed to attend meetings convened in term of section 77 of the Act and the Procedure;
 - 4.2 the responding party has made written representations within 20 (twenty) calendar days of receipt of the notice by Nedlac, and the referring party has not responded to such written representations.



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