



PROTOCOL FOR

TABLING AND CONSIDERING MATTERS AT NEDLAC



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1. INTRODUCTION

This protocol is adopted by the Nedlac Executive Council and is binding on all parties to Nedlac.

2. DEFINITION OF KEY TERMS

Agreement	Any matter in respect of which the concurrence of parties' views is recorded in writing.
Committee	Includes the management committee, the standing committees established in terms of clause 3 of the Nedlac Constitution, any forum established in terms of clause 8.3 of the Nedlac Constitution, any task team established by a Chamber in terms of clause 7.6 of the Nedlac Constitution, and any other committee established by the Executive Council or the Management Committee.
Constituency	Organised business, organised labour, the State and organisations of community and development interests.
Council	The National Economic, Development and Labour Council;
Executive Director	The head of the Secretariat, appointed by the executive council in terms of clause 17.2 of the Nedlac Constitution.
Management Committee	The committee established in terms of clause 3.3 of the Nedlac Constitution.
Member	The representative of any party to the Council, unless the context indicates otherwise.
Matter	Any issue, relating to any topic, which Nedlac is obliged or permitted to consider.
Nedlac Act	National Economic Development and Labour Council Act, 35 of 1994.
Nedlac Constitution	The Constitution adopted by the Executive Council in terms of section 6(1)(b) of the Nedlac Act.
Nedlac Report	The official and public report on the consideration of a matter of policy, subordinate legislation or legislation by Nedlac.
Overall Convenors' Committee	The committee consisting of the members of the Executive Council appointed as Overall Convenors for their Constituency in terms of clause 6.6 of the Nedlac Constitution.
Party	Any organisation which has members representing it on Nedlac.
Programming Committee	The Programming Committee established by the Management Committee to support the implementation of the Protocol
Policy document	A policy document includes any document in which a proposed change to socio-economic policy is set out. This may include a green paper, white paper, master plan or strategy.
Social and economic policy	Includes any financial, fiscal and monetary policy, socio-economic programmes, trade and industrial policy, reconstruction and development programmes and all aspects of labour market policy.
Subordinate legislation	Includes Regulations, Codes and Guidelines



3. PURPOSE OF THIS PROTOCOL

The purpose of this protocol is to:

- 3.1. Guide participants at Nedlac on the process for considering matters within the Council by clarifying sequences of actions, roles and responsibilities, and decision-making procedures.
- 3.2. Improve the efficiency and effectiveness of Nedlac by developing clear and uniform processes for participants to follow in considering matters.
- 3.3. Enable participants to focus on matters of substance by clarifying process issues.
- 3.4. Provide conflict resolution mechanisms that enable participants to avoid deadlock and make progress in productive engagement;
- 3.5. Outline the requirements for the completion of Nedlac processes; and
- 3.6. Provide for the mechanisms to track the implementation of Nedlac processes.

4. SCOPE

- 4.1. This protocol records the manner in which the government is required in terms of the Nedlac Act to submit legislation and policies to Nedlac for consideration prior to their being implemented or tabled in Parliament.
- 4.2. This protocol applies to all legislation, subordinate legislation and policy considered by Nedlac, any agreements concluded between the parties at Nedlac and any other matters provided for in the protocol. The protocol does not, however, apply to dialogues.
- 4.3. In accordance with the Nedlac Act, the Government must table at Nedlac –
 - 4.3.1. labour legislation relating to labour market policy, before introducing it into Parliament;
 - 4.3.2. any other legislation and any policy that propose significant changes to social and economic policy, before implementing it or introducing it into Parliament.
- 4.4. Nedlac may consider any matter relating to social or economic policy that is tabled before it in accordance with the provisions of this Protocol.
- 4.5. Labour legislation includes –
 - 4.5.1. All laws administered by the Minister responsible for Employment and Labour;
 - 4.5.2. Unemployment Insurance Contributions Act; 4 of 2002;
 - 4.5.3. Skills Development Act, 97 of 1998
 - 4.5.4. Skills Development Levies Act, 9 of 1999
 - 4.5.5. Employment Tax Incentive Act, 26 of 2013;
 - 4.5.6. Mine Health and Safety Act, 29 of 1996;
 - 4.5.7. Occupational Diseases in Mines and Works Act, 78 of 1973; and
 - 4.5.8. other laws regulating occupational health and safety.
- 4.6. The Government should refer any subordinate legislation dealing with labour market policy to Nedlac before bringing it into effect, unless there has been a process of consultation in respect of that subordinate legislation in a statutory consultative forum in accordance with the requirements of a statute referred to in 4.5.





5. STRUCTURES

The key structures responsible for the implementation of this Protocol are –

- 5.1. The Management Committee, a governance structure that approves Nedlac Reports;
- 5.2. The Programming Committee which is responsible for the allocation of laws and policies to the appropriate structure for consideration;
- 5.3. The Overall Convenors' Committee which consists of the Overall Convenors of each Constituency to which differences, disputes and deadlocks may be escalated;
- 5.4. Nedlac's four Chambers, which are responsible for engagement on matters tabled at Nedlac and for overseeing the work of the Task Teams they establish, being the:
 - 5.4.1. Public Finance and Monetary Policy Chamber;
 - 5.4.2. Trade and Industry Chamber;
 - 5.4.3. Labour Market Chamber; and
 - 5.4.4. Development Chamber.
- 5.5. Other Forums, Rapid Response Task Teams or Committees set up by the Management Committee;
- 5.6. Task Teams established by a Chamber or Forum to consider any legislation or policy; and
- 5.7. One-a-sides, involving the Constituency Leads of a Task Team or other relevant structure.

6. ROLE PLAYERS

The key role players responsible for implementation of this protocol are:

- 6.1. The Overall Convenors who oversee the implementation of this Protocol and who are responsible for escalation in the event of a significant difference, dispute or deadlock, and who may delegate duties to the relevant Chamber Convenor or Constituency Lead;
- 6.2. The Chamber Convenors who are responsible for oversight of the work of the Chambers and associated Task Teams and Committees, and who must keep their Constituency regularly informed and updated on Chamber matters. Each Chamber has Constituency Convenors;
- 6.3. The Constituency Leads who co-ordinate the engagement of their Constituency in any Task Team or Committee and who must ensure that their respective Constituency positions are articulated and reflected;
- 6.4. The Constituency Representatives who are responsible for considering the matters that are tabled after being duly mandated; and
- 6.5. The Secretariat which is responsible for co-ordination, facilitation, logistics and other activities to ensure the effective operation of the Council and implementation of this Protocol.



7. PROCESSING A MATTER

7.1. Authority to table a matter

- 7.1.1. Any Constituency may initiate proposals for introducing or amending policy or legislation by tabling a document setting out the purpose of the proposed policy, policy changes, legislation or legislative amendments that relate to socio-economic matters.
- 7.1.2. A government department that tables any policy or legislation in Nedlac must –
 - 7.1.2.1. confirm to Nedlac that the Minister within whose competency the policy or bill falls has approved its tabling;
 - 7.1.2.2. advise Nedlac whether the policy or bill has been published for public comment and, if so, whether there is a summary or analysis of the public comments available for consideration by the constituency representatives.
- 7.1.3. Any other social partner that tables any proposal for consideration Nedlac must confirm to the satisfaction of Nedlac that the tabling has been mandated in terms of its constitutional structures.

7.2. Procedure to table a matter

- 7.2.1. Any Constituency may table a matter at Nedlac by referring it to the Executive Director and should, in addition, ensure that their Overall Convenor is aware of the matter being tabled at Nedlac.
- 7.2.2. The Executive Director must allocate the matter to the appropriate Chamber, Committee or Forum for engagement.
- 7.2.3. If the Executive Director is uncertain as to the significance of any policy or legislation which is tabled, or which structure should consider the matter, the Executive Director must request the Programming Committee to determine whether Nedlac should consider it and, if so, which structure should do so.
- 7.2.4. Nedlac is required in terms of section 5(1) (d) of the Nedlac Act to consider any significant change to social and economic policy before it is implemented or introduced into Parliament. When determining what other policies or draft legislation Nedlac should consider, the Executive Director or Programming Committee, as the case maybe, must take into account –
 - 7.2.4.1. the importance of the matter;
 - 7.2.4.2. whether there is any other social dialogue forum that is able to consider the matter;
 - 7.2.4.3. whether consideration within Nedlac is likely to enhance the development of the policy or legislation; and
 - 7.2.4.4. the capacity of Nedlac and social partners to engage with the topic.
- 7.2.5. Nedlac is required in terms of section 5(1) (c) of the Nedlac Act to consider all proposed labour legislation relating to labour market policy before it is introduced into Parliament. The consideration of proposals related to labour legislation must take place in the Labour Market Chamber or a Task Team established by the Chamber.
- 7.2.6. Where any policy or legislation is tabled for consideration by Nedlac, the social partners must be provided with a reasonable opportunity to prepare and consult on the matter. The period for preparation should normally be one month.
- 7.2.7. The process thereafter should be concluded within a period based on the complexity of the matter, which is to be agreed upon and stipulated in the terms of reference. Unless the matter is one of exceptional complexity, this period should not exceed six months.



- 7.2.8. If a policy or bill which is tabled in Nedlac has been published for public comment, the Department must notify Nedlac of this and make the public comment, and any summary or response by the Department, available to the Parties for their consideration.
- 7.2.9. In cases where the matter falls within the terms of reference of more than one Chamber or other structure, the Programming Committee must decide where the matter will be considered.
- 7.2.10. Draft legal provisions may be introduced by any Constituency, either at the outset of the process or subsequently.


7.3. Procedure for establishment of an appropriate structure to consider a matter

- 7.3.1. The Executive Director, through the relevant managers of the Nedlac Secretariat, must table the matter in the next meeting of the appropriate Chamber, Committee or Forum.
- 7.3.2. Once the matter has been tabled in the appropriate Chamber, Committee or Forum, that structure may in turn –
 - 7.3.2.1. establish a Task Team for the purpose of considering a particular set of proposals; and
 - 7.3.2.2. determine the number of representatives each Constituency may appoint to the Committee, which may not exceed six.
- 7.3.3. Each Overall Convenor, or a Constituency Convenor who has been duly delegated to perform this function, must appoint:
 - 7.3.3.1. the Constituency Representatives;
 - 7.3.3.2. a Constituency Lead to be responsible for ensuring the Constituency participation in the Task Team or structure;
 - 7.3.3.3. an alternative lead person if the lead person is unavailable.
- 7.3.4. The first meeting of the Task Team must determine its terms of reference. The terms of reference must specify, to the extent necessary:
 - 7.3.4.1. timeframes,
 - 7.3.4.2. the method of considering the proposals including the involvement of external facilitators, experts, resource persons;
 - 7.3.4.3. whether technical support, legal opinions and/or research is required by one or more parties, individually or collectively;
 - 7.3.4.4. who will play the role of Chairperson. This may be Nedlac staff, the social partners on a rotating basis or an independent chairperson;
 - 7.3.4.5. whether an independent facilitator is required and the role such a person should play;
 - 7.3.4.6. how decisions will be recorded. This may be done by means of minutes, a decision-matrix or similar document.
 - 7.3.4.7. programme of work and/or schedule of meetings;
 - 7.3.4.8. documentation required for the respective parties to prepare for negotiation
 - 7.3.4.9. conflict resolution mechanisms, if they differ from the those in the protocol; and
 - 7.3.4.10. any other relevant matter.

7.4. Dispute Resolution

- 7.4.1. Where there are significant areas of disagreement in respect of any consideration of any policy or legislation, the Chairperson of the relevant structure should confer with the Constituency Leads of the Task Team and the Nedlac Secretariat to discuss whether any method of dispute resolution should be adopted.



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- 7.4.2. This may include –
 - 7.4.2.1. elevating the matter to involve more senior representatives of the constituencies including Chamber Convenors, Overall Convenors, or Constituency principals including relevant Ministers;
 - 7.4.2.2. bilateral engagements;
 - 7.4.2.3. the appointment of an independent mediator; and/or
 - 7.4.2.4. obtaining an advisory opinion.
 - 7.4.3. In the event that agreement on any issue is not reached, the disagreement and the parties' respective views must be recorded in the Nedlac Report.

7.5. Time frames for processing activities

- 7.5.1. The Secretariat should distribute the agenda for a meeting to all members at least five working days before a meeting, unless the meeting has been called on an urgent basis.
- 7.5.2. The Secretariat should distribute an action list based on decisions taken at any meeting within two working days of that meeting.
- 7.5.3. The Secretariat should distribute minutes of a meeting at least five working days before the following meeting.
- 7.5.4. Responses from Constituencies should be submitted within five working days, unless otherwise agreed. If the Secretariat does not receive responses from any Constituency, the Secretariat should send those Constituencies a second request with a shorter deadline.
- 7.5.5. If the Secretariat does not receive responses from all of the constituencies by the second deadline, the Secretariat should escalate the matter to the immediately more senior role-player, and send a letter to the relevant Chamber Convenors or, if it involves a non-Chamber structure, the Overall Convenor.

7.6. Preparation and approval of the Nedlac Report

- 7.6.1. Once the process of engagement on the policy has been finalised, a Nedlac Report will be prepared by the Secretariat and tabled at the Task Team or other structure that considered the matter.
- 7.6.2. The Task Team or structure must consider and recommend the Nedlac Report to the Management Committee for approval.
- 7.6.3. The Nedlac Report must be tabled at the following meeting of the relevant Chamber, Forum or Committee for noting.
- 7.6.4. In cases of urgency of submission, the Nedlac Report may be approved by the Overall Convenors.
- 7.6.5. The Nedlac Report should comprise the following sections:
 - 7.6.5.1. background (a brief description of what the issues are and how the matter arrived at Nedlac);
 - 7.6.5.2. an overview of the process of the Task Team and its members;
 - 7.6.5.3. the positions of the social partners;
 - 7.6.5.4. policy proposals or legislative drafting where relevant;
 - 7.6.5.5. areas of agreement and/or disagreement;
 - 7.6.5.6. any additional recommendations; and
 - 7.6.5.7. annexures, if applicable.



7.7. Processing of codes of practice in terms of section 203 of the LRA

- 7.7.1. Any proposal to issue a new Code of Good Practice or to replace or change an existing Code of Good Practice must be tabled in the Labour Market Chamber and the process as outlined above is to proceed.
- 7.7.2. In the event that the social partners agree on a Code, the final text must be submitted to the Management Committee for approval.
- 7.7.3. After approval, the Nedlac secretariat must ensure the publication of the Code in the Government Gazette in terms of section 203 (2) of the LRA.
- 7.7.4. In the event that the social partners do not agree, a report must be sent to the Management Committee with the Nedlac Report indicating areas of agreement and disagreement as contemplated by section 203 (2A) (b) of the LRA. The Nedlac Secretariat must advise the Minister that Nedlac has considered the proposed Code and has been unable to reach agreement and forward the relevant Nedlac Report to the Minister for consideration in terms of section 203 (2A) of the LRA.

8. CONSTITUENCY REPRESENTATIVES' CODE OF CONDUCT

- 8.1. Representatives must –
 - 8.1.1. have a mandate to participate in Nedlac activities;
 - 8.1.2. respond to correspondence from the Secretariat within the specified timeframes;
 - 8.1.3. attend meetings to which they have been appointed;
 - 8.1.4. be prepared to engage on matters beyond a positional stance and negotiate with a view of reaching agreement;
 - 8.1.5. confirm their participation in meetings timeously so that meetings are not cancelled at the last moment; and
 - 8.1.6. uphold and follow the principles of good conduct and ethics as set out in clause 3 of Nedlac's Code of Ethics.



9. PROCESSING OF NEDLAC REPORTS TO PARLIAMENT

- 9.1. Government departments are bound, as one of the parties, to accurately reflect the Agreements reflected in Nedlac Reports in Bills tabled in Parliament. Where detailed legal drafting is included in the Agreement, this should be reflected in the Bill as agreed. Where specific legal drafting was not included in the Agreement, the substance and spirit of the Nedlac Agreement must be reflected in the Bill prepared for tabling in Parliament.
- 9.2. If, prior to tabling in Parliament, any changes are introduced into a Bill that has been considered by Nedlac which are inconsistent with the agreement recorded in the Nedlac Report on that matter:
 - 9.2.1. the relevant government department must ensure that the Executive Director is informed of the changes; and
 - 9.2.2. the Executive Director should inform the affected Overall Convenors which should determine, in consultation with the Executive Director, any next steps that should be taken including –
 - 9.2.2.1. reconvening the structure which considered the Bill, or convening a new structure, to consider the changes;
 - 9.2.2.2. if appropriate, appearing at the Parliament Portfolio Committee to deliver a report regarding the changes.
- 9.3. Clause 9.2 is applicable irrespective of whether the changes are introduced at the instance of the Cabinet, a government department or the State law advisors.
- 9.4. The Nedlac Secretariat must forward all Reports to the Minister for tabling in the National Assembly and National Council of Provinces in terms of section 9 of the Act.
- 9.5. The following provisions are applicable to Parties during deliberations by Parliament on any Bill that has been considered at Nedlac:
 - 9.5.1. parties must not re-open discussion on any matter on which agreement has been reached in Nedlac;
 - 9.5.2. parties retain the right to raise matters in Parliament on which agreement has not been reached at Nedlac.

10. TRACKING OF NEDLAC REPORTS AND AGREEMENTS

- 10.1. The Nedlac Secretariat must track the progress of Bills through Parliament and report at least annually to the Management Committee.
- 10.2. The Nedlac Secretariat, if requested by the Constituencies, must request government departments to report back to Chambers on the progress in the implementation of any policy, law or agreement reached or considered at Nedlac. A government department that is requested to provide a report in terms of this clause must provide it to Nedlac expeditiously.

