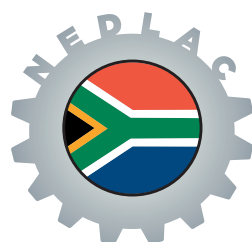


NEDLAC CONSTITUTION



National Economic
Development and
Labour Council

NEDLAC CONSTITUTION

1. DEFINITIONS

In this Constitution any expression that is defined in the Act has that meaning 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. **“Committee”** includes the management committee, the standing committees established in terms of clause 3, any task team established by a Chamber in terms of clause 7.5 and any other committee established by the Executive Council or the Management Committee;
- 1.4. **“Constituent”** means organised business, or organised labour, or the State or organisations of community and development interests, and “constituency” shall bear the same meaning;
- 1.5. **“Council”** means the National Economic, Development and Labour Council;
- 1.6. **“Constitution”** means the Nedlac Constitution as provided for in section 4 of the Nedlac Act;
- 1.7. **“Labour Relations Act”** means the Labour Relations Act, 66 of 1995;
- 1.8. **“Management Committee”** means the committee established in terms of clause 3.3;
- 1.9. **“Minister”** means the Minister of Employment and Labour;
- 1.10. **“Member”** means the representative of any party to the Council save where the context indicates otherwise;
- 1.11. **“National summit”** means the annual meeting of Nedlac constituencies and interested parties called by the executive council in terms of clause 15;
- 1.12. **“Organisations of community and development interest”** means those non-governmental organisations identified by the Minister contemplated by section 3(5) of the Act;
- 1.13. **“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;
- 1.14. **“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;
- 1.15. **“Overall convenors’ committee”** means the committee consisting of the members of the executive council appointed as overall convenors for their constituency in terms of clause 6.6;
- 1.16. **“Party to the Council”** means any organisation which has members representing it on the Council;
- 1.17. **“Public Finance Management Act”** means the Public Finance Management Act, 1 of 1999;
- 1.18. **“Standing Committee”** means the audit and risk committee, the human resource and ethics committee, the overall convenors’ committee and the committees established to perform the functions of the Council in terms of sections 29 and 77 of the Labour Relations Act;
- 1.19. **“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;
- 1.20. **“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 is a public entity listed in Schedule 3A of the Public Finance Management Act.

3. COMPOSITION OF COUNCIL

The Council shall be composed of -

- 3.1. an executive council, which shall be the governing body and the accounting authority 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;
- 3.4. standing committees of the management committee;
- 3.5. any other committees which may be established by the executive council or the management committee; and
- 3.6. a secretariat headed by an Executive Director.

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 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 power 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, Regulations, Instructions, 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 conflict between provisions of this constitution and any provisions of the Act, the Act shall prevail.

5. POWERS OF THE EXECUTIVE COUNCIL

- 5.1. 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 other organs of state 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 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 parties and members;
 - 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 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.
- 5.2. The executive council may authorise by way of delegation or assignment any chamber, committee or official to exercise the powers conferred on it in terms of the Act, except the power to amend this constitution.

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 President;
- 6.1.4. not more than 18 members who represent organisations of community and development interests, appointed by the Minister in the Office of the Presidency.
- 6.2. An equal number of members shall be appointed from each constituency.
- 6.3. The responsibility for the chairing of meetings of the executive council shall be rotated, on an annual basis, amongst the constituencies or such other frequency as may be determined by the executive council.
- 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 resignations 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. The overall convenors shall meet as a committee as may be necessary.
- 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 must 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 request is approved by the constituency's Overall Convenor.

7. THE CHAMBERS

- 7.1. A chamber shall be composed of an equal number of members not exceeding six:
 - 7.1.1. appointed by the constituency of organised business;
 - 7.1.2. appointed by the constituency of organised labour;
 - 7.1.3. appointed by the constituency to represent the State; and
 - 7.1.4. In the case of the Development chamber, appointed by the constituency of community and development interests.
- 7.2. The meeting of each chamber shall be chaired by Constituencies on an annual rotational basis, or on such other frequency as determined by that chamber. If so requested by a chamber, the Secretariat may, on an ad-hoc basis, chair meetings of a chamber.
- 7.3. A chamber shall meet at least four times in every financial year unless the chamber determines that it is able to conduct its work in any year in a lesser or greater number of meetings..
- 7.4. A chamber may consider issues relevant to that chamber's scope of work..
- 7.5. A chamber may, for the purposes of considering any matter within its scope, establish a task team with specified terms of reference and composition.
- 7.6. Each constituency in a chamber shall designate a convenor.
- 7.7. Each constituency must appoint its representatives, and alternates to its representatives, in terms of the criteria and procedures determined by that constituency. An alternate must attend meetings in the absence of a representative.
- 7.8. Each chamber shall have such further functions and terms of reference as may be decided by a protocol adopted by the chamber and approved by the management committee.
- 7.9. The chambers may interact with any government department in respect of issues that fall within that department's jurisdiction.
- 7.10. All reports, adopted by a chamber when considering a matter in terms of either section 5(1)(c) or (d) shall be submitted to the management committee for confirmation. The management committee -

7.10.1. shall ratify consensus recommendations made by any chamber, except where by consensus the management committee decides to amend such recommendations;

7.10.2 may refer any report to the executive council for its consideration.

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; and

8.1.2. the convenors from each constituency in each of the chambers may choose to replace any convenor with another representative;

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 to ensure parity of representation of parties.

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 may establish committees to consider any matter that falls outside the terms of reference of any chamber and must specify the terms of reference and composition of such a committee.

8.5. The responsibility for the chairing of meetings of the management committee shall be rotated, on an annual basis, amongst the constituencies or such other frequency as may be determined by the management committee.

8.6. The management committee may approve protocols and terms of reference regulating the functioning of chambers and committees.

9. OVERALL CONVENORS

9.1. Each convenor must coordinate the participation of their respective constituency members in respect of each of the chambers and all committees.

9.2. The overall convenors' committee must undertake tasks delegated by the executive council or the management committee.

10. ADMISSION OF MEMBERS AND PARTIES

10.1. Applications for admission as a party to business, labour and community and development constituencies of the Council shall be made to the executive director, in writing, in the form required by the executive council.

10.2. The executive director on receiving such an application shall assess whether it is compliant with the requirements for a valid application and, if it is, submit such application to the overall convenor of the affected constituency, to enable the constituency to consider it in accordance with the criteria for admission of parties set out in the Schedule to the Constitution.

10.3. The overall convenor shall within 45 days of receipt of an application from the executive director, advise the executive director of the views of the constituency.

10.4. Once the executive director has received the views of the constituency or the 45 day period contemplated in clause 10.5 has lapsed, the executive director shall take the following steps to enable the executive council to consider the application at its next scheduled meeting

10.4.1. submit the application, together with any views expressed by the constituency, to the overall convenors' committee for consideration;

- 10.4.2. submit the application, together with the recommendation of the overall convenors' committee, for consideration by the management committee; and
- 10.4.3. thereafter, submit all documentation concerning the application to the executive council to decide whether to admit the applicant as a Party to the Council, provided the documents are received at least ten working days before the deadline for circulating documents to the executive council.

11. TERMINATION PARTY TO THE COUNCIL

- 11.1. The admission of any party to the Council may be terminated by the executive council in accordance with the provisions of this clause in the following circumstances:
- 11.1.2. the party no longer meets the criteria set out in the Schedule to the Constitution, or a
- 11.1.2 the party has ceased to function as provided for in terms of its own constitution or the law.
- 11.2. If the executive director has grounds to believe that any of the circumstances contemplated by clause 11.1 may exist in respect of a party to the Council, the executive director must request the overall convenor of constituency concerned to consider the matter and provide its views within 45 days.
- 11.3. Where any constituency has grounds to believe that the circumstances contemplated by clause 11.1 exist in respect of any party to the council within its constituency, the overall convenor of that constituency must notify the executive director.
- 11.4. Where any of the circumstances contemplated in clause 11.1. are present, the executive director must provide the party to Council concerned with a period of 45 days to make representations as to why it should not be removed by the executive Council as a party to the Council. A party may only be removed for failing to meet the membership threshold set out in Schedule One if –
- 11.4.1. it has been given notice by the executive director that it does not meet the membership threshold; and
- 11.4.2. a period of one year has elapsed since that notice.
- 11.5. The executive director shall take the following steps to ensure that the possible termination of a party to the Council is considered by the executive council at its next scheduled meeting –
- 11.5.1. submit the relevant information, together with any views expressed by the constituency and the party to the Council concerned, to the overall convenors' committee for consideration;
- 11.5.2. submit the relevant information, together with the recommendation of the overall convenors' committee, for consideration by the management committee; and
- 11.5.2. thereafter, submit the relevant information to the executive council, to decide whether to remove the Party from the Council, provided the documents are received at least ten working days before the deadline for circulating documents to the executive council.

12. PROCEEDINGS AT MEETINGS

- 12.1. All meetings, in terms of this constitution, shall be conducted in accordance with any rules which may be made by the management committee. The Secretariat shall have the responsibility, but not the exclusive jurisdiction, to prepare the agenda and any notices for all meetings held in terms of this constitution.
- 12.2. The parties to the Council present at any meeting held in terms of this Constitution shall seek to adopt any decisions of any by consensus in accordance with any procedures or protocols as determined or amended by the executive council.
- 12.3. Any decision on an administrative matter may be adopted by a simple majority of the members participating in the meeting.

- 12.4. The quorum necessary for meetings of the executive council, committees (excluding the management committee) or chambers shall be one third of the number of members of the executive council, committee 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 each constituency shall have at least two members present for the meeting to be quorate.
- 12.6. Where a meeting of the executive council, committee or chamber is not quorate, a majority of those members present at the meeting may decide that the meeting –
 - 12.6.1. will continue, in which case any resolution adopted in the meeting must be circulated to the full membership for their consideration; or
 - 12.6.2. will be adjourned for a period of not more than one week, in which case the meeting may proceed, irrespective of whether a quorum is participating.
 - 12.6.3. Organisations shall be entitled at any time, and entirely within their own discretion to replace any of the members representing them on the committees or chambers by other persons provided that due reasonable notice of such replacement is given in writing to the executive-director prior to the meeting.
- 12.7. Each constituency may appoint its members to represent it on any structure of the Council in terms of such criteria as that constituency may determine.
- 12.8. In respect of organised labour, representation shall be determined in proportion to the paid-up membership of the federations of trade unions that are admitted as parties.
- 12.9. Each constituency may appoint an alternate to its members. The appointments shall be done in terms of the criteria and procedures determined by each constituency.

13. RECORDS

- 13.1. The Council shall maintain records of its proceedings including all meetings of the executive council, management committee, chambers, committees and task teams.
- 13.2. The record of a meeting must include an accurate reflection of –
 - 13.2.1. all decisions and resolutions adopted at a meeting; and
 - 13.2.2. details of attendance at the meeting and any apologies given.
- 13.3. A record of each meeting must be prepared and adopted at the following meeting of that structure.

14. REPORTS

- 14.1. The Council shall, in accordance with the Public Finance Management Act, furnish the Minister with an annual report in respect of its activities.
- 14.2. In the event of dissenting views these shall be included in 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, in accordance with section 52 of the Public Finance Management Act.
- 15.3. The activities of the Council, shall be funded from the budget of the Department of Employment and Labour.
- 15.4. The executive director shall prepare quarterly performance and financial reports for management committee meetings.
- 15.5. 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.

- 15.6. Subject to the availability of funding, the Council may procure the services of experts to advise a chamber, or any committee in respect of the performance of its functions.

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 -
- 16.3.1. to involve as many interested parties as possible in order to give feedback on Council activities;
 - 16.3.2. to obtain inputs from organisations or persons not normally involved in Council activities;
 - 16.3.3. to obtain broader consultation on issues being deliberated upon in the Council.
- 16.4. The annual summit shall be chaired by one or more persons appointed by the executive council.
- 16.5. The executive council shall invite the President, the Deputy President or any other person to address the annual summit.

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 decision making powers.

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 -
- 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; and
 - 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 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.

20. DISPUTES ABOUT THE CONSTITUTION

- 20.1. A party to the Council must refer any dispute about the interpretation or application of this Constitution to arbitration in terms of the Arbitration Act, 42 of 1965.
- 20.2. If an application to be admitted as a party to the business, labour or community constituencies is refused by the executive council in terms of clause 10, that applicant may refer a dispute concerning such refusal to grant admission to arbitration in terms of the Arbitration Act, 42 of 1965.

SCHEDULE

CRITERIA TO BECOME OR REMAIN PARTIES TO THE COUNCIL

Organised labour

The following criteria apply to federations of trade unions to become, or remain as, parties to the Council:

1. it must be a registered as a trade union federation for a continuous period of two years and be compliant with section 107(1)(a) to (d) of the Labour Relations Act. A registered trade union federation formed by the merger of one or more registered federation of trade unions may be admitted at any time after its registration, if each of the federations that merged had been registered for more than two years at the time of the merger; and
2. its affiliates have a membership of at least 300 000 employees duly certified by the Registrar of Trade Unions.

Organised business

The following criteria apply to federations of employer or business organisations to become, or remain as, parties to the Council:

1. it must be registered as -
 - a. a federation of employers' organisations for a continuous period of two years and must be compliant with section 107(1)(a) to (d) of the Labour Relations Act; or
 - b. as a non-profit company in terms of the Companies Act, 2008 (Act No.71 of 2008); and
2. it must have a paid-up membership base of organisations representing the employers of 1 000 000 or more employees or making a GDP contribution of at least 10%.

Organisations of community and development interest

The following criteria apply to an organisation of community and development interest to become, or remain as, parties to the Council:

1. it must be registered as a nonprofit organisation in terms of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997) or as a non-profit company in terms of the Companies Act, 2008 (Act No. 71 of 2008);
2. it represents a significant community interest on a national basis;
3. it has a direct interest in reconstruction and development; and
4. it is constituted democratically.

This revised version of the Nedlac Constitution was approved by the Exco on 26 January 2024.