

ANNEXURE A

**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 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 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 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.

4. Appointing a panelist 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 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 one or more of the responding parties may agree 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;
 - 4.5.2 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) 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 Panelist within 5 (five) days of the conclusion of any of the processes set out in Clause 3 of the Code of Good Practice

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 Panelist (in terms of clause 4.7) fail to produce the Report within the prescribed timeframes, 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 any (3) three of the 4 (four) constituencies are present. However should 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 unanimously 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.