



NATIONAL ECONOMIC DEVELOPMENT AND LABOUR COUNCIL

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WHAT IS SECTION 77?

There has been much discussion in the media over the past few weeks around the Nedlac Section 77 process and the role of the institution in ensuring protest actions are protected. Section 77 refers to Section 77 of the Labour Relations Act which speaks to protest action to promote or defend socio-economic interests of workers. The intention of this section is primarily to bring disputing parties together to engage on a matter in order to find resolution, and at the same time to try and prevent any protest action which is burdensome to both worker and employers and negatively affects the economy.

The Act has designated Nedlac, as the primary social dialogue forum in the country, to be the platform for these engagements. A Nedlac Standing Committee exists to oversee this process. The Standing Committee is made up of a representative of each of the four social partners, and is chaired by the Executive Director who also has a casting vote. In practice the way this works is that a trade union will serve a Section 77(1)(b) notice on Nedlac. This notice outlines the nature of their dispute, and also cites the respondents (who are usually Government departments and/or organised Business). Nedlac then convenes a meeting of the Standing Committee, the applicants (the unions) and the respondents. At times this has meant we have had to coordinate the diaries of the four Standing Committee members, the applicants, the Presidency, National Treasury, the Department of Labour and Organised Business.

This first meeting is an opportunity for the applicant to give more detail on its application, and for the Standing Committee and the respondent to ask questions of clarity. Arising from the first meeting a number of things can happen

- o An engagement process can be set up with an independent facilitator
- o A second meeting can be set up giving the respondents time to report to their principals and develop a response to the dispute

The role of the Section 77 Standing Committee at this point is to see if the parties can find some common ground to resolve the dispute through dialogue. If the parties cannot find common ground the Standing Committee will issue a (1)(c) notice which states that the matter has been deemed considered. At this point the union can issue a (1)(d) notice which advises of intention to go on protest action 14 days after submission.

The action that the union calls for in the Section 77 (1)(d) notice is protected under law. This protection is given not just to members of the union or federation who lodged the



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notice at Nedlac, but to all workers [essential services workers are governed by a separate set of laws] who are sympathetic to that cause. The rule of no-work-no-pay applies for workers who are taking the day off to join the protest action. The law is quite straightforward regarding the Section 77 process. The Standing Committee work within strict rules of how to manage the process. The parties similarly have clear time-frames they have to follow.

In summary the following points are key:

- The intention of Section 77 of the LRA is to get parties to talk in the hope that disputes of a socio-economic nature can be resolved through social partner engagement
- To this end parties are discouraged from using Section 77 and Nedlac as a rubber stamp to get permission to strike.
- Once the engagements have deadlocked the Standing Committee makes a ruling that further engagements will serve no benefit to the parties
- The Standing Committee will, based on this decision, issue a Sec 77 (1)(c) notice to the applicants
- Should they applicants decide to engage on protest action they must give a 14-day notice period in the form of a Section 77 (1)(d) notice which advises Nedlac of the date of the protest
- This protest is then considered protected and no employer may institute disciplinary action against any worker who chooses to join the action