For attention: Hon N Meth, MP

Minister of Employment and Labour

Email: Kopano.Kgathlanye@labour.gov.za, Hlukani.Mabunda@labour.gov.za

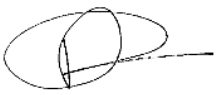
28 November 2025

Dear Hon Meth

The Helen Suzman Foundation is an NGO that advocates for constitutional democracy and human rights in South Africa. We attach our written submission in response to the invitation for comments on the Draft National Economic Development and Labour Council (NEDLAC) Bill 2025.

Should you have any queries, it would be appreciated if you could contact me at the following email address: naseema@hsf.org.za

Yours Sincerely



Naseema Fakir

Executive Director

Helen Suzman Foundation

Helen Suzman Foundation Trust
Trust No: 1455/93
NPO Reg. No. 036-281-NPO
PBO no: 930020049

Postnet Suite 130, Private Bag
x2600, Houghton 2041
Tel: +27 11 482 2872
Email: info@hsf.org.za
Website: www.hsf.org.za

North Block, La Val Office
Block, 45 Jan Smuts Avenue,
Westcliff, Johannesburg,
2193
South Africa

HSF

1. Introduction

1.1. The National Economic Development and Labour Council ("NEDLAC") serves as a unique socio-economic governance body that encourages participation between all stakeholders in the labour market. As such, inclusive governance lies at its heart.

1.2. The National Economic Development and Labour Council Bill, 2025 ("the Bill") seeks to replace the 1994 Act and create new rules and regulations governing participation in NEDLAC.

1.3. HSF welcomes the reform of NEDLAC, particularly given longstanding criticisms regarding inefficiency, exclusivity, and past allegations of financial misconduct. However, HSF submits that, in its current form, the Bill falls short of ensuring effective, inclusive, and accountable participation by civil society.

1.4. While this submission addresses the proposed criteria for admitting federations of non-governmental organisations ("NGOs"), it also highlights other areas where the Bill risks undermining transparency, fairness, and civil-society participation, including:

1.4.1. The vague and manipulable standards for admission of federations of NGOs;

1.4.2. Arbitrary and over-burdensome requirements that apply only to civil-society organisations;

1.4.3. The exclusion of charitable trusts, which play a critical role in supporting vulnerable communities;

1.4.4. A lack of clear regulations, membership thresholds, and timeframes for implementation, creating the potential for inconsistent or arbitrary decision-making; and

1.4.5. Insufficient mechanisms for public participation in the development of NEDLAC's governance instruments, such as the code of conduct.

1.5. HSF therefore submits that, if the Bill is to proceed, it must be amended to ensure that NEDLAC is a genuinely representative, inclusive, and accountable forum by amending the Bill to:

1.5.1. Ensure that organisations continue to represent significant community interests through introduction of clear criteria for admission and procedural guidelines for evaluation of representation;

1.5.2. Apply standards for admission equally across all parties;

1.5.3. Include charitable trusts as a non-governmental organisation under the schedule;

1.5.4. Impose a clear and reasonable time frame for the promulgation of regulations; and

1.5.5. Opening the code of conduct to public commentary before adoption.

2. The Bill Fails to Define "Most Representative"

2.1. Section 6 of the Bill regulates parties eligible to participate in NEDLAC. Section 6(4) provides that a federation of NGOs may only be admitted if it:

2.1.1. Meets the criteria for "organised civil society" set out in the Schedule; and

2.1.2. Is appointed by the Minister in the Presidency on the recommendation of the Executive Committee in accordance with a prescribed process.

2.2. The Schedule introduces three new criteria for organised civil society. A federation must:

2.2.1. Be registered as a nonprofit organisation under the Nonprofit Organisations Act, 1997, or as a non-profit company under the Companies Act, 2008;

2.2.2. Be democratically constituted; and

2.2.3. Be the most representative federation of NGOs in the Republic in relation to civil-society interests on socio-economic issues.

2.3. The shift from recognising organisations that "represent a significant community interest on a national basis" (1994 Act) to those that are "the most representative federation" constitutes a substantial and unjustified narrowing of the admission standard.

2.4. This approach risks excluding grassroots organisations, particularly those that may lack access to information on federation formation or criteria, thereby marginalising vulnerable communities. Further, the Bill provides no explanation for abandoning a long-standing, workable standard in favour of one that is vague, undefined, and inherently difficult to satisfy.

2.5. HSF is particularly concerned that the term "most representative" as it:

2.5.1. Lacks objective metrics for determining representation;

2.5.2. Fails to specify how representation is measured across diverse sectors;

2.5.3. Provides no mechanism for resolving disputes about representation.

2.6. By contrast, the 1994 Act's requirement to represent "a significant community interest on a national basis" has proven inclusive, practical, and verifiable over three decades.

2.7. HSF submits that the Bill, in its current form, risks:

2.7.1. Limiting civil-society participation to a single "umbrella" federation, even where multiple federations legitimately represent different constituencies;

2.7.2. Introducing opacity into the admission process; and

2.7.3. Creating opportunities for arbitrary exclusion, undermining pluralism in NEDLAC.

2.8. HSF therefore recommends that the Bill either:

2.8.1. Retain the 1994 Act standard; or

2.8.2. Introduce precise, objective, and measurable criteria for determining whether a federation is "the most representative," including:

2.8.2.1. A transparent evidentiary framework;

2.8.2.2. Clear procedural guidelines; and

2.8.2.3. Mechanisms for appeal or review to prevent arbitrary outcomes.

3. Arbitrary and Over-Burdensome Admission Requirements

3.1. Section 6 requires that federations of NGOs be appointed by the Minister in the Presidency on the Executive Committee's recommendation.

3.2. This requirement is unique to civil-society organisations and does not apply to the State, organised labour, or business organisations. HSF submits that holding civil society to a higher standard than other parties is exclusionary, particularly where NGOs have previously litigated against the government or criticised its policies which may influence the decision making of the Minister.

3.3. HSF submits that the admission requirements are amended to equalise appointment requirements across all NEDLAC parties or removing the Ministerial appointment requirement for civil-society organisations altogether.

3.4. This measure ensures consistency and standardises the admission criteria to fairly apply to all parties.

4. Exclusion of Charitable Trusts

4.1. Under the schedule for the criteria to become or remain as a party to NEDLAC, section 1 under Organised Civil Society specifies that:

4.1.1. *"It must be registered as a nonprofit organisation in terms of section 13(2)(b) 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)."*

4.2. A charitable trust is a legal personality that is governed via the Trust Property Control Act of 1998 and must be registered via the Master of the High Court. They may also seek Public Benefit Organisation status.

4.3. Charitable trusts are created with the goal to distribute wealth to the benefit of society through the establishment or funding of programmes that help many vulnerable groups in South Africa.

4.4. By excluding charitable trusts, this excludes a number of foundations that have been vital in advancing the rights and interests of marginalised groups in South Africa that may constitute valuable voices in NEDLAC's organisation

4.5. HSF proposes that the schedule must be amended to include charitable trusts that are registered under the Trust Property Control Act of 1998 and is

registered as a Public Benefit Organisation with the South African Revenue Services.

5. Lack of Critical Documents and Timeframes

5.1. Section 13 obliges the Minister to promulgate regulations after meeting the requirements in section 13 (3)(a) – (c).

5.2. Without these regulations NGOs may neither be admitted nor removed from NEDLAC, freezing the current status quo indefinitely.

5.3. Additionally, the regulations are intended to specify membership thresholds of trade unions and employers and business organisations. The membership thresholds therefore are undefined for civil society and state parties, creating a risk of arbitrary decision-making and unbalanced representation.

5.4. This similarly applies to the appointment of the executive committee as it is subject to the provision of the constitution under section 7 of the Bill. However, the Bill does not specify who will draft and adopt the Constitution, nor whether it will go through a public consultation process or a time frame for the above. This results in another deadlock where the executive committee is unable to be appointed as its process must be provided for in the constitution.

5.5. While the substantive content of the constitution is expanded upon, there remains a lacuna of uncertainty around the procedural underpinnings of the constitution.

5.6. In order to ensure the efficacy of NEDLAC, HSF recommends that the Bill:

5.6.1. Specify a clear timeframe for the Minister to promulgate regulations;

5.6.2. Specify who is responsible for the drafting and adoption of the constitution, as well as impose reasonable timeframes on this process, and

5.6.3. Include membership thresholds for civil society, state, and other parties to prevent inconsistent or exclusionary outcomes.

6. Lack of Public Participation in Governance

6.1. Section 12 requires the Executive Committee to develop a code of conduct for NEDLAC parties and representatives.

6.2. While such a code is essential for maintaining integrity and accountability, HSF submits that the process must be transparent. Given NEDLAC's use of public funds and impact on legislation, the code should be gazetted for public comment before adoption and include mechanisms to prevent misconduct, particularly in light of past allegations against former officials such as Mfanufikile Daza.

6.3. Opening this process to public participation will ensure broader input and engagement that is necessarily to instil confidence in NEDLAC and avoids any potential litigation regarding opaque procedures.

7. Conclusion

7.1. HSF supports efforts to modernise NEDLAC and strengthen civil-society participation. However, the Bill's current formulation raises significant concerns across multiple dimensions:

7.1.1. The proposed criteria for admitting federations of NGOs are vague, undefined, and may exclude grassroots organisations;

7.1.2. Arbitrary and overly burdensome requirements apply solely to civil-society organisations, creating inequitable standards;

7.1.3. Charitable trusts, which provide essential socio-economic support to vulnerable communities, are excluded from participation;

7.1.4. The absence of clear regulations, membership thresholds, and implementation timeframes creates the risk of inconsistent or arbitrary decision-making; and

7.1.5. Mechanisms for public participation in governance, including the development of NEDLAC's code of conduct, are insufficient.

7.2. Without addressing these concerns, the Bill risks undermining representation, transparency, and accountability, contrary to the constitutional principles of participation and pluralism.

7.3. HSF therefore urges that the Bill prioritised oversight and accountability of the executive committee and parties to facilitate transparency and accountability to the public, as well as mitigate arbitrary or exclusionary outcomes so that all parties with legitimate interests have the opportunity to apply to participate in NEDLAC.