

TOBACCO PRODUCTS AND ELECTRONIC DELIVERY SYSTEMS CONTROL BILL

National Economic Development and Labour Council

14 MAY 2025

Presentation to the Portfolio
Committee on Health



National Economic
Development and
Labour Council

Tobacco Products and Electronic Delivery Systems Control Bill

Presentation Overview

1. Introduction
2. Purpose, Background and Objective
3. Nedlac Process Overview
4. Discussions including areas of agreement and areas of disagreement on various sections of the Bill
5. Recommendations Beyond the Bill
6. Key concerns raised through the engagements
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Introduction

- The advent of democracy in 1994 brought new paradigm in resolving political as well as workplace conflict, as well as key socio-economic issues facing the country.
- South Africa acknowledged social dialogue as a key instrument to address social and economic challenges since 1994.
- The National Economic Development and Labour Council (NEDLAC) was therefore established to promote and facilitate social dialogue.
- NEDLAC is the vehicle by which Government, labour, business and community organisations will seek to cooperate, through problem-solving and negotiation, on economic, labour and development issues and related challenges facing the country.

Vision

To promote growth, equity and participation through social dialogue

Mission

To give effect to the NEDLAC Act by ensuring effective public participation in labour-market and socio-economic policy and legislation, and to facilitate consensus and cooperation between Government, labour, business and the community in dealing with South Africa's socio-economic challenges.

Values

- Accountability;
- Transparency;
- Integrity and ethical conduct;
- A spirit of partnership; and
- Problem-solving and consensus-seeking

Nedlac Mandate

NEDLAC's mandate is derived from the following:

1. The NEDLAC Act No. 35 of 1994
2. The Labour Relations Act 66 of 1995
3. NEDLAC Founding Declaration
4. NEDLAC Constitution
5. NEDLAC Protocols

Purpose, Background and Objectives

1. Purpose of the Presentation

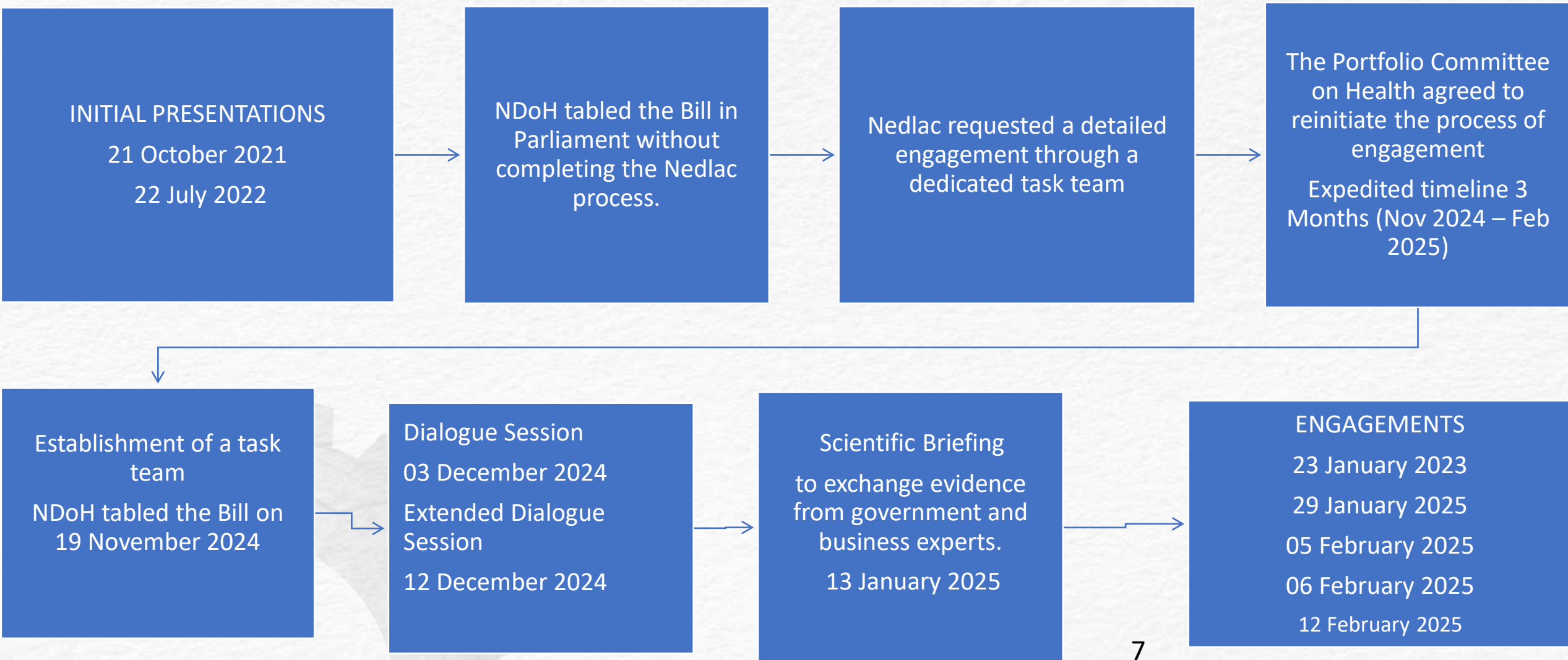
- To brief Parliament on the Nedlac process and social partners engagements on the Tobacco Products and Electronic Delivery Systems Control Bill (“the Bill”).
- To highlight areas of agreement, disagreement and additional recommendations made by social partners.

2. Background & objectives of the Bill

Seeks to:

- Regulate smoking, the sale and advertising of tobacco products and electronic delivery systems and the packaging and appearance of tobacco products and electronic delivery systems and to make provision for the standardisation of their packaging.
- It further seeks to provide for standards in respect of the manufacturing and export of tobacco products and electronic delivery systems, prohibit the sale of tobacco products and electronic delivery systems to children; prohibit the free distribution of tobacco products and electronic delivery systems; and prohibit the sale of tobacco products and electronic delivery systems by means of vending machines.

Nedlac Process Overview

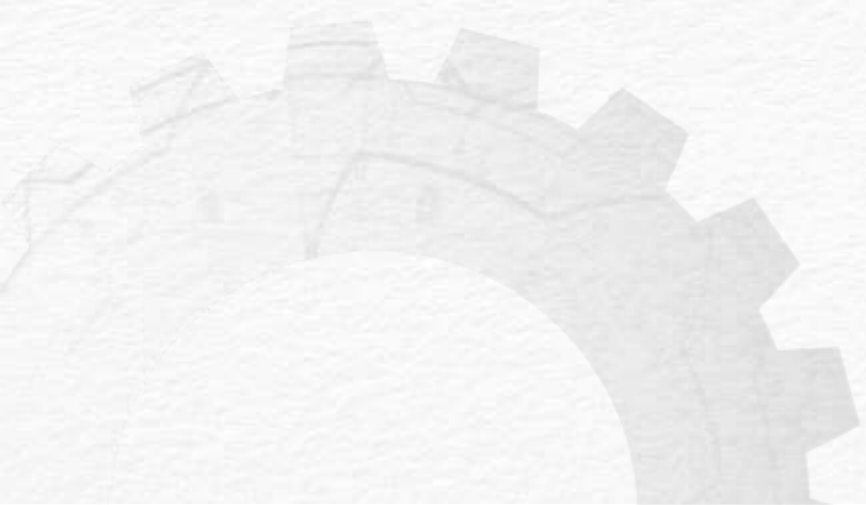


Summary on key issues of Disagreement

- The areas of disagreement centred around overarching divergent assumptions primarily, between the proposals from Business and Government.
- These fundamental differences had cross-cutting effect on various areas of the Bill, including the Preamble. Consequently, while there were agreements reached in some areas, they were mixed with some disagreements..
- These are pertinent:
 - The illicit trade
 - The availability of cigarettes at extremely low tax evaded prices.
 - Enforcement
 - Harm reduction
 - Differentiation of products based on different levels of risks
 - Toxicity of Nicotine

Long Title of the Bill

- **Business** proposed amendments to the long title that reflected its proposed changes to the Bill.
- **Government** reviewed the long title and did not agree to the changes.



Preamble of the Bill

Issue	Disagreement	Agreement
Illicit trade	Business proposed inclusion of Illicit trade in the Preamble. Labour and Community agreed. Government disagreed.	Government added definition + Section 17(6); all parties acknowledged its impact.
Low pricing	Business proposed inclusion of Illicit trade in the Preamble. Labour, and Community supported it. Government opposed preamble inclusion.	Government prohibited discounts through Section 3(4)(f).
Enforcement	Business proposed inclusion of enforcement in the Preamble. Labour, and Community agreed with Business. Government disagreed and indicated that currently enforcement works.	Government expanding enforcement under Clause 17, plans for training.

Preamble of the Bill

Issue	Disagreement	Agreement
Product differentiation	Business advocated a differentiated approach to regulations, based on the risk profile or level of harmfulness of the products. Community supported a differentiated approach. Government disagreed, arguing that “all harms are harmful”. Labour supported Government’s viewpoint.	.
Toxicity of nicotine	Business opposed; Labour sided with Government.	Government maintained inclusion based on health evidence.
'Youth' in Preamble	No disagreement	All parties agreed to remove reference to “Youth”.

Definitions

Definitions Agreed to	Definitions Not Agreed To
Technical amendments made included the following: ○ Rearranged wording of “multi-unit residence.” ○ Changed “characterised” to “characterising.” ○ Adjusted the definition of “public place.” ○ Moved the definition of “consumer” from Section 3(5)(b) to the general definitions section for consistency across the Bill.	Business proposed changes to key definitions to reflect scientific and technical distinctions between product categories, including: •Tobacco products, •Electronic tobacco delivery systems, •Electronic nicotine/non-nicotine delivery systems, •Oral nicotine products. Government did not support this approach, arguing existing definitions of “smoking” and “emissions” sufficiently cover all tobacco and related products. .

New Definitions Disagreed

Definitions Not Agreed To

New Definitions Proposed by Business:

- Suggested adding:
 - “Aerosol” or “vapour”** to differentiate non-combustion processes.
 - “Use”** to reflect various delivery methods.
 - “Oral nicotine products”** for products absorbed differently (e.g., lozenges, pouches).
- Business argued that these changes align with **evolving nicotine product science** and ensure regulatory precision.

Stakeholder Positions:

- Community** supported Business’s categorisation.
- Labour** stressed the need for definitions that are inclusive and **comprehensive without prejudice**.
- Government** maintained that current definitions already meet the Bill's needs.

Section 2: Control over smoking

- **Definition Scope:** Smoking is broadly defined to include inhaling, exhaling, or handling products that emit substances—including electronic non-nicotine systems.
 - **Business** proposed revising the clause heading to explicitly reference EDS usage, but **Government** disagreed with the change, arguing that the existing definition already covers it.
- **Technical Textual Adjustment:**
 - Business requested a minor amendment in **Clause 2(1)(b)** to replace “of” with “or”. **Government** declined, retaining the original wording.
- **Private Dwellings and Workplaces (Clause 2(1)(f)):**
 - The original clause prohibited all smoking in dwellings used for childcare, tutoring, or as workplaces.
 - After deliberation, **Business, Government, and Labour** agreed to revise it so that smoking is only banned **during working hours**.
 - **Community** opposed this revision, calling it impractical.
 - The phrase “**domestic employment**” was removed, as it’s already covered under “workplace”.

Section 2: Control over smoking Cont.

- **Public Conveyance (Clause 2(3)):**
 - **Government** removed reference to public transport, as these are now subject to **100% smoke-free regulations**.
- **Employer Definition (Clause 2(7)):**
 - A **technical amendment** was accepted: the term “clause” was changed to “section”, and “volunteers” were added to the definition of who may work for an employer.
- **Use of Electronic Delivery Systems in Entertainment Venues (Clause 2 (8)):**
 - **Business** proposed allowing EDS use in designated areas (max 25% of venue), citing lower health risks and distinct properties compared to combustible tobacco.
 - **Government, Labour, and Community** disagreed the proposal, stating that second-hand EDS emissions are harmful and the Bill aims to **eliminate** all designated smoking areas to protect public health.

Section 3: Advertising, promotion, sponsorship, distribution and display of relevant products or related products

Section 3 of the Bill outlines comprehensive prohibitions on advertising, promoting, displaying, and sponsoring tobacco, electronic delivery systems (EDS), and oral nicotine products. Business generally accepted restrictions for traditional tobacco products but sought differentiated treatment for EDS and oral nicotine products based on their lower risk profiles. The clause also covers retail display bans, signage rules, educational venue restrictions, trade discounts, and communication of factual product information.

Key themes of contention included:

- Product risk differentiation for EDS and oral nicotine products.
- Practical implementation challenges for informal traders.
- Limitations on commercial communication and corporate social responsibility (CSR).
- Legal and constitutional implications for commercial freedoms.

Section 3: Advertising, promotion, sponsorship, distribution and display of relevant products or related products

Areas of Agreement

Clause	Agreement by all parties
3(4)(g): Retailer incentives	All parties agreed to delete sub-clauses (i) and (ii) as they would impact normal Fast-Moving Consumer Goods (FMCG) business practices.
Trade discounts	All parties agreed to define "trade discount" and link its contravention to a 15-year sentence under Section 17 (Penalties).
3(4)(n): Companies Act compliance	General agreement on the principle that compliance with the Companies Act should not be obstructed.

Areas of Disagreement

Clause	Reason for No Consensus
3(5)(a–e): Retail display ban	Deep divide on practicality for informal traders, health vs. visibility trade-offs.
Exclusive retailer provisions	Community opposed lack of informal trader inclusion.
Definition of “trade discount”	All parties agreed that it should be include in the definitions, however, disagreed on wording and criteria.
Clause 3(7): Adult information rights	Business framed it as necessary for informed choice and less harm; others saw it as a loophole.

Section 3: Advertising, promotion, sponsorship, distribution and display of relevant products or related products

Areas of Disagreement

Clause	Business Position	Government Position	Labour	Community
(Advertising Ban Scope)	Wanted risk-based differentiation for EDS/oral nicotine products.	Opposed; views all tobacco products as harmful.	Opposed Business	Opposed Business
3(4)(k): Educational venues	Proposed restriction only to primary/secondary + adult-focused event exceptions.	Opposed; insisting it must include tertiary venues with possible minors.	Supported Government	Supported Business
3(4)(l): Brand display by name	Sought exemption where store name equals brand.	Opposed; suggested staggered implementation instead (Clause 20(2)).	Supported Government	Supported Government

Section 3: Advertising, promotion, sponsorship, distribution and display of relevant products or related products

Areas of Disagreement cont...

Clause	Business Position	Government Position	Labour	Community
3(4)(m): CSR support	Requested deletion of “whether or not” to preserve CSR rights.	Opposed; weakens restriction, contravenes WHO FCTC.	Supported Business	Supported Business
3(4)(n): Companies Act reference	Amendment proposed to protect compliance rights.	disagreed; current “commercial communication” definition sufficient.	Agreed with Government.	Agreed with Government
3(5)(a–e): Retail display ban	Opposed; impractical for informal sector, harms visibility & public health outcomes. Cited constitutional issues.	Supported; essential for child protection.	Supported Business.	Supported Business.
Exclusive retailer exemptions	Sought broader exemption, including for informal traders.	Only allowed for specialist tobacconists/nicotine shops, with tight criteria.	Supported Government. 19	Opposed Government proposal—too narrow.

Section 3: Advertising, promotion, sponsorship, distribution and display of relevant products or related products

Areas of Disagreement cont.

Clause	Business Position	Government Position	Labour	Community
3(5)(a–e): Retail display ban	Opposed; impractical for informal sector, harms visibility & public health outcomes. Cited constitutional issues.	Supported; essential for child protection.	Supported Business.	Supported Business.
Exclusive retailer exemptions	Sought broader exemption, including for informal traders.	Only allowed for specialist tobacconists/nicotine shops, with tight criteria.	Supported Government.	Opposed Government proposal—too narrow.
New clause 3(7): Factual info to adults	Proposed adult-only factual info exceptions (in-person, digital, samples).	disagreed; would undermine ad ban and target youth.	Opposed.	Supported.
Trade discount definition	Sought economic minimum price to deter illicit trade.	disagreed; too restrictive.	disagreed Government's definition (ineffective on tax evasion).	No specific position recorded.

Section 4: Standardised Packaging and labelling of tobacco products

- This section of the Bill proposes standardised packaging and labelling for tobacco products, including mandatory health warnings and regulated product appearance.
 - **Business** strongly opposed the section, citing concerns over increased illicit trade, constitutional infringements (on property, trade, and expression), and lack of evidence specific to the South African market.
 - **Community** supported Business in most parts, particularly regarding informal traders.
 - **Government** maintained that standardisation aligns with global best practices and enhances public health protection.
 - **Labour** largely supported Government's position except on provisions concerning informal traders. Multiple sub-clauses triggered sharp debate, with no consensus reached on several critical aspects, especially those affecting informal economic participants and commercial freedoms.

Section 5: Packaging and labelling of tobacco devices, electronic nicotine delivery systems and electronic non-nicotine delivery systems

This section of the Bill grants the Minister of Health powers to regulate the packaging and labelling of electronic nicotine delivery systems (ENDS), electronic non-nicotine delivery systems (ENNDS), and tobacco devices.

Business opposed this provision because:

- Scientific evidence shows these products are less harmful than combustible tobacco, and standardised packaging would misleadingly equate risk.
- It could discourage adult smokers from switching to less harmful alternatives.
- There is no existing regulatory framework for these products in South Africa, making such extreme regulation premature and potentially unconstitutional.
- The proposed regulation fails the Section 36 proportionality test of the Constitution by not exploring less restrictive alternatives first.
- Business proposed an alternative: health warnings should cover only 10% of the display area for these products.

Government responded that:

- The Bill (Sections 4–6) already allows product differentiation, which would continue during the regulatory phase.
- There is no provision in the Bill mandating identical warnings across all products.
- Regulatory precedent from the Tobacco Products Control Act supports differentiated treatment, such as with cigarettes and snuff.

Community supported Business, while Labour supported Government

Section 6: Packaging and labelling of non-nicotine and nicotine-containing products

Section 6 of the Bill authorises the **Minister of Health** to regulate the packaging and labelling of: **(EDS, ENDS), (ENNDS), and Nicotine-containing substances or products** — including through **standardised packaging**.

Stakeholder Positions

Business opposed this provision, mirroring its stance in Section 5:

- Argues the **regulation is overly broad**, potentially including products with minimal or no health risks.
- Contends it may **misrepresent relative product risk** to consumers.
- Raised **constitutional concerns** about proportionality, freedom of trade, and lack of supporting evidence.

- **Government** defended the clause:

- Cited **public health responsibility** under the Constitution as justification for the **mandatory nature** ("must") of regulation.
- Argued that **non-nicotine products** are also harmful, and some have been **proven to contain undisclosed nicotine**.
- Warned that accepting Business's proposals would **undermine regulatory control** over harmful related products.

- **Community** supported **Business**, likely due to concerns around regulatory overreach or the impact on small or informal traders.

Labour supported **Government**, aligning with its health-protective stance

Section 7: Health warning and required information

Clause 7 of the Bill empowers the Minister of Health to prescribe:

- **Health warnings** for tobacco products and electronic delivery systems (EDS).
- **Manufacturing information** that must appear on packaging.

Clause 7(2): Business proposed substantive amendments to introduce a more **proportionate and tailored regulatory approach**, specific to the **distinct characteristics** of each product category.

Government disagreed:

- Any deletion of current wording, asserting that **products, devices, and systems function together** and should not be separated in law.
- Any new provisions on **size, constituents, or content**, stating these will be addressed in **future regulations**.

Labour supported **Government's** stance.

Clause 7(3): The Bill proposed requiring a **leaflet inside product packaging** with health warnings.

- **Business** proposed deleting this clause.
- **All parties agreed** to remove the requirement for a leaflet.

Section 8: Standards for manufacturing, processing and importing of relevant product and related products

Clause 8 of the Bill empowers the Minister of Health to make regulations concerning standards for the manufacturing, processing, and importing of tobacco, electronic delivery systems (EDS), oral nicotine, and related products.

General Regulatory Powers (Clause 8(1)–8(3)):

Business raised concerns that:

The Minister's powers are overly broad and may overlap with existing mandates of recognised technical bodies like the South African Bureau of Standards (SABS).

SABS already has expertise and a legal mandate to develop product standards, and has worked on EDS and nicotine product standards, without participation from the Department of Health.

Business proposed the deletion of terms like “type, shape, size, contents, and ingredients” to avoid overreach.

• Government responded:

The intention is not to set standards directly but to regulate how standards are developed.

Including specifications like type, shape, size, and ingredients is critical for public health, particularly in relation to product attractiveness and addictiveness.

Removing such language would undermine the Bill's core health objectives and contradict WHO FCTC principles.

• Labour and Community supported Government.

- Business maintained its opposition.

Section 8: Standards for manufacturing, processing and importing of relevant product and related products

Clause 8(4): Destruction of Non-Compliant Products

- Business proposed adding the word “confiscated” to clarify that only confiscated products may be destroyed by law enforcement.
- Government disagreed the amendment, stating the legal process already presumes confiscation precedes destruction, and the added word is redundant.
- Community and Labour supported Business’s proposed addition.

Section 9: Restrictions of sales in respect of relevant products and related products

Clause 9 of the Bill sets restrictions on who may sell tobacco and related products, how and where such sales may occur, and empowers the Minister to introduce further requirements through regulation.

Key Provisions and Stakeholder Positions

1. Clause 9(2): Child Labour Prohibition

- Original clause did not prohibit children working in manufacturing, importing, or distribution.
- **Nedlac legal drafters** proposed a sentence to explicitly prohibit child labour in the tobacco industry.
- **Government, Labour, Business** fully supported the addition.
- **Community** supported the addition **excluding distribution**.

2. Clause 9(4)(b): Distance from Educational Institutions

- Restricts sales near educational premises at a “prescribed distance”.
- **Business** disagreed the discretionary language and proposed a **fixed 100-meter** limit for clarity and proportionality.
- **Community** supported **Business**.
- **Government and Labour** disagreed the fixed limit, preferring flexibility in **regulations**, citing protection of children.

Section 9: Restrictions of sales in respect of relevant products and related products

Clauses 9(5) & 9(6): Online and Postal Sales Ban

- Restricts sale through postal, courier, internet, or electronic means.
- **Business** requested exclusion of sales to **trade partners**.
- **Government** proposed compromise wording: "**No person, except for commercial purposes**".
- **All parties agreed** to this exemption.

4. Age Verification for Online Sales

- **Business** proposed robust two-step age verification (ID at purchase + adult signature on delivery).
- **Community** supported Business.
- **Government and Labour** disagreed it, citing ease of circumvention.

Section 9: Restrictions of sales in respect of relevant products and related products

5. Clause 9(7): Minister's Power to Prescribe Additional Requirements

- Business disagreed with the clause on constitutional grounds—arguing it gives the Minister excessive discretion without defined limits.
- Government agreed to delete part of the clause—specifically the phrase: “or to otherwise further the objectives of the Act”.
- Labour and Community supported this revision.

Section 10: Disclosures to Minister & Section 11: The Minister may make certain information publicly available

Section 10 of the Bill provides certain information to be disclosed by the industry to the Minister.

- All agreed

Section 11 of the Bill authorises the Minister to make certain information publicly available.

- All agreed

Section 12 and 14: Establishment of Relevant Product Monitoring Committee and Appointment of Members of the Monitoring Committee

Sections 12 and 14 of the Bill empower the Minister of Health to:

- Establish a Relevant Product Monitoring Committee (Section 12), and
- Determine its composition and appointment procedures (Section 14).

The Committee is intended to support the monitoring and enforcement of the Bill's provisions.

Social Partners Positions

Business:

- Raised serious governance concerns about the proposed Minister-appointed 15-member committee.
- Concerned that the criteria for expertise for representation was unclear, which could result in undue influence by special interest groups.
- Proposed an inter-governmental structure including senior enforcement agency representatives for effective coordination and accountability.
- Recommended the Bill should specify operational details and composition criteria for the Committee.

Section 12 and 14: Establishment of Relevant Product Monitoring Committee and Appointment of Members of the Monitoring Committee cont.

Government:

- Supported a whole-of-government approach but maintained that:
 - The Minister retains the right to appoint the Committee.
 - The Public Entities Directorate of NDoH will manage the appointment process.
 - Members will be chosen based on skills and knowledge and may include external experts.
 - Details will be prescribed in the Gazette, not the Bill itself.

Labour and Community:

- Supported a multi-sectoral approach, advocating for representation from social partners (e.g., Labour, Business, Civil Society).

Section 12 and 14: Establishment of Relevant Product Monitoring Committee and Appointment of Members of the Monitoring Committee

Issue	Agreement	Disagreement
Need for a Monitoring Committee	All parties agree on the need for a monitoring structure	All agreed on the need, but disagreed with Business' proposals for the Committee to have enforcement responsibilities.
Committee composition (multi-sectoral or intergovernmental)	Labour & Community agree on multi-sectoral representation	Business (intergovernmental) vs Government (Ministerial discretion)
Role of Public Entities Directorate in appointments	Government position; not contested	None Other partners did not oppose or explicitly support
Requirement for technical expertise in appointments	Business advocated criteria in Bill	Government insists this will be addressed in Gazette; Labour & Community silent. No consensus on codifying in legislation
Inclusion of operational details in the Bill	Business supported inclusion	Government disagreed – says to be defined through the Gazette. Labour & Community views not clearly expressed

Section 13: Functions and powers of the Monitoring Committee

Clause 13 of the Bill defines the powers and functions of the Monitoring Committee, which is tasked with overseeing policy development, coordination, and implementation of tobacco control laws.

1. Clause 13(1)(b): Monitoring Use and Prevalence of Products

- Business proposed expanding the Committee's mandate to monitor usage patterns across product categories.
- Government disagreed the proposal, stating that the Committee has a broad strategic role, not operational surveillance.
- Labour and Community supported Government.

2. Clause 13(1)(c): Role in Enforcement Coordination

- Business wanted the Committee to have a stronger role in coordinating enforcement (e.g., with SARS, SAPS).
- Government disagreed, stating that enforcement is handled through existing government clusters and Section 17.
- Labour and Community supported Government.

Section 13: Functions and powers of the Monitoring Committee

Clause 13 of the Bill defines the powers and functions of the Monitoring Committee, which is tasked with overseeing policy development, coordination, and implementation of tobacco control laws.

3. Clause 13(1)(d): Ministerial Delegation of Functions

- Business sought deletion of this clause due to concerns about unfettered ministerial discretion.
- Government defended the clause, stating it is necessary for administrative flexibility.
- Labour and Community supported Government.

4. New Clause – Reporting to Parliament

- Business proposed that the Monitoring Committee should report annually to Parliament on enforcement and compliance.
- Government disagreed, arguing that ministerial committees report to the Minister, not Parliament.
- Labour and Community supported Government.

Section 13: Functions and powers of the Monitoring Committee

5. Clause 13(3): Protection from Commercial/Vested Interests

- Business strongly objected, calling the clause a constitutional overreach and inappropriate application of international law (FCTC Article 5.3).
- Argued it curtails stakeholder rights, especially those in the vaping industry.
- Government proposed softening the language to “facilitate the protection”, but still retained the clause.
- Business maintained that the clause should be deleted entirely.
- Labour and Community supported Government.

• 6. Addition of “Subject to National Laws”

- Business proposed adding this to ensure the clause doesn’t override constitutional rights.
- Government disagreed this addition, arguing the Bill is national law.
- Labour supported Government, while Business held that rejection affirms overreach.

• 7. “Other Vested Interests” (e.g. international NGOs)

- Business proposed broadening the clause to include non-commercial vested interests.
- Government and Labour disagreed this.
- Community supported the addition.

Section 15: Regulations

Section 15 of the Bill outlines the Minister's regulatory authority over various matters, including sales, packaging, labelling, and product standards. The section triggered constitutional, governance, and implementation concerns, particularly from Business.

Key Issues and Social partners Positions

1. General Delegation of Powers

Business raised constitutional concerns, arguing the Minister's powers are overbroad, lacking clear limits or Parliamentary oversight, and may violate the separation of powers principle.

Government responded that:

- Regulation-making powers are lawfully delegated by Parliament.
- The Bill has been vetted by Parliamentary Legal Advisors.
- The powers are aligned to protect public health.
- Labour agreed with Government. Community had no view.

2. Clause 15(1)(b): Sales Restrictions

- Business proposed deletion due to risk of unconstitutional sales bans (e.g., during the 2020 lockdown).
- Government defended the clause, citing policy successes during COVID-19.
- Labour supported Government. Community had no view.

Section 15: Regulations

3. Clause 15(1)(d)(ii): Health Warning Languages

- Community proposed warnings in all 11 official languages.
- Government and Labour supported the proposal.
- Business disagreed, citing complexity and issues with imported goods. Suggested using dominant regional languages instead.

4. Clause 15(1)(e)(iii): Prohibition of Flavours

- Business opposed broad flavour bans, proposing that the Minister consider product-specific features in regulation.
- Government disagreed the full proposal but agreed to remove the words “the prohibition of” for clarity.
- Labour supported Government. Community had no view

Section 15: Regulations

5. Clause 15(1)(h): Application Forms

- This clause was deleted due to no requirement in the Bill for product approval.
- All parties agreed

6. Clause 15(3): Public Comment Period for Draft Regulations

- Business proposed extending the public comment period from one month to six months.
- Compromise reached: all parties agreed to extend the period to three months

7. Parliamentary Oversight of Regulations

- Business proposed that regulations should be approved by Parliament, especially due to the Bill's broad and discretionary language.
- Government disagreed, stating that regulatory powers are delegated by Parliament and do not need to be returned.
- Labour and Community supported Government's position.

Section 15: Regulations

Key Issues and Stakeholder Responses

1. Inclusion of Monetary Values for Fines

Social partners queried whether specific monetary fines could be included in the Bill.

Government responded that:

- The Adjustments of Fines Act will apply to reflect inflation.
- Courts can impose lesser penalties than the maximum provided.
- The Bill does not invoke the Criminal Procedure Act, so offences are not classified as criminal.
- A legal drafter from Nedlac confirmed the approach is standard legislative drafting practice, where such offences usually lead to fines, not imprisonment.
- A tabular format could be used for clarity.

2. Severity of Sentences

- The maximum penalty of 20 years for selling to a child raised concerns among all social partners.
- Labour, Business, and Community considered such sentences:
 - Severe and impractical.
 - Likely to undermine public trust and make enforcement difficult.
 - Suggested penalties be more aligned with other public health legislation.
- Nedlac legal drafter advised that 15-year jail time for allowing a child to sell cigarettes (Section 9(2)) is realistic.

Section 15: Regulations

3. New Offence – Selling Below Trade Discount Price

- All parties agreed that:
 - Selling tobacco products below the minimum economically viable price is a punishable offence.
 - Section 16(4) was updated to include this offence.
 - A penalty of 15 years imprisonment was attached.
 - Section 3(4)(f) was also added to support this provision.

Section 16: Offences and penalties

Clause 16 of the Tobacco Products and Electronic Delivery Systems Control Bill defines penalties for offences related to the sale and handling of tobacco and related products. Social partners raised critical concerns regarding severity, proportionality, and the practical implementation of penalties.

Key Issues and Social Partners Responses

1. Inclusion of Monetary Values for Fines, Social partners asked if specific monetary fines could be included in the Bill.

- Government response: The Adjustments of Fines Act applies automatically to adjust fines for inflation. Sentences outlined are maximum penalties; presiding officers can impose lesser penalties based on case merit. These offences are not criminal offences under the Criminal Procedure Act (CPA), and thus won't follow CPA processes. A Nedlac legal drafter affirmed that this is a traditional legislative drafting approach, where most of these offences typically lead to fines. A tabular format for penalties may be considered to improve clarity.

2. Severity of Sentences

- Social partners (Labour, Business, Community) raised concerns about The maximum 20-year sentence for selling tobacco products to a child, calling it disproportionate and impractical to enforce. Excessively harsh penalties potentially undermine the legitimacy and enforceability of the Bill. Nedlac legal drafter stated that, in contrast, the 15-year sentence for allowing a child to sell cigarettes (Section 9(2)) is realistic and justifiable.

3. New Offence: Selling Below Trade Discounted Price All social partners agreed – to include this as an offence under Section 16(4), with a maximum penalty of 15 years' imprisonment. Link this offence with the provision introduced under Section 3(4)(f) to curb illicit trade practices through pricing manipulation.

Section 17: Application of certain sections of the National Health Act

Clause 17 of the Bill outlines the enforcement mechanisms and applicable legislation for enforcing provisions of the Bill. It references the National Health Act, 2003, and identifies designated enforcement authorities.

Key Issues and Social Partners Positions

1. General Enforcement Capacity

Business raised major concerns about the lack of enforcement capacity, citing:

- Failures in enforcing existing laws and the rise of illicit trade.
- Risks of overburdening compliant businesses while allowing non-compliant actors to flourish.
- Criticised reliance on “self-enforcement”, calling it ineffective against criminal networks.
- Proposed that the Bill mandate enforcement coordination by the Minister.

Government responded that:

- Existing internal enforcement mechanisms are sufficient.
- Laws are often self-enforcing, with enforcement triggered by non-compliance.
- The current Act has generally been enforced successfully.
- Labour supported Business’s call for stronger Ministerial oversight.
- Community supported Government.

Section 17: Application of certain sections of the National Health Act

2. Clause 17(3): Workplace Inspectors

- Originally referenced only the Labour Relations Act.
- All parties agreed to:
- Delete the Labour Relations Act.
- Add the Basic Conditions of Employment Act (BCEA) and Occupational Health and Safety Act (OHSA) for enforcement in workplaces.
- Make a technical amendment replacing the word “clause” with “section”.

3. Clause 17(5): SARS as Law Enforcement Authority

- Original clause excluded SARS.
- All parties agreed to include SARS, recognising its critical role in enforcing against illicit trade.

Section 17: Application of certain sections of the National Health Act

4. Clause 17(6): Illicit Trade

- All parties agreed to:
 - Define “illicit trade”.
 - Insert a new clause (17(6)) stating that the Minister will support efforts to address illicit trade in the tobacco and related products market.

5. Role of the Minister in Enforcement

- Business and Labour proposed a new clause requiring the Minister to coordinate and oversee enforcement.
 - Argued the Bill lacks centralised enforcement leadership.
 - Government disagreed the proposal, asserting:
 - Enforcement responsibilities are inherent to the Executive.
 - No need to legislate what is already implied in the Minister’s role.
 - Community-supported Government.

Section 18: Repeal of Laws

- This section provides for the repeal of the Tobacco Products Control Act, 1993 (Act No. 83 of 1993). No amendments were proposed to this section of the Bill



Section 19: Transitional arrangement

This section provides for transitional provisions. All agreed and no amendments were proposed to this section of the Bill.



Section 20: Short Title and Commencement

Clause 20(2) was introduced to address stakeholder concerns about the **practical implementation** of specific provisions of the Bill, particularly **Section 3(4)(I)**, which restricts the display of **brand elements in retail outlets and venues**.

- **Business** requested a **transition period** for affected businesses to **change their branding or store names** in compliance with the restrictions.
- **Government** agreed that it is standard legislative practice for **different sections of an Act to come into force on different dates**, allowing for **phased implementation**.
- As a result, a **new Clause 20(2)** was added:

"Different sections of the Act may come into operation on different dates."

- **All parties — Business, Government, Labour, and Community — agreed to this clause.**

Recommendations on issues not included on the Bill

- Illicit cigarette production and sales
- Behavioural change and public education
- Harm Reduction
- Impacts on jobs in the tobacco industry
- Impact on small business

Concerns raised through the process

	Concerns Raised	Responses on the Concerns
Government Representation on the engagement processes	Believed that some government representatives were linked to anti-tobacco organisations	The Terms of Reference allowed social partners to duly nominate their own representatives to nominate task team members.
Socio-Economic Impact Assessment Systems (SEIAS)	Business claimed that no SEIAS was done on the current Bill version, despite significant amendments.	Government maintained that SEIAS was done for the 2018 and 2022 versions.
Constitutionality of the Bill	Business argued that the Bill's legality concerning its regulation of tobacco, e-cigarettes, and oral nicotine products was inadequately assessed. While the Bill was certified by state legal advisors, Business's concerns were noted in the report but not endorsed by other constituencies.	The process concluded with a comprehensive report, reflecting both consensus points and areas of unresolved contention

Annexures in the Nedlac Report

- **Annexure 1** – A clean Bill with amendments proposed and agreed to, by all social partners
- **Annexure 2** – A marked-up Bill colour coded, showing agreements and disagreements by all social partners.
- **Annexure 3** – Terms of Reference of the task team
- **Annexure 4** – Names of the members of the task team
- **Annexure 5** – Names of the 2-aside task team leads
- **Annexure 6** – Dialogue Session Report
- **Annexure 7.1.** – List of scientific evidence provided by Government
- **Annexure 7.2.** – List of scientific evidence provided by Business
- **Annexure 8** - Nedlac covering report listing presentations made on 13 January at the scientific briefing
 - Annexure 8A1 – Annexure 8A5** – Government Scientific Evidence Presentations
 - Annexure 8B1 – Annexure 8B4** – Business Scientific Evidence Presentations
- **Annexure 9** – SEIAS concerns raised by Business and responses by Government.

Conclusion

- The engagements were concluded and the Nedlac Report signed-off on 15 March 2025.
- Business signed-off on the report, noting its reservations or concerns about the issues relating to the government representation, SEIAS and the Constitutionality of the Bill.
- During the deliberations, social partners agreed, in principle, on the need to promote public health, including on some key aspects of the Bill as indicated above.
- They disagreed on some provisions, particularly, on the fundamental aspects where had implications on the discussions on various sections on the Bill, such as product differentiation, harm reduction and nicotine toxicity.
- Nedlac appreciates the support for the Portfolio Committee to enable the Bill to be tabled for engagement by social partners.

Thank you



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