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| **INSTITUTIONAL REGULATORY CODE (IRC)**  **(Policies, Procedures, Rules etc.)** | | | | | | | | | |
| ***To be completed by initiator of policy/policy owner:*** | | | | | | | | | |
| 1**. POLICY TITLE**: | | **POLICY ON RACISM AND RACIAL DISCRIMINATION** | | | | | | | |
| 2. **FIELD OF APPLICATION**:       (All persons to whom policy applies) | | | | | | All employees and students | | | |
| 3. **COMPLIANCE OFFICER(S)**:  (Persons responsible for ensuring policy  implementation) | | | | | | EMCOM | | | |
| 4. **STAKEHOLDER CONSULTATION**  (State the stakeholder group/s consulted during policy formulation/revision) | | | | | | TEC, IF, EMCOM | | | |
| 5. **DESIGNATION OF** **POLICY OWNER**:  (Person responsible for maintaining policy) | | | | | | Director: Organisational Transformation & Equity | | | |
| 6. **NAME OF POLICY OWNER:** | | | | | | Ms R-A Levendal | | | |
| **POLICY HISTORY *(To be completed by policy owner)*** | | | | | | | | | |
| **Decision**  **Date**  (Compulsory) | **Status**  (New/Revised/  No Changes) | | **Implementation Date**  (Compulsory if “new” or “revised”) | **Approving Authority**  (If ”new” or “revised”. N/A if no changes) | | | **Resolution Number**  **e.g.** 07/11-10.2  (Minute number. N/A if no changes) | **Policy Document Number**  (e.g. D/…./07 N/A if no changes) | **Pending date for next revision**  (Compulsory) |
| 12 March 2005 | New | | Immediate | Interim Council | | | IC05.07.1.1 (ii) | D/523/05 | biennially |
| 19Jun09 | Revised | | Immediate | Council | | | C09.23.1.2.1.8 | D/354/09 | biennially |
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| ***For office use only*** | | | | | | | | | |
| **SUBJECT** (Broad policy field): | | | | | Organisational Transformation & Equity | | | | |
| **SUBJECT NUMBER**: | | | | | 700 | | | | |
| **CATEGORY** (Policy sub-field): | | | | | Transformation and Equity | | | | |
| **CATEGORY NUMBER**: | | | | | 701 | | | | |
| **IRC NUMBER**: | | | | | 701.04 | | | | |

**NELSON MANDELA METROPOLITAN UNIVERSITY**

**Policy on Racism and Racial Discrimination**

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| Items contained in this Policy | |
| 1. | Preamble |
| 2. | Definitions |
| 3. | Regulatory Framework |
| 4. | Scope of Policy |
| 5. | Main objectives of the Policy |
| 6. | Promotion of racial equality at the NMMU |
| 7. | Protection of persons affected by racism and/or unfair racial discrimination and the registration of complaints |
| 8. | Procedure |
| 9. | Confidentiality |
| 10. | Accountability |
| 11. | Disciplinary action |

**1. PREAMBLE**

The NMMU supports a zero tolerance stance with regard to all forms of racial discrimination, overt or covert, on and off its campuses. For the purposes of this Policy, racial discrimination means:

*any distinction, exclusion, restriction or preference based on race, colour, language (nehawu), descent, national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life" (International Convention on the Elimination of All Forms of Racial Discrimination). Racial discrimination is not limited to the above but also includes the perpetuation of practices and procedures that are entrenched by the existing power-imbalances brought about by apartheid.*

Any staff of student found to be in contravention of this policy will be subjected to the disciplinary procedures of the NMMU.

**2. DEFINITIONS**

For purposes of this policy the words listed in the definition section will have the meaning ascribed below, unless the context indicates otherwise.

**2.1 BLACK PEOPLE** mean Africans, Coloureds and Indians.

**2.2 DESIGNATED GROUPS / EQUITY CANDIDATES** means black people, women and people with disabilities.

**2.3 DIRECT UNFAIR DISCRIMINATION** means an overt act of discrimination that is not reasonable or justifiable. Hate speech, i.e. communication including remarks and gestures that impair the human dignity of other persons, is a form of harassment that constitutes direct discrimination. Derogatory remarks concerning a person’s race, ethnicity, colour or nationality are considered as serious forms of unfair discrimination as they continue to promote racial discrimination, ethnocentrism (perceptions that one's own ethnic group is superior) and xenophobia (dislike of non-nationals). Unfair accusations of racism may be considered to be a form of unfair discrimination.

**2.4 DIVERSITY** means a broad variation in culture, race, physical ability, gender, language, values, beliefs, needs and interests. In respect of the selection of academic staff, the Equity Policy emphasizes that an additional criterion of diversity will be that academics should be able to contribute to diversity of academic discourse.

**2.5 GENDER** means economic, social and cultural attributes associated with being male or female which may result in an imbalance of power.

**2.6** **GENDER DISCRIMINATION** means any distinction, exclusion, restriction or preference based on sex, gender, pregnancy, family responsibility, sexual orientation or marital status which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in political, economic, social, cultural or any other field of public life.

**2.7 HATE SPEECH** means anything published, propagated, advocated or communicated, on the grounds of race, gender, age, sexual orientation, disability, sex, marital status, HIV / AIDS status, pregnancy, ethnic or social origin, colour, religion, conscience, belief, culture, language or birth, against any person that could reasonably be construed to demonstrate a clear intention to be hurtful, harmful, to incite harm or to promote or propagate hatred.

**2.8 INDIRECT UNFAIR DISCRIMINATION** means any distinction, exclusion, restriction or preference that on the surface appears neutral, but in application unfairly discriminates against individuals or groups.

**2.9** **OCCUPATIONAL DETRIMENT** means:

* being subjected to disciplinary action, subject to paragraph 7.1;
* being dismissed, suspended, demoted, harassed or intimidated;
* being transferred against his or her will;
* being refused transfer or promotion;
* being subjected to a term or condition of employment or retirement which is altered or kept altered to his or her disadvantage;
* being refused a reference or being provided with an adverse reference by his or her employer;
* being denied appointment to any employment, profession or office;
* being threatened with any of the actions referred to above; or
* being otherwise adversely affected in respect of his or her employment, profession or office, including permanent employment opportunities and work security.

**2.10 PROTECTED DISCLOSURE** has the consequence that the employee making the disclosure will not suffer any occupational detriment on that account.

**2.11 RACE** is primarily a social construct in which individuals are classified into groups (“races”) on the grounds of perceived heritage and physical differences.

**2.12 RACIAL HARASSMENT** means social behaviour that is intended to coerce, manipulate, intimidate or take advantage of persons belonging to a particular “race”, typically, but not always, in situations where unequal power and authority relations prevail between those who harass and those who are harassed.

**2.13 RACIAL PREJUDICE** means the belief that a particular “race” (or group of “races”) is inferior to another “race” with respect to one, or usually many, qualities or attributes.

**2.14 RACISM** means intolerance of, and hostility towards, other people on account of their “race”.

**2.15** **THIRD PARTIES** include, but is not limited to clients, customers and business contacts, accessing the University.

**2.16 UNFAIR DISCRIMINATION** means any distinction, exclusion, restriction or preference based on race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, Human Immunodeficiency Virus (HIV) status and birth or any other reason which is unreasonable or unjustifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors. Harassment of an employee or student is a form of unfair discrimination.

**It is not unfair discrimination to:**

* Take Affirmative Action measures consistent with the purpose of the Employment Equity Act.
* Distinguish, exclude or prefer any person on the basis of an inherent requirement of a job or learning programme.

**3.** **REGULATORY FRAMEWORK**

**3.1** The Constitution Act 108 of 1996, chapter 2

**3.2** The Employment Equity Act (EEA) 55 of 1998

**3.3** The Promotion of Equality and Prevention of Unfair Discrimination Act 4, 2000

**3.4** The White Paper 3 A Programme for Higher Education Transformation (1997)

This policy should be read in conjunction with, but not limited to, the following institutional policies:

* Equity
* Recruitment and Selection
* Human Resource Development
* Future Leaders Strategy
* Scarce and Critical Skills
* Appointment procedure, roles, responsibilities and allowances for academic heads of department and directors of schools
* Policy on disclosures relating to criminal and irregular conduct
* Ad personam promotions
* Admissions
* Staff disciplinary procedure and code
* Student disciplinary procedure and code.

**4.** **Scope of this policy**:

The provisions of this policy apply to the NMMU staff, students and third parties, including but not limited to clients, customers and business contacts, accessing the University.

**5.** **MAIN OBJECTIVES OF THE POLICY**

The main objectives of the Policy on Racism and Racial Discrimination are to provide a framework within which the following can be provided:

**5.1** The assistance of staff, students and third parties to identify intentional and unintentional racial biases.

**5.2** The promotion of fair treatment of all employees, students, visitors and the communities it engages with, irrespective of their colour, language, culture, birth or location.

**5.3** The protection of persons unfairly discriminated against on the basis of race.

**5.4** The regulation and resolution of disputes arising from racial discrimination.

**5.5** The implementation of the Constitution, all legislation supporting equality and elimination of unfair racial discrimination and the NMMU Statute, together with its Mission, Vision and Strategic Plan.

**6. THE PROMOTION OF RACIAL EQUALITY AT THE NMMU**

The NMMU commits itself to the promotion of racial equality via strategies and interventions supported by management through the implementation of the strategic plan and projects that facilitate racial equality, such as, but not limited to:

**6.1** All orientation of staff and students will include education on fundamental human rights, racial discrimination and the NMMU's policy on racial discrimination. Continuous education in these areas will be provided and implemented.

**6.2** Academic staff members are to be encouraged to facilitate the promotion of racial equality in their specific courses. All staff members will be encouraged to promote racial equality and tolerance in their respective units / departments.

**6.3** In the interest of redressing past imbalances, Affirmative Action may be applied to promote greater equality and diversity of race groups on campus. This action will be implemented via the Equity Policy and the Employment Equity Plan.

**6.4** The NMMU commits to engaging the broader NMMU community in the promotion of racial equality.

**7. PROTECTION OF PERSONS AFFECTED BY RACISM AND/OR UNFAIR DISCRIMINATION AND THE REGISTRATION OF COMPLAINTS**

**7.1** The University ensure that any employee who makes a disclosure in terms of this policy will not suffer any occupational detriment. However, an employee who does not act in good faith or makes an allegation without having reasonable grounds for believing it to be substantially true, or makes it for purposes of personal gain, or makes it maliciously or vexatiously may be subject to disciplinary proceedings.

**7.2** The University ensure that any student who makes a disclosure in terms of this policy will not suffer any detriment. However, a student who does not act in good faith or makes an allegation without having reasonable grounds for believing it to be substantially true, or makes it for purposes of personal gain, or makes it maliciously or vexatiously may be subject to disciplinary proceedings.

**7.3** If a student perceives that he / she has been affected by racism and/or unfairly discriminated against, he / she must follow the recourse that is available to students for lodging a complaint with the office of the Director – Organizational Transformation and Equity (D-OT&E), via the Student Representative Council [SRC], who will submit the complaint to an external independent jurist, as appointed by the Vice-Chancellor**.**

**7.4** If an employee perceives that he / she has been affected by racism and/or unfairly discriminated against, he / she may follow the grievance procedure (as per the Grievance policy) or alternatively submit a formal complaint, via the office of the D-OT&E, who will submit the complaint to an external independent jurist, as appointed by the Vice-Chancellor**.**

**7.5** If any other third party, other than the abovementioned, should perceive himself / herself to be unfairly discriminated against, he / she may lodge a complaint directly with the office of the D–OT&E,after which the complaint will be processed as per the procedure stipulated in section 8 below.

**8. PROCEDURE**

**8.1** The office of the Director OT&E will forward all complaints to the Director Legal Services, whose office will provide administrative support to the independent jurist.

**8.2** The independent jurist will conduct a preliminary investigation and will consider the information made available to him or her with due regard to the following:

* the seriousness of the issues raised;
* the credibility of the concern;
* the likelihood of confirming the allegation satisfactorily;
* the quality and/or quantity of information;
* alternative mechanisms to deal with the matter.

**8.3** Having exercised his or her discretion to conduct a substantive enquiry, the independent jurist decides on the form of the substantive investigation to be undertaken. The format and the procedure to be followed in conducting any investigation by the independent jurist will be determined by him or her, with due regard to the circumstances in each case.

**8.4** A report will be submitted to the Vice-Chancellor, who will inform the relevant parties of the outcome of the investigations and, where applicable, any action to be taken in that regard. This information will be delivered via the Legal Services Office and the relevant EMCom member/Executive Dean.

**9. CONFIDENTIALITY**

The SRC or Unions, as recipients of the allegation, as well as any other stakeholder as identified in 4.3. above, should treat such allegations in the strictest confidence, more so as:

* 1. to give effect to the individual’s presumption of innocence;
  2. the stigma attached to such allegations are unique in nature and in effect;
  3. such allegations carry the increased legal risk of defamation action if untested allegations are publicized.

Infringement of this clause can lead to disciplinary action being taken.

Relevant stakeholders involved in the resolution process shall have access to pertinent information which has bearing on the case.

**10. ACCOUNTABILITY**

All staff, students and third parties are responsible for promoting and developing racial equity. Should any incident of racism and/or racial discrimination occur, the matter will be referred to the Director – OT&E, (via the ED - Student Affairs, in the case of a student submitting a complaint), who will initiate the process as stipulated in section 8 above for investigation and resolution thereof.

**11. DISCIPLINARY ACTION**

Disciplinary action may be instituted by the relevant University authority should the outcome of due process show that racism and/or unfair racial discrimination had been perpetrated. Unfair discrimination is considered as a very serious offence.

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Document reference: My Documents\Forums\2009\TEC Policies – Equity policies