

# NELSON MANDELA

## UNIVERSITY

### INSTITUTIONAL REGULATORY CODE (IRC) (Policies, Procedures, Rules etc.)

*To be completed by initiator of policy/policy owner:*

1.	<b>POLICY TITLE:</b>  	Integrated Policy for the Promotion of Equality and the Prevention and Protection against Unfair Discrimination.
2.	<b>FIELD OF APPLICATION:</b> (all persons to whom policy applies)	All employees All students
3.	<b>COMPLIANCE OFFICER(S):</b> (Persons responsible for ensuring policy implementation)	All employees in managerial positions All students in leadership portfolios
4.	<b>STAKEHOLDER CONSULTATION:</b> (State the stakeholder group/s consulted during policy formulation/revision)	Employment Equity Forum; Sexual Harassment and Offences Committee; Transformation Committee; Institutional Forum; Organised Labour; Student Services Council; Executive Committee of Senate; Senate; MANCO; HRREM and GEC committees of Council; Council
5.	<b>DESIGNATION OF POLICY OWNER:</b> (Person responsible for maintaining policy)	Director Transformation within the Engagement and Transformation MANCO portfolio

### **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)
3 Dec 2020	New	Immediate	COUNCIL	C20.95.1.1	D_926_20_(20 20-10-27 09h17)	Biennial

### **For office use only**

<b>SUBJECT</b> (Broad policy field):	Organisational Transformation & Equity
<b>SUBJECT NUMBER:</b>	700
<b>CATEGORY</b> (Policy sub-field):	Transformation & Equity
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<b>IRC NUMBER:</b>	701.10

**INTEGRATED POLICY FOR THE PROMOTION OF EQUALITY AND THE PREVENTION OF AND PROTECTION AGAINST UNFAIR DISCRIMINATION**

ITEMS CONTAINED IN THIS POLICY		PAGE
SECTION 1	INTRODUCTION	2
SECTION 2	DEFINITIONS	3
SECTION 3	GUIDING PRINCIPLES	7
SECTION 4	TERMS OF REFERENCE	8
SECTION 5	APPLICATION, OBJECTIVES, SCOPE AND DURATION	9
SECTION 6	REGULATORY FRAMEWORK	11
SECTION 7	ROLE PLAYERS	12
SECTION 8	COMPLAINT	14
SECTION 9	RESPONSE TO THE COMPLAINT	14
SECTION 10	INQUIRY PANEL	20
SECTION 11	HANDLING FALSE COMPLAINTS	22
SECTION 12	RIGHT TO PURSUE EXTERNAL PROCESSES	23
SECTION 13	CONFIDENTIALITY	23
SECTION 14	ADVOCACY AND EDUCATION	23
SECTION 15	MONITORING MECHANISMS	24
SECTION 16	REVIEW	24
ANNEXURE "A"	CONSIDERATIONS RELATING TO DISCRIMINATION	25
ANNEXURE "B"	PROCESS FLOW – HARASSMENT AND/OR UNFAIR DISCRIMINATION	26
ANNEXURE "C"	PROCESS FLOW – MEDIATION	27
ANNEXURE "D"	PROCESS FLOW – INVESTIGATION	28
RELATED POLICY	DISABILITY ACCESSIBILITY	
RELATED POLICY	SEXUAL HARASSMENT AND SEXUAL OFFENCES	
RELATED POLICY	GENDER EQUALITY	
RELATED POLICY	RACISM AND RACIAL DISCRIMINATION	
RELATED POLICY	EMPLOYMENT EQUITY	
RELATED POLICY	RELIGION, BELIEF AND OPINION	
RELATED POLICY	SEXUAL ORIENTATION	
RELATED POLICY	HIV AND AIDS	
RELATED POLICY	LANGUAGE	

**SECTION 1: INTRODUCTION**

- 1.1. South Africa needs to build a more equitable, non-sexist, non-racial, democratic and prosperous society, where opportunity is not defined by race, gender, class or religion. This process includes implementing redress, promoting economic and social inclusion, social cohesion, active citizenry and broad-based leadership. The most important uniting elements amongst South Africans are our shared geographical space and shared history.
  
- 1.2. Despite the eradication of apartheid legislation, South Africa remains one of the most unequal economies in the world and remains divided where the privilege associated with 'race', socio-economic status/class, space and gender remain significant factors perpetuating the prevailing inequality.

- 1.3. The preamble to and the provisions of the Constitution of the Republic of South Africa (1996), in particular Sections 9, 10, 12, 15, 16, 30 and 31, together with the Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000 (“PEPUDA”), reflect the dream, desire and design of the society South Africa strives to become.
- 1.4. The University is committed to realising these provisions - the vision, mission, core values and strategic and transformation priorities all reflect our undertaking to being a dynamic African University that is recognised for its leadership in generating cutting-edge knowledge for a sustainable future whilst practicing the values of, *inter alia*; Ubuntu, diversity, integrity, excellence, social justice, equality and environmental stewardship.

## **SECTION 2: DEFINITIONS**

In this Policy, the terms below shall have the following meanings:

- 2.1 **“Age”**, for the purposes of this policy, includes the conditions of disadvantage and vulnerability suffered by persons on the basis of their age, especially advanced age;
- 2.2 **“Bullying”** is recognised as a form of unfair discrimination. In its simpler manifestation, it involves the chronic abuse of an individual employee or student by another person. This abuse can take the form of, *inter alia*; insults, intimidation, undermining, withholding of resources, social exclusion, harassment, abuse of power or any other behaviour intended to make the victim feel unwelcome. In its more complex manifestations, bullying may include mobbing, which involves more than one respondent acting against a member of the institution, or it may be systemic, in which the culture of an institution may ignore or minimise bullying or even inadvertently promote it in its structures;
- 2.3 **“Complainant”** (also known as applicant), means a person who lodges a complaint, against whom an act or acts in contravention of this Policy, have allegedly been perpetrated;
- 2.4 **“Complaint”** means a complaint brought in terms of this Policy concerning acts in contravention of this Policy;
- 2.5 **“Confidentiality”** means ensuring that information is accessible only to those authorised to have access to it;
- 2.6 **“Discrimination”** means any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly imposes burdens, obligations or disadvantage on; or withholds benefits, opportunities or advantages from any person on one or more of the prohibited grounds.
- 2.7 **“Unfair discrimination”**, for the purpose of this Policy, must be considered together with Annexure “A” hereto and means any distinction, exclusion, restriction or preference, 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;
- 2.8 **“Direct unfair discrimination”** is an overt act of discrimination, which occurs when a person is treated less favourably than another person on the basis of any of the grounds listed under the prohibited grounds or any other legally recognised grounds;
- 2.9 **“Disability”**, within the context of this Policy arises when someone with a physical, psychosocial, intellectual, neurological and/or sensory impairment is denied access to full participation in all aspects of life, and when society fails to uphold the rights and specific needs of individuals with impairments. Persons with disabilities experience three main types of interrelated barriers: social

(including high cost, lack of disability awareness, and communication difficulties); psychological (such as fear for personal safety); and structural (including infrastructure, operations and information);

2.10 “**Indirect unfair discrimination**” occurs when an unreasonable requirement, condition or practice, which appears neutral on the surface, is imposed in order to exclude person/s upon one or more grounds stipulated under the prohibited grounds or any other legally recognised grounds. Such a distinction, exclusion, restriction or preference unfairly discriminates against individuals or groups of individuals. It is not unfair discrimination to:

2.10.1 take affirmative action measures consistent with the purpose of the Employment Equity Act, No. 55 of 1998; and/or

2.10.2 distinguish, exclude or prefer any person on the basis of an inherent requirement of a job or learning programme.

2.11 “**Equality**” includes the full and equal enjoyment of rights and freedoms as contemplated in the Constitution and includes *de jure* and *de facto* equality and also equality in terms of outcomes;

2.12 “**Employee**” means an employee of the University or a person who has agreed to be bound by the rules and policies of the University relating to persons employed by the University;

2.13 “**ERO**” means the Employee Relations Office of the University;

2.14 “**Gender**” refers to a social and cultural construct that distinguishes differences in the attributes of females and males and refers to their socially constructed roles and responsibilities;

2.15 “**Gender-based discrimination**” means any distinction, exclusion or restriction made on the basis of biological sex and/or gender identity which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by persons, especially women, irrespective of their marital status, on a basis of equality between the genders, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field;

2.16 “**Gender-based violence**” or “**GBV**” occurs where people do not conform to certain forms of gender expectations, violence, abuse and discrimination may be employed to force conformity, to punish, or to affirm dominance and control. These forms may include the physical, sexual, emotional and psychological, as well as the social and the economic;

2.17 “**Harassment**” means unwanted conduct which is persistent or serious and demeans, humiliates or creates a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences and which is related to:

2.17.1 sex, gender or sexual orientation; or

2.17.2 a person’s membership or presumed membership of a group identified by one or more of the prohibited grounds or a characteristic associated with such a group.

2.18 “**Harm**” means any emotional, psychological, physical, social or economic harm, including patterns of degrading or humiliating conduct towards the complainant, such as:

2.18.1 repeated insults, ridicule or name calling;

2.18.2 repeated threats designed to cause emotional pain; or

- 2.18.3 the repeated exhibition of obsessive possessiveness or jealousy, which is such as to constitute a serious invasion of the complainant's privacy, freedom, integrity or security.
- 2.19 "**Hate speech**" includes incitement of imminent violence; or the advocacy of hatred that is based on one or more of the prohibited grounds including race, ethnicity, gender, class or religion, and that constitutes incitement to cause harm;
- 2.20 "**HIV/AIDS status**" includes actual or perceived presence in a person's body of the Human Immunodeficiency Virus (HIV) or symptoms of Acquired Immunodeficiency Syndrome (AIDS), as well as adverse assumptions based on this status;
- 2.21 "**Intimidation**" means uttering or conveying a threat, or causing a complainant to receive a threat, which induces fear;
- 2.22 "**Listed grounds**" are:
- 2.22.1 race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth;
- 2.23 "**LSO**" means the Legal Service Office of the University;
- 2.24 "**Mobbing**" is a form of harassment by a group of people targeted at an individual. Like bullying, mobbing occurs when an individual is ridiculed, humiliated or otherwise targeted with hostile or harmful behaviours;
- 2.25 "**Occupational detriment**" means where an employee or student (as the context suggests):
- 2.25.1 is subjected to disciplinary action;
- 2.25.2 is dismissed, suspended, demoted, harassed or intimidated;
- 2.25.3 is transferred against his/her will;
- 2.25.4 is refused transfer or promotion;
- 2.25.5 is subjected to a term or condition of employment or retirement which is altered or kept altered to his/her disadvantage;
- 2.25.6 is refused a reference or is provided with an adverse reference;
- 2.25.7 is denied appointment to any employment, profession or office;
- 2.25.8 is threatened with any of the actions referred to above; or
- 2.25.9 is otherwise adversely affected in respect of his/her employment, profession or office, including permanent employment opportunities and work security.
- 2.26 "**PEPUDA**" means the Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000;
- 2.27 "**Pregnancy**" includes any condition related to pregnancy, intended pregnancy, potential pregnancy or termination of pregnancy.

- 2.28 “**Prohibited grounds**” means:
- 2.28.1 race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth; or
  - 2.28.2 any other ground where discrimination based on that other ground:
  - 2.28.3 causes or perpetuates systemic disadvantage, such as socio-economic status/class, nationality;
  - 2.28.4 undermines human dignity; or
  - 2.28.5 adversely affects the equal enjoyment of a person’s rights and freedoms in a serious manner that is comparable to discrimination on a ground in Section 2.28.1.
- 2.29 “**Protected disclosure**” has the consequence that the student or employee making the disclosure will not suffer any detriment (occupational or otherwise) on that account;
- 2.30 “**Related person**” means any member of the family or household of a complainant, or any other person in close relationship to the complainant;
- 2.31 “**Related policies**” means all institutional policies associated with the advancement of equality;
- 2.32 “**Respondent**” means a person alleged to have committed an act or acts in contravention of this policy;
- 2.33 “**Retaliation**” is conduct, including threats, intimidation, reprisals, adverse employment or educational actions taken against any other person (such as a complainant, witness or other party) related to a good faith complaint or belief that a complaint had been lodged;
- 2.34 “**Stalking**” means repeatedly following, pursuing, or accosting the complainant as well as any other form of direct or indirect communication, harassment, or threats made towards the complainant using various mediums, including but not limited to, the use of cell phones and computerised technology. Direct online harassment includes threats, bullying, or intimidating messages sent directly to the victim via e-mail or other internet communications media. Indirect online harassment includes spreading rumours about the Complainant on various internet platforms and/or forums;
- 2.35 “**Student**” means a registered student of the University or a person who has agreed to be bound by the rules and policies of the University;
- 2.36 “**Third parties**” mean any persons who are neither employees nor students who access the University, including but not limited to, visitors, clients and/or service providers/business contactors;
- 2.37 “**the University**” means the Nelson Mandela University;
- 2.38 “**Victimisation**” is a form of harassment and may occur when one person subjects another to harm (or threatens to do so) because they have:
- 2.38.1 laid, intend to lay, or have helped someone else to lay a complaint of unfair discrimination on the basis of any of the prohibited grounds or any other legally recognised grounds;
  - 2.38.2 refused to perform an act which is in contravention of any policy or legislation;

- 2.38.3 reported/disclosed information regarding criminal and irregular conduct, i.e. whistle-blowing; or
  - 2.38.4 acted to the occupational detriment of a complainant by agreeing to be a witness in cases related to the contravention of policy or legislation.
- 2.39 “**Vilification**” occurs when a person incites hatred towards, contempt for, or severe ridicule of a person or group of persons on any of the grounds stipulated under the prohibited grounds or any other legally recognised grounds;
- 2.40 “**Xenophobia**” means an attitudinal orientation of hostility against non-nationals in a given population.

For all other terms and definitions related to the subject matter of this Policy reference can be made to other specific social justice policies, the PEPUDA as well as legal precedents arising from the decision of any Equality Court, the Labour Court and the Commission for Conciliation, Mediation and Arbitration. Regard should also be had to the Employment Equity Act, No. 55 of 1998, the Criminal Law (Sexual Offences and Related Matters) Amendment Act, No. 32 of 2007, the Protection from Harassment Act, No. 17 of 2011 and associated Regulations, the Domestic Violence Act, No. 116 of 1998 and associated Regulations, and other relevant legislation and binding international agreements (such as the Convention on the Elimination of all forms of Discrimination against Women 1979 and the International Convention against all Forms of Racial Discrimination 1969).

### **SECTION 3: GUIDING PRINCIPLES**

The following guiding principles are to support the implementation and application of this Policy:

- 3.1 This Policy calls for the active promotion of equality as a positive duty on all employees and students, alongside the actions needed to be taken for the prevention of unfair discrimination.
- 3.2 Whilst acknowledging the broad structural and systemic inequalities prevalent within our society, this policy advances the promotion of human dignity, equality and redress in the University towards the realisation of social justice and inclusion.
- 3.3 Recognition of the intersectionality of many forms of unfair discrimination and disadvantage and the indivisibility of rights.
- 3.4 In addition to the socio-economic status and race, this policy acknowledges the underlying challenges of gender. Gender-based violence, sexual orientation (including experiences of gender variant persons) and other forms of discrimination based on gender, constitute the most extreme forms of intersectional triple oppression and unfair discrimination, and is being foregrounded in this policy and related policies.
- 3.5 Any employee and/or student who contravenes the spirit and intent of this policy is to be held accountable via the disciplinary processes.
- 3.6 This Policy is to be considered a ‘living document’ which foregrounds the ‘human element’ in its implementation and thus remain flexible, dynamic and adaptive.
- 3.7 This Policy acknowledges the important distinction between forms of “fair” and “unfair” discrimination. The considerations for distinguishing between these categories are set out in Annexure “A” to this Policy and will continue to evolve. For the purposes of this Policy, institutional constraints to eliminate all forms of unfair discrimination is acknowledged as a relevant criterion,

alongside other criteria. In this regard, this Policy adopts the constitutional concept of the reasonable and “progressive realisation of rights” within the context of realistic institutional constraints.

- 3.8 Whereas this Policy contains the overarching framework for the equality project of the University, multiple parallel complimentary and aligned processes are required to give practical effect to the spirit and intention of the Policy throughout the University.
- 3.9 Formal Disciplinary Processes convened and managed by the Human Resources and Legal Divisions, informed by the Employees and Student Disciplinary Codes, respectively, remain in effect for dismissible and expulsion-worthy offences as well as for complaints unable to be satisfactorily resolved by the provisions of this Policy and the structures and processes created in terms of this Policy.
- 3.10 The imperative of on-going curriculum transformation and renewal to promote equality and social inclusion in the academic project forms part of the positive practical actions required in terms of this Policy.
- 3.11 The Policy is intended to be responsive from both a complainant and respondent perspective. It makes provision for remedial and restorative justice interventions, with the aim of supporting and empowering victims/survivors and enlightening, educating and holding accountable respondents, thereby preventing future harm where-ever appropriate and feasible to do so.
- 3.12 In all instances the enactment of the Policy must align with the University's overarching commitment to humanising pedagogies and practices and the recognition of context, history and dignity.
- 3.13 The enactment of the Policy needs to take into consideration ways in which certain people have been socialised or acculturated to accept certain behaviours; or alternatively an entitlement to certain behaviours.
- 3.14 The Policy is enacted with the understanding that every member or group of the University needs to take personal/individual and collective responsibility for every micro-engagement and interaction and to contribute to co-create a culture of robust courageous conversations around discriminatory behaviours in their everyday lived experiences and in the academic project.
- 3.15 The Policy and the accompanying institutional processes and mechanisms apply equally to employees and to students. The intention of the Policy is to be equally supportive and enabling to both employees and students.
- 3.16 It is acknowledged that special relationships between employees and students including, but not limited to romantic relationships, sexual relationships, kinship, and relationships with a history of serious interpersonal conflict, may contribute to a perception of unfair discrimination and may undermine the promotion and protection of equality in terms of this Policy. These relationships are strongly discouraged and need to be conducted in terms of Section 8 of the formal Code of Ethical Behaviour.

#### **SECTION 4: TERMS OF REFERENCE**

- 4.1. This Policy:
  - 4.1.1. provides an overarching framework for the promotion of equality and the prevention of and protection against unfair discrimination at the University;

- 4.1.2. identifies a number of related policies that are associated with realising the equality and social inclusion provisions set out herein and those contained in the Constitution of the Republic of South Africa (1996).
- 4.2. This Policy and the related policies must be read together with the University's Policy on the Student Disciplinary Code; the Employee Disciplinary Procedure and Code; the University's Code of Ethical Conduct and the Students' Academic Grievance Policy and Procedure.

## **SECTION 5: APPLICATION, OBJECTIVES, SCOPE AND DURATION**

### **5.1. Application**

- 5.1.1. The provisions of this Policy will apply to all University employees and students.
- 5.1.2. The victims of and respondent/s to unfair discrimination may include, *inter alia*; students, employers, managers, supervisors, employees, job applicants, clients, suppliers, contractors, service providers, alumni, members of Council and other persons who have occasion to interact with the University.
- 5.1.3. All employees, regardless of whether they occupy permanent or fixed-term contract posts at the University, shall be required to comply with the provisions of this Policy at all times including, but not limited to, when they are:
  - 5.1.3.1. acting in the course and scope of their employment;
  - 5.1.3.2. participating in University-related activities;
  - 5.1.3.3. spending time at off-campus sites utilised by the University (e.g. at hospitals and schools);
  - 5.1.3.4. engaging with society in general as representatives of the University in whatever capacity or form.
- 5.1.4. All students shall be required to comply with the provisions of this Policy at all times including, but not limited to, when they are:
  - 5.1.4.1. present on any of the University's campuses;
  - 5.1.4.2. participating in University-related activities;
  - 5.1.4.3. spending time at off-campus sites utilised by the University (e.g. at hospitals and schools);
  - 5.1.4.4. engaging with society in general as representatives of the University in whatever capacity or form.

### **5.2. Objectives**

The objectives of this Policy are as follows:

- 5.2.1. To honour the University's commitment to actively enact the provisions of the Constitution and the aspirational aspects of the University's vision, mission, core values and strategic and transformation priorities;

- 5.2.2. To promote and protect the full and equal enjoyment of rights and freedoms by all employees and students as contemplated in the Constitution of South Africa and the Bill of Rights.
- 5.2.3. To promote transformation and equality of opportunities, access and success for all employees and students;
- 5.2.4. To protect employees and students from unfair discrimination;
- 5.2.5. To provide for the orientation and approach of the University to matters relating to equality and unfair discrimination;
- 5.2.6. To contribute to a fair, just, equitable, diverse, inclusive and non-discriminatory inclusive institutional culture that is more closely aligned to the vision, mission, core values and strategic and transformation priorities of the University;
- 5.2.7. To create an enabling environment with a view to ensuring the effective implementation of this Policy;
- 5.2.8. To state the legal and regulatory frameworks within which the Policy is to be interpreted, implemented and adjudicated;
- 5.2.9. To explicitly articulate the responsibilities, normative standards and behaviours that the University demands of everyone situated in different domains within the University, to play their respective roles in the inter-connected and systemic undertaking of co-creating a more just and equal University;
- 5.2.10. To promote awareness regarding policies and procedures of the University relating to equality and unfair discrimination; and
- 5.2.11. To protect employees against occupational detriment within the context of equality and unfair discrimination.

### 5.3. Scope

- 5.3.1. The scope of the Policy includes all forms of potential discrimination, including but not limited to "listed grounds" in the Constitution and "prohibited grounds" indicated in PEPUDA. This Policy therefore also applies to 'analogous' or comparable grounds to the listed and prohibited grounds.
- 5.3.2. The scope of this policy encompasses any incidents relating to unfair discrimination, harassment, hate speech, violence and retaliation, where such incidents are based on one or more of the listed and prohibited grounds in the Constitution of the Republic of South Africa (1996) and PEPUDA, respectively.
- 5.3.3. It is acknowledged and understood that the grounds upon which discrimination occurs continue to evolve, as society does, and it is the intention of this Policy to be responsive to, and inclusive of any other ground where discrimination:
  - 5.3.3.1. causes or perpetuates systemic disadvantage;
  - 5.3.3.2. undermines human dignity; or
  - 5.3.3.3. adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination based on a listed or prohibited ground.

- 5.3.4. In the context of a broad policy with an emphasis on promoting positive actions, practical actions providing “reasonable accommodation” to differently situated groups extend to cover all domains and grounds, to include different contexts and realities. In this regard, this Policy also adopts the constitutional concept of the reasonable and “progressive realisation of rights” within the context of realistic institutional constraints.
- 5.3.5. This Policy acknowledges that the implications of “gender variance” for the University is a dynamic and unfolding process with new challenges in creating an equal environment free from unfair discrimination.
- 5.3.6. The development of best practice, precedent and jurisprudence with regards to the Promotion of Equality and the Prevention of and Protection Against Unfair Discrimination, particularly in the context of Higher Education Institutions, occurs in dynamic and unfolding ways. It cannot be captured in a detailed and fixed form in a policy that is intended to endure over a period of time, while at the same time being responsive to these developments. It is the intention of the University to be alert to these developments and to remain in the vanguard of a socially responsible University in keeping with the spirit and intentions set out in the Preamble to this Policy.

#### 5.4. Duration

This Policy will commence upon approval from Council and will remain in force until it is revised or replaced, on approval from Council.

### **SECTION 6: REGULATORY FRAMEWORK**

- 6.1. This Policy includes of a number of related policies (attached hereto as Addenda) that are linked to realising the equality provisions of the Constitution of the Republic of South Africa (1996).
- 6.2. This Policy does not replace the Student Disciplinary Code; the Employee Disciplinary Procedure and Code; the Code of Ethical Conduct and the Students' Academic Grievance Policy and Procedure.
- 6.3. This Policy should be read in conjunction with the following national legislation, plans and policies:
  - 6.3.1. The Bill of Rights in Chapter 2 of the Constitution of the Republic of South Africa 1996;
  - 6.3.2. Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000;
  - 6.3.3. Employment Equity Act, No. 55 of 1998 and associated Codes of Good Practice;
  - 6.3.4. Sexual Offences and Related Matters Amendment Act No. 32 of 2007;
  - 6.3.5. Protection from Harassment Act, No. 17 of 2011 and associated Regulations;
  - 6.3.6. Domestic Violence Act, No. 116 of 1998 and associated Regulations;
  - 6.3.7. Protected Disclosures Act, No. 26 of 2000;
  - 6.3.8. Labour Relations Act, No. 66 of 1995 and associated Codes of Good Practice;

- 6.3.9. Prevention and Combating of Hate Crimes and Hate Speech Bill, 2016;
- 6.3.10. Policy Framework for the Realisation of Social Inclusion in the Post-School Education and Training System, DHET 2016;
- 6.3.11. Policy Framework to Address Gender-Based Violence in the Post-School Education and Training Sector, DHET 2020.
- 6.3.12. Language Policy Framework for Public Higher Education Institutions, DHET 2020.
- 6.3.13. National Strategic Plan on Gender-Based Violence and Femicide, DWYPD 2020; and
- 6.3.14. Emergency Response Action Plan on Gender-Based Violence & Femicide, DWYPD, 2020.

## **SECTION 7: ROLE PLAYERS**

### **7.1. Role of employee and students**

All employees and students are expected to take collective and individual responsibility in:

- 7.1.1. being familiar with and comply with the contents of this Policy;
- 7.1.2. treating every person equally and fairly;
- 7.1.3. treating every person with reverence, respect and dignity;
- 7.1.4. promoting a safe and inclusive environment, free from any form unfair discrimination;
- 7.1.5. resolving conflicts in a peaceful and respectful manner;
- 7.1.6. respecting the beliefs (including religious beliefs) and opinions of others;
- 7.1.7. ensuring that others are not insulted and/or dehumanized and are able to enjoy their right to freedom of expression;
- 7.1.8. obeying the laws of South Africa including the national legislation, plans and policies referred to in Section 6.3 above.
- 7.1.9. ensure that they do not engage in any conduct which, in terms of this Policy, is considered to constitute unfair discrimination;
- 7.1.10. report any incidents of alleged unfair discrimination the Transformation Office.

### **7.2. Role of Managers:**

Every manager shall take all reasonable steps to create and maintain a safe humane working environment which promotes equality and is free from any form of unfair discrimination. This require managers to, *inter alia*:

- 7.2.1. exemplify appropriate behaviours;
- 7.2.2. ensure that they do not engage in conduct that may breach this Policy;

- 7.2.3. understand the terms of this Policy and be responsible for the implementation thereof;
- 7.2.4. attend training and educational sessions relating to this Policy;
- 7.2.5. communicate the contents of this Policy to all employees in their respective areas of responsibility;
- 7.2.6. monitor the working environment within their area of responsibility to ensure that acceptable standards of conduct are maintained at all times;
- 7.2.7. take appropriate steps to mitigate any risk of unfair discrimination in the workplace and seek guidance from the organisational development unit and/or the Employee Relations Office where necessary;
- 7.2.8. refer complaints to the Transformation Office; and
- 7.2.9. when they become aware of any incidents of alleged unfair discrimination regarding any employee and/or student, to report the matter to the Transformation Office.

7.3. Role of Third Parties:

- 7.3.1. The University recognizes that it has no jurisdiction over third parties. However, all third parties providing services to the University and/or having access to its campuses, are expected to uphold and respect all who work at, study at, visit the University, or participate in any of the institution's activities at any location other than the University.
- 7.3.2. While third parties are not subject to the rules or procedures for employees or students, or the provisions of the respective Codes of Conduct, the University, via the LSO, will keep a record of complaints and reported violations of this and related policies and will report these to the appropriate offices, including the procurement office, so that the information can be taken into account in considering whether to extend contracts for services procured from companies of such employees.
- 7.3.3. The LSO will also forward such complaints to the relevant employer for action. The University retains its right to bar the third parties from its premises and/or reconsider any further commercial transactions with service providers of employees implicated in such transgressions.
- 7.3.4. Disputes involving visitors and independent contracts must be submitted to the Registrar, who in consultation with the LSO, the Transformation Office and/or the Procurement Office (in the case of independent contractors/service providers), to determine how the matter will be dealt with in the best interests of the University and any affected person.
- 7.3.5. A disputed matter involving an independent contractor must be brought to the attention of LSO, the Procurement Manager and the Transformation Office in order to establish whether a dispute exists between the Nelson Mandela University and the service provider. The parties must attempt to resolve the issue by applying the alternative dispute resolution mechanism.
- 7.3.6. Should the parties determine that a dispute exist between the parties, the Procurement Office must record the dispute and follow the procedure outlined in section B.2.9.4 of the Supply Chain Management Policy.

7.3.7. The power to cancel contracts rests with the MANCO representative in consultation with the legal department upon the recommendation from the head of legal department.

## **SECTION 8: COMPLAINT**

- 8.1. If an employee or student believes that they have been the victim of harassment and/or unfair discrimination, they must follow the recourse that is available and lodge a complaint with the Transformation Office via the online reporting system (available on both the staff and student portals, respectively). It is acknowledged that certain complaints may be lodged anonymously.
- 8.2. The Transformation Office shall, in turn, appoint an independent person with adequate and relevant expertise to investigate the complaint (“the investigating officer”).
- 8.3. In the event that a complaint concerns the alleged misconduct of any employee who would ordinarily be required to play a role in the processes provided for in Section 9 below:
  - 8.3.1. the relevant MANCO member will be notified of the conflict as soon as possible;
  - 8.3.2. the implicated employee will recuse themselves from all processes provided for in Section 9 below; and
  - 8.3.3. the MANCO member will, to the extent necessary, and as soon as possible, appoint an alternative impartial employee to fulfil the role of the implicated employee.

## **SECTION 9: RESPONSE TO THE COMPLAINT**

### **9.1. Acknowledgment of Receipt**

- 9.1.1. The Transformation Office shall be required to acknowledge the receipt of any complaint within 3 (three) working days of receipt thereof.
- 9.1.2. In the event of an anonymous complaint being lodged, such complaint shall nevertheless be investigated to the extent possible in terms hereof.

### **9.2. Investigating Officer and Mediator**

Any investigating officer or mediator appointed by the Transformation Office in terms of Section 9 shall be required to meet the following minimum criteria:

- 9.2.1. They must be conversant with the provisions of this Policy and PEPUDA;
- 9.2.2. They must have a working knowledge of employment laws in general;
- 9.2.3. They must not have a personal or familial relationship with the complainant, respondent or any potential witness;
- 9.2.4. They must not have any prior knowledge of the facts relevant to the complaint;
- 9.2.5. They must not have a personal interest or stake in the outcome of the matter;
- 9.2.6. They must have the ability to investigate or mediate (as the case may be) the complaint objectively without bias;

- 9.2.7. They must have strong interpersonal skills to build a rapport with the parties involved and to be seen as neutral and fair;
- 9.2.8. They must possess sufficient expertise in dealing with unfair discrimination disputes and conducting:
  - 9.2.8.1. investigations, in the case of the investigating officer; or
  - 9.2.8.2. mediations in general, in the case of the mediator.

### 9.3. Preliminary Assessment

- 9.3.1. The investigating officer appointed in terms of Section 8.2 above shall, within 3 (three) calendar days of their appointment, conduct a preliminary assessment of the complaint with a view to recommend and advise the Inquiry Panel as to:
  - 9.3.1.1. whether it would be appropriate to offer the complainant the opportunity to have his/her complaint dealt with by way of the mediation process provided for in Section 9.4 below; or
  - 9.3.1.2. whether, on the face of it, the complaint is too serious to be dealt with by way of the mediation process and there is sufficient substance to warrant the conduct of a detailed investigation with a view to possibly initiating disciplinary proceedings against the respondent/s.
- 9.3.2. In conducting a preliminary assessment of the complaint in terms hereof, the investigating officer may, if they deem it necessary in the circumstances, interview the complainant with a view to determining:
  - 9.3.2.1. the scale of the issue;
  - 9.3.2.2. the materiality of the complaint;
  - 9.3.2.3. the availability or otherwise of witnesses and/or corroborating information;
  - 9.3.2.4. the quality, specificity and seriousness of the allegations; and
  - 9.3.2.5. the nature of the outcome sought by the complainant.
- 9.3.3. The investigating officer shall deliver a brief written report to the Transformation Office with their recommendation in terms of Section 9.3.1 above which shall, in turn be delivered to the Inquiry Panel.
- 9.3.4. Where the alleged harassment or unfair discrimination is of such a serious nature that it may constitute a criminal offence or the conduct complained of is, in the opinion of the Inquiry Panel, too serious to be dealt with by way of the mediation process provided for herein, a formal investigation as envisaged in Section 9.5 below will be conducted with a view to possibly referring the matter to:
  - 9.3.4.1. the ERO, where the respondent is an employee, in order that disciplinary proceedings may be instituted against the respondent in terms of the Employee Disciplinary Procedure and Code; or

- 9.3.4.2. the LSO, where the respondent is a student, in order that disciplinary proceedings may be instituted against the respondent in terms of the Student Disciplinary Code.

#### 9.4. Mediation

9.4.1. If, after the conduct of the preliminary assessment in terms of Section 9.3 above, the Inquiry Panel determines that the complaint is capable of being resolved by mediation and this would be appropriate in the circumstances, it shall notify the Transformation Office of its determination or recommendation and the Transformation Office will notify the complainant accordingly.

9.4.2. Within 2 (two) calendar days of receipt of the aforesaid notification, the complainant may, by means of written notice to that effect to the Transformation Office, confirm their election to have the matter dealt with, either:

9.4.2.1. by way of mediation; or

9.4.2.2. by way of the investigation process provided for in terms of Section 9.5 below.

9.4.3. In the event of the complainant electing to have the matter dealt with:

9.4.3.1. by way of mediation, the Transformation Office shall appoint a suitably qualified mediator to attempt to resolve the matter;

9.4.3.2. by way of the investigation process provided for in terms of Section 9.5 below, a formal investigation of the complaint will be conducted accordingly.

9.4.4. No person engaged in the mediation process shall be entitled to legal representation excepting that:

9.4.4.1. where the complainant or respondent is an employee, they may be accompanied and supported by a union representative or fellow employee, who will serve in an advisory capacity; or

9.4.4.2. where the complainant or respondent is a student, they may be accompanied and supported by a member of the Student Representative Council or a fellow student, who will serve in an advisory capacity.

9.4.5. The principal role of the mediator is to facilitate communication between the complainant and the respondent with a view to helping them reach a voluntary resolution of the matter that is both timely and fair in the circumstances.

9.4.6. The mediator shall be required to, *inter alia*:

9.4.6.1. advise the complainant at the outset of the mediation process, whether the relief sought by the complainant is reasonable and achievable in the circumstances;

9.4.6.2. facilitate the process by detailing the general nature of the relief that may be reasonable and achievable in the circumstances; and

9.4.6.3. conclude the mediation process within 14 (fourteen) calendar days of their appointment, which period may, on good grounds and/or under exceptional circumstances, be extended by the Transformation Office.

- 9.4.7. If the mediation process is not concluded within 14 (fourteen) calendar days of the mediator's appointment or within such extended period as may be authorised by the Transformation Office, the mediator shall declare the mediation process terminated and inform the Transformation Office accordingly. In such event, an investigation shall be conducted in terms of Section 9.5 below.
- 9.4.8. The mediator will be required to manage any meeting and conduct the mediation process as they deem appropriate in the circumstances, with due regard being had for the fact that the mediator should not impose solutions or decisions and has no power to force a resolution of the matter.
- 9.4.9. A resolution of the dispute can only be reached by agreement between the complainant and the respondent.
- 9.4.10. The mediator has no right or duty to provide legal advice to the complainant and/or the respondent but may raise issues and help the parties explore options.
- 9.4.11. Until the termination of the mediation process, whether by resolution or otherwise, both the complainant and respondent are obliged to attend all meetings called by the mediator and truthfully attempt to resolve the matter.
- 9.4.12. The mediator may treat the failure of either party to attend a meeting or failure in any other way to co-operate with the mediator, as sufficient grounds to hold that it will be impossible to reach a fair and appropriate resolution of the matter within a reasonable period of time.
- 9.4.13. Nothing stated by the complainant, the respondent or the mediator during and for the purposes of the mediation process is admissible in disciplinary proceedings of the University and in any subsequent court of law.
- 9.4.14. Prior to or at any stage during the mediation process, the mediator may, for the following reasons, declare the process terminated and report the reasons for their decision in writing to the Director: Transformation:
  - 9.4.14.1. if either the complainant or the respondent withdraws consent to the mediation process;
  - 9.4.14.2. if the mediator decides that the complaint is not one for which mediation is appropriate; or
  - 9.4.14.3. if the mediator decides that it will not be possible to reach a fair and appropriate resolution within a reasonable period.
- 9.4.15. If, after the mediation process, the complainant and the respondent agree to resolve the complaint, and the mediator is satisfied that the nature and terms of the proposed resolution are appropriate and fair, the mediator shall draft the terms of the resolution agreement. If the complainant and the respondent agree to the mediated resolution agreement, they shall sign the resolution to ratify their agreement to it. The mediator shall then submit their report to the Transformation Office and present the resolution agreement for endorsement. It is only by such an endorsement that a resolution agreement becomes binding.
- 9.4.16. If the Transformation Office declines to endorse the resolution agreement, the reasons therefore will be stated in writing and delivered to the mediator, the complainant and the respondent. If, notwithstanding the reasons provided, the complainant and respondent remain satisfied with the resolution agreement, the resolution agreement shall be binding on the parties.

- 9.4.17. Any breach of the binding resolution agreement shall constitute misconduct under the Employee and Student Disciplinary Codes, respectively.
  - 9.4.18. A binding resolution agreement precludes the institution of disciplinary proceedings in respect of the complaint it settles. Every mediated resolution agreement should therefore stipulate such consequence.
  - 9.4.19. After the mediated resolution agreement has been endorsed, a copy thereof shall be given to both the complainant and the respondent and placed on the personal employee/student files of all involved in the mediation process. An electronic copy of the resolution agreement will be kept on the online reporting system by the Transformation Office, for a period of 12 (twelve) months.
  - 9.4.20. Every resolution agreement, whether binding or not, is confidential to the parties involved, the mediator and the University. Any breach by an employee or student of any obligation to confidentiality imposed by this Section constitutes misconduct under the respective Disciplinary Codes.
  - 9.4.21. The complainant may, within 20 (twenty) days of signature of the agreement, make written application to the Transformation Office for review of the terms of resolution agreement or for the resolution agreement to be set aside.
  - 9.4.22. An application for review must be supported by a concise and clear statement of facts, alleging irregularities in law in respect of the agreement and which irregularity was present at the time when the agreement was concluded.
  - 9.4.23. The Transformation Office will refer the application for review of the resolution agreement to the Inquiry Panel for a determination, which decision shall be binding.
- 9.4.24. Annexure "C" hereto provides an overview of the process flow of a mediation conducted in terms of this Section 9.

9.5. Investigation:

- 9.5.1. The investigating officer appointed in terms of Section 8.2 above shall conduct a formal investigation of the complaint if:
  - 9.5.1.1. the mediation process is terminated by the mediator in terms of Sections 9.4.7 and/or 9.4.14 above;
  - 9.5.1.2. the complainant, in response to the notification received by them in terms of Section 9.4.1 above, opts out of the matter being dealt with by way of the mediation process provided for in Section 9.4 above;
  - 9.5.1.3. the outcome of the preliminary assessment conducted in terms of Section 9.3 above is such that the complaint is considered by the Inquiry Panel to be serious, such that it would be inappropriate to have the matter dealt with by way of the mediation process provided for in Section 9.3 above, and warrants the need to conduct a detailed investigation with a view to the University possibly initiating disciplinary proceedings against:
    - 9.5.1.3.1. the respondent employee in terms of the Employee Disciplinary Procedure and Code; or
    - 9.5.1.3.2. the respondent student in terms of the Student Disciplinary Code.

9.5.2. The investigation of the complaint must be dealt with discreetly and as soon as possible and address all relevant issues. In this regard the investigating officer should, *inter alia*:

- 9.5.2.1. interview both the complainant and the respondent outlining the nature of the process;
- 9.5.2.2. afford the respondent the opportunity of responding to each of the specific allegations raised by the complainant;
- 9.5.2.3. interview any relevant witnesses identified by either the complainant or the respondent, and gather any relevant evidence such as documents, screenshots, voice recordings, pictures, emails, social media posts;
- 9.5.2.4. make recordings and/or take detailed notes of all interviews;
- 9.5.2.5. ensure that a thorough, fair and impartial investigation is conducted;
- 9.5.2.6. determine whether a *prima facie* case of misconduct on the part of the respondent has been established which warrants the conduct of a disciplinary hearing in terms of either the Employee Disciplinary Procedure and Code or the Student Disciplinary Code, as the case may be;
- 9.5.2.7. take all reasonable steps as may be open to them to conclude the investigation within 14 (fourteen) calendar days of their appointment which period may, on good grounds and/or under exceptional circumstances, be extended by the Transformation Office;
- 9.5.2.8. prepare a written report outlining the complaint, the steps taken during the investigation, and a summary of the evidence gathered; and
- 9.5.2.9. make such recommendations as the investigating officer deems appropriate in the circumstances.

9.5.3. In respect of any interviews conducted with a complainant or respondent:

- 9.5.3.1. where the complainant or respondent is an employee, they may be accompanied and supported by a union representative or fellow employee, who will serve in an advisory capacity; or
  - 9.5.3.2. where the complainant or respondent is a student, they may be accompanied and supported by a member of the Student Representative Council or a fellow student, who will serve in an advisory capacity.
- 9.5.4. In respect of any interview with the complainant, the investigating officer should attempt to create a safe and confidential environment for the complainant where they are encouraged to participate and provide as much information as possible during the process. In order to do this, investigating officer should attempt to establish rapport by:

- 9.5.4.1. allowing adequate time for the interview;
- 9.5.4.2. conducting the interview at a venue where the complainant feels safe and able to speak freely;
- 9.5.4.3. ensuring that the respondent is not present or in the vicinity;

- 9.5.4.4. adopting a "seeking to understand" perspective in questioning the complainant;
  - 9.5.4.5. reviewing the complainant's rights and explaining the complainant's role in the process, including, where disciplinary proceedings are contemplated, the leading of evidence-in-chief, cross examination, re-examination and argument;
  - 9.5.4.6. inquiring about any threats the respondent or any other person may have made towards the complainant and respecting and supporting their efforts to maintain their safety.
- 9.5.5. Upon the conclusion of the investigation, the investigating officer shall furnish their report and recommendations to the Transformation Office.
- 9.5.6. The Transformation Office shall, within 3 (three) calendar days of receipt of the investigating officer's report, submit same to the University's Inquiry Panel together with comments (if any).
- 9.5.7. Annexure "D" hereto provides an overview of the process flow of an investigation conducted in terms of this Section 9.

## **SECTION 10: INQUIRY PANEL**

### **10.1. Composition**

The University's Inquiry Panel shall be comprised of:

- 10.1.1. a Chairperson, who must be a legal professional or legal academic with expertise in human rights law and/or gender equality;
- 10.1.2. a member of the transformation committee;
- 10.1.3. an appropriate expert working in the area related to the matter at hand;
- 10.1.4. in student-related complaints, a representative of the Student Representative Council;
- 10.1.5. in employee-related complaints, a nominee proposed by either the DVC Learning and Teaching, in consultation with the relevant Executive Dean of a faculty where the respondent is an academic or faculty-associated staff member, or a nominee proposed by the relevant MANCO portfolio when the respondent is a professional, administrative, support services employee;
- 10.1.6. a member of the Ethics Office; and
- 10.1.7. a representative from the LSO, in student-related complaints, or a representative from the ERO, in staff-related complaints.

### **10.2. General**

- 10.2.1. The Inquiry Panel may, by majority resolution, second any other person to serve on the Inquiry Panel who the Inquiry Panel believes may contribute meaningfully to the conduct of any process contemplated in this Policy.
- 10.2.2. Any member of the Inquiry Panel that may be directly involved in any aspect of the complaint, whether as the complainant, the respondent, a related party or as a witness shall be required to recuse themselves from the Inquiry Panel in so far as the Inquiry Panel is required to deal with the complaint and, in such instance, the remaining members of the panel shall act alone.

### 10.3. Review of Report and Recommendations

- 10.3.1. Within 10 (ten) working days of receipt of the investigating officer's report and recommendations, the Inquiry Panel will meet in order to carefully review the said report and recommendations.
- 10.3.2. Should the Inquiry Panel require further information, the investigating officer may be called upon to obtain such information within a period of three (3) working days and submit it electronically to the Inquiry Panel as a supplement to the above report and recommendations.
- 10.3.3. The Inquiry Panel may, as part of its deliberations, request to engage directly with the complainant and/or respondent, provided that they shall not be interviewed together. Such a session will be set up by the Transformation Office, where practicable. Any engagement shall necessitate:
  - 10.3.3.1. the Inquiry Panel adopting the same principles as set out in Section 9.5.4 above; and
  - 10.3.3.2. the complainant and/or respondent being entitled to representation on the same basis as set out in Section 9.5.3 above;
  - 10.3.3.3. the complainant and respondent (where the Inquiry Panel deems it necessary to engage with both of them) waiting in separate rooms and participating in the process by way of direct audiovisual access.
- 10.3.4. The Inquiry Panel shall adopt an inquisitorial approach with a view to determining the facts of the case and making an informed decision as to the appropriate process to be followed.
- 10.3.5. All administrative and logistical functions are to be coordinated by the Transformation Office including the booking of venues.
- 10.3.6. All proceedings must be recorded and should be submitted to Employee Relations or the LSO, as the case may be, as part of the Inquiry Panel's report.
- 10.3.7. In the event that the Inquiry Panel concludes, by majority resolution, that a *prima facie* case of misconduct on the part of the respondent has been established which warrants a formal disciplinary process to be conducted, the matter will, within 2 (two) working days of the aforesaid resolution, be referred to:
  - 10.3.7.1. Employee Relations, where the respondent is an employee, in order that disciplinary proceedings may be instituted against the employee in terms of the Employee Disciplinary Procedure and Code; or
  - 10.3.7.2. The LSO, where the respondent is a student, in order that disciplinary proceedings may be instituted against the student in terms of the Student Disciplinary Code.
- 10.3.8. The referral of the matter to either Employee Relations or the LSO, as the case may be, shall be accompanied by the report and recommendations of the investigating officer, the report of the Inquiry Panel and all relevant documentation forming part of the investigation and the deliberations of the Inquiry Panel.
- 10.3.9. In the event that the Inquiry Panel concludes, by majority resolution, that a *prima facie* case of misconduct on the part of the respondent has not been established, this will be reported to

Employee Relations (if the respondent is an employee) or the LSO (if the respondent is a student) and such report will need to be signed off by either the Executive Director: Human Resources or the Senior Director: Legal Services, as the case may be, who shall be required to, in turn, inform the relevant parties of the outcome of the matter.

- 10.3.10. In the event that the Inquiry Panel concludes, by majority resolution, that a *prima facie* case of misconduct on the part of the respondent has not been established, this will be reported to Employee Relations (if the respondent is an employee) or the LSO (if the respondent is a student) and such report together with the reasons for the decision must be submitted either to the Executive Director: Human Resources or the Senior Director: Legal Services.
- 10.3.11. Upon receiving a report from the Transformation Office, the Executive Director: HR (in the case of employees) or Senior Director: Legal Services (in the case of students) must assess the report and may make the following determination:
  - 10.3.11.1. Support the report of the Inquiry Panel;
  - 10.3.11.2. Refer the matter to the Inquiry Panel for reconsideration; or
  - 10.3.11.3. Make any recommendation supported by legislation or institutional policy.
- 10.3.12. The Executive Director: Human Resources or the Senior Director: Legal Services will inform the parties as well as the Transformation Office (where the complaint was lodged) of the outcome of their assessment via the ERO and LSO, respectively.
- 10.3.13. Annexure "B" hereto provides an overview of the process flow of harassment and/or unfair discrimination complaints.

## **SECTION 11: HANDLING FALSE COMPLAINTS**

- 11.1. The University recognises that any allegations of unfair discrimination must be carefully investigated, with the due regard to the interests of both the complainant and the respondent.
- 11.2. A false allegation or false report should be distinguished from a mere mistake or faulty memory. Innocent mistakes or inaccuracies form part of any human activity.
- 11.3. An employee or student who does not act in good faith or lodges a complaint in terms of this Policy 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.
- 11.4. The intentional false allegation of a complainant is and should be treated differently to a decision to withdraw a complaint.
- 11.5. Many factors may influence a victim's decision to withdraw a complaint, including the following:
  - 11.5.1. A complainant may not have initially realized the toll that an investigation and/or disciplinary process would take on them mentally, emotionally, physically and financially, and later decide to end their involvement with the process;
  - 11.5.2. A complainant may face tremendous pressure from family, friends and the community not to report or participate in prosecuting an alleged offender;

11.5.3. A complainant may withdraw their participation in the process because they have grown tired of lengthy investigative delays, when they feel uninformed about, and uninvolved in, the decision-making process;

11.5.4. A complainant-centred response necessitates that, in the event of a withdrawal of a complaint, it should be ascertained whether the withdrawal is a result of a system failure, witness tampering or other factors that are outside the control of the University.

## **SECTION 12: RIGHT TO PURSUE EXTERNAL PROCESSES**

12.1. Nothing in this Policy removes the right of an employee or student to pursue any claim they may have or refer a dispute to any competent authority in terms of any relevant prevailing legislation.

12.2. The above notwithstanding and in keeping with the spirit of this Policy which seeks to actively promote safety, equality and a transformative institutional culture at the University, employees and students are urged to exhaust all available internal mechanisms provided for in this Policy, before pursuing their rights by initiating an external process.

## **SECTION 13: CONFIDENTIALITY**

13.1. Confidentiality must be preserved, as far as possible, by limiting communication to persons who are affected by and/or implicated in the concern, complaint or grievance; or persons to whom disclosure is necessary in terms of their official position and responsibility; or persons with the specific responsibility to assist in the resolution of the concern, complaint or grievance concerned.

13.2. It is acknowledged that ensuring the physical and emotional safety of complainants during the processes provided for in this Policy is critical.

13.3. Subject to the provisions of Section 11 above, any employee or student who lodges a complaint and/or makes a disclosure in terms of this Policy or the legislation referred to in Section 6 above, will not suffer any form of detriment.

## **SECTION 14: PROMOTING EQUALITY THROUGH OVERSIGHT, ADVOCACY AND EDUCATION**

14.1. The University will implement various interventions on an ongoing basis to create awareness and educate both employees and students on elements related to human rights, social inclusion, equality, harassment and unfair discrimination practices to ensure that the principles outlined in this Policy are embedded as institutional praxis.

14.2. The interventions will include but not necessarily be limited to:

14.2.1. using institutional structures (e.g. Transformation Committee; Institutional Forum) to oversee and champion equality at the University;

14.2.2. promoting and undertaking advocacy work relating to, amongst others, human rights; bill of responsibilities relating to our rights; civic agency; active and responsible citizenship; positive socialisation; and social inclusion and cohesion; and

14.2.3. conducting education programmes fostering the Constitutional values of equal opportunities, inclusion and redress.

## **SECTION 15: MONITORING MECHANISMS**

- 15.1. The online complaints mechanism will be used to facilitate the monitoring of cases after they are logged, and to facilitate reporting to the Transformation Committee, MANCO, Council, and the University community at large.
- 15.2. The outcome of cases will be publicised periodically *via* the official communication mechanisms, due regard being had however to the importance of keeping confidential the identity of the complainant and the respondent and any sensitive information.
- 15.3. The minutes of committees whose mandates involve equality-related matters (Sexual Harassment and Offences Committee, Transformation Committee) will serve at the relevant governance structures for noting and action.
- 15.4. The above committees must, from time to time, review the effectiveness of the procedures that are in place to deal with all equality-related complaints and provide recommendations where such procedures are ineffective and/or lack urgency in responsiveness.
- 15.5. The Director: Transformation will request quarterly reports from all the relevant stakeholders with a view to, in turn, providing a comprehensive quarterly report to the Vice-Chancellor for reporting purposes to Council.

## **SECTION 16: REVIEW**

This Policy and the procedures set out herein will be reviewed after every 3 (three) years, or when relevant legislation (see Section 6 above) is either amended or promulgated. Appropriate amendments to this Policy will be made from time to time where such amendments are deemed appropriate to promote the objectives of this Policy.

## **ANNEXURE “A”**

### **BURDEN OF PROOF (DISCRIMINATION)**

- (1) If the Complainant makes out a *prima facie* case of discrimination:
  - (a) the respondent must prove that the discrimination did not take place as alleged; or
  - (b) the respondent must prove that the conduct was not based on one or more of the prohibited grounds.
- (2) If the discrimination did take place:
  - (a) on any of the prohibited grounds listed in this policy, then it is unfair, unless the respondent proves that the discrimination is fair;
  - (b) on any of the prohibited grounds, then it is unfair:
    - (i) if one or more of the conditions of the prohibited grounds is established; and
    - (ii) unless the respondent proves that the discrimination is fair.

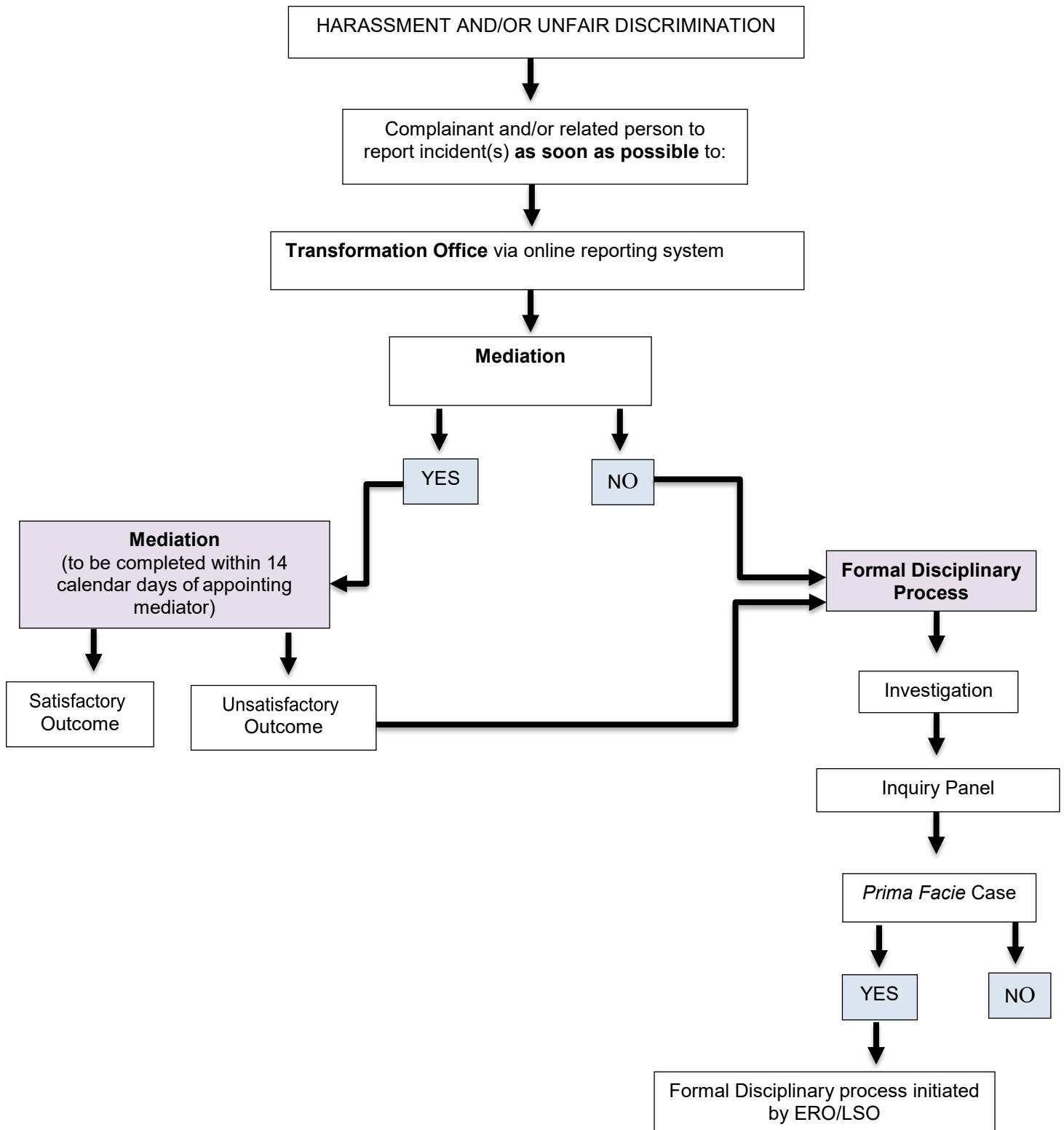
### **DETERMINATION OF FAIRNESS AND UNFAIRNESS**

This Policy adopts the determination of fairness and unfairness as set out in Section 14 of the PEPUDA, as reflected below:

- (1) It is not unfair discrimination to take measures designed to protect or advance persons or categories of persons disadvantaged by unfair discrimination or the members of such groups or categories of persons.
- (2) In determining whether the respondent has proved that the discrimination is fair, the following must be taken into account:
  - (a) the context;
  - (b) the factors referred to in subsection (3) below;
  - (c) whether the discrimination reasonably and justifiably differentiates between persons according to objectively determinable criteria, intrinsic to the activity concerned.
- (3) The factors referred to in subsection (2)(b) above, include the following:
  - (a) whether the discrimination impairs or is likely to impair human dignity;
  - (b) the impact or likely impact of the discrimination on the Complainant;
  - (c) the position of the Complainant in society and whether they suffer from patterns of disadvantage or belongs to a group that suffers from such patterns of disadvantage;
  - (d) the nature and extent of the discrimination;
  - (e) whether the discrimination is systemic in nature;
  - (f) whether the discrimination has a legitimate purpose;
  - (g) whether and to what extent the discrimination achieves its purpose;
  - (h) whether there are less restrictive and less disadvantageous means to achieve the purpose;
  - (i) whether and to what extent the respondent has taken such steps as being reasonable in the circumstances to:
    - (i) address the disadvantage which arises from or is related to one or more of the prohibited grounds; or
    - (ii) accommodate diversity.

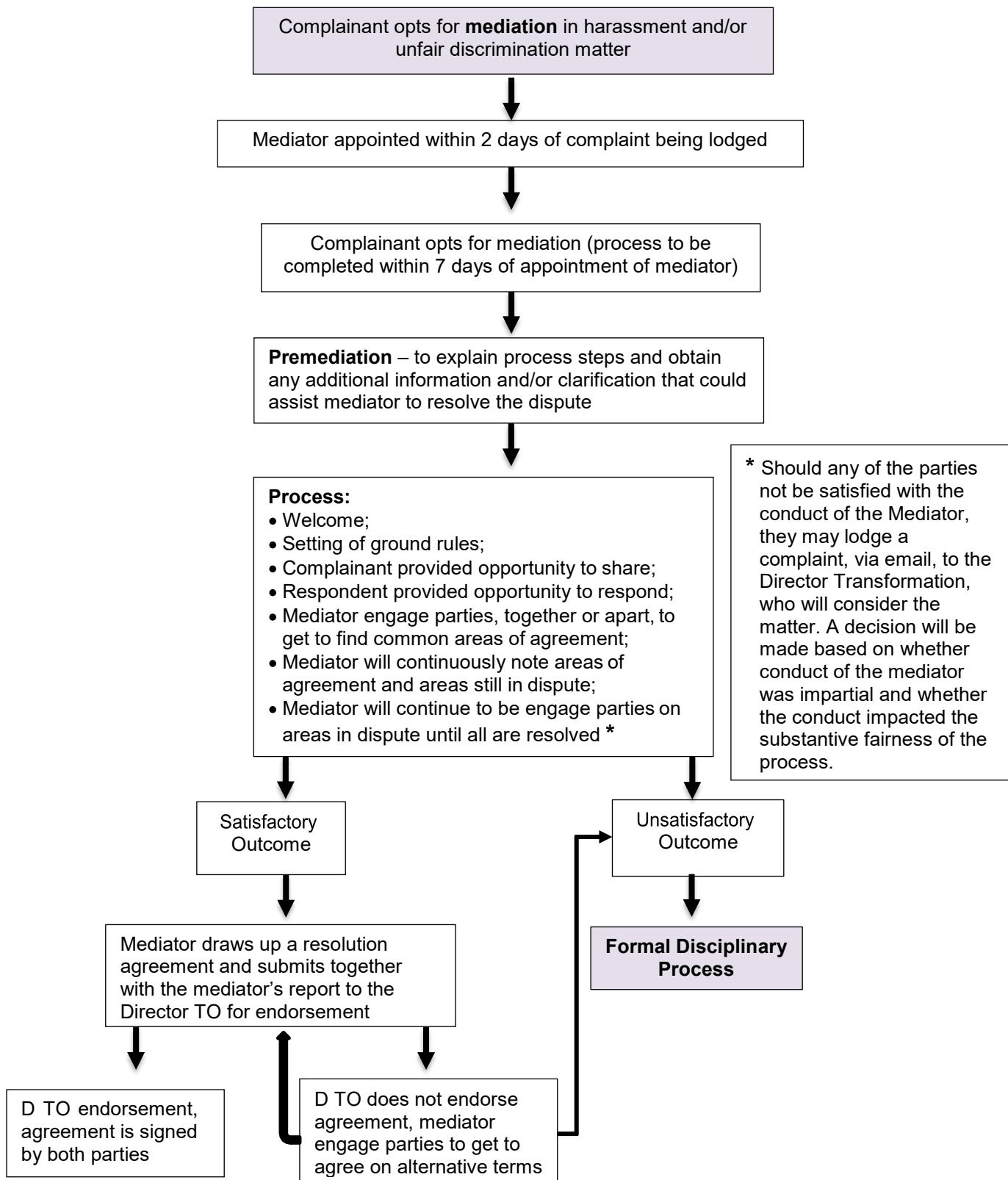
**ANNEXURE "B"**

**PROCESS FLOW OF HARASSMENT AND/OR UNFAIR DISCRIMINATION COMPLAINTS**



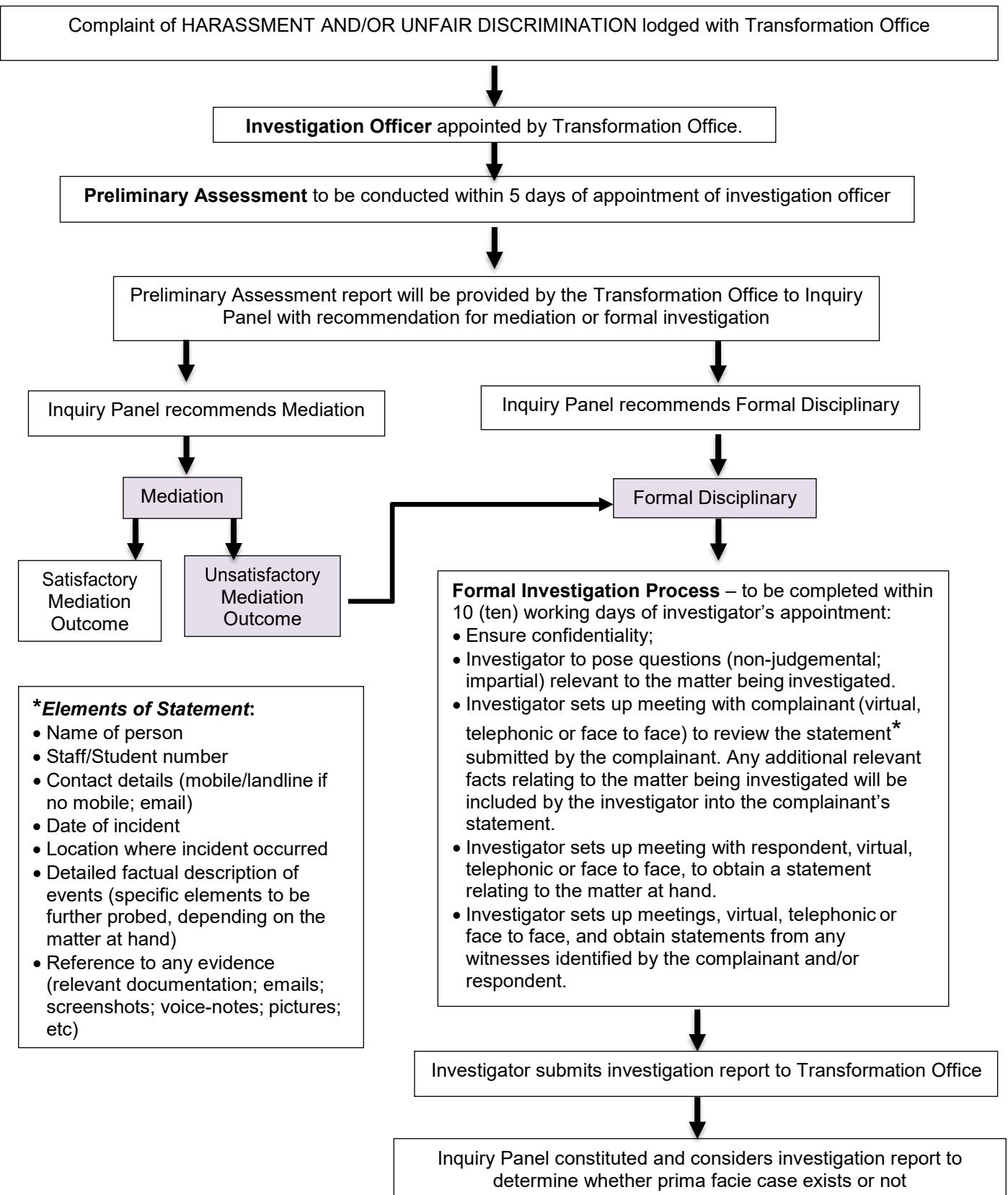
**ANNEXURE “C”**

**PROCESS FLOW – MEDIATION**



**ANNEXURE "D"**

**PROCESS FLOW – INVESTIGATION**



**RELATED POLICY: DISABILITY ACCESSIBILITY**

Under review.

**RELATED POLICY: SEXUAL HARASSMENT AND SEXUAL OFFENCES**

Under review.

**RELATED POLICY: GENDER EQUALITY**

Under review.

**RELATED POLICY: RACISM AND RACIAL DISCRIMINATION**

Under review.

**RELATED POLICY: EMPLOYMENT EQUITY**

Under review.

**RELATED POLICY: RELIGION, BELIEF AND OPINION**

Under review.

**RELATED POLICY: SEXUAL ORIENTATION**

To be developed; no policy relating to Gender identities and sexual orientation.

**RELATED POLICY: HIV AND AIDS**

Under review.

**RELATED POLICY: LANGUAGE**

Under review.