



RHODES UNIVERSITY

Policy on Eradicating Unfair Discrimination and Harassment

1. POLICY PARTICULARS

DATE OF APPROVAL BY RELEVANT COMMITTEE STRUCTURE:

Employment Equity Committee: 25th of November 2008

Equity Committee: 6th of February 2009

DATE OF APPROVAL BY SENATE: 20th of March 2009

DATE OF APPROVAL BY COUNCIL: 27th of March 2009

COMMENCEMENT DATE: 1 September 2009

REVISION HISTORY: This policy replaces the Harassment Policy.

REVIEW DATE: Every three years, next review date 31 December 2012

POLICY LEVEL: All students and staff

RESPONSIBILITY:

- IMPLEMENTATION & MONITORING: Heads of Departments/Divisions, Deans, Hall & House Wardens, Deputy Vice-Chancellors, Vice-Chancellors, SRC, Psychology Clinic, Counselling Centre, Dean of Students Division, Human Resources Division, Registrar's Division
- REVIEW AND REVISION: Student Services Council, GENACT/Employment Equity Committee and thereafter the Equity Committee but any of the above structures may recommend changes

ORGANISATIONAL REPORTING (management responsibility) STRUCTURE:

As regards matters related to staff: Director: HR → Registrar: Finance and Operations/Vice-Chancellor → Equity Committee → Senate → Council

As regards matters related to students: Dean of Students → Deputy Vice-Chancellor: Academic and Student Affairs → Equity Committee → Senate → Council

As regards matters related to curriculum: Dean of Teaching and Learning → Deputy Vice-Chancellor: Academic and Student Affairs → Equity Committee → Senate → Council

2.1 POLICY DECLARATION:

In the Mission and Vision Statement of Rhodes University, a commitment is made to developing shared values that embrace basic human and civil rights. Unfair discrimination and harassment as a result of an individual's membership or perceived membership of a group significantly undermines this commitment. Attitudes and behaviour stemming from prejudice and behaviours such as racism, sexism, homophobia, harassment and vilification will not be tolerated. This policy outlines the institution's commitment to eradicating discrimination, harassment and prejudice in order to provide an environment in which staff and students are able to work effectively and fully participate in University life.

The University's commitment to eradicating unfair discrimination and harassment on the basis of group membership is upheld within the context of the *Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), Chapter 2, Bill of Rights, Section 9, Equality* which prohibits unfair discrimination.

Specifically:

“(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3).”

Within the context of Section 6, the Employment Equity Act, no 55 of 1998, section 6 refers to the prohibition of unfair discrimination and harassment. In terms of this legislation, employers are liable if they fail to take reasonable steps to provide an environment free of harassment and to provide employees with recourse if harassment is experienced. It must be recognised that this piece of legislation also differentiates between fair and unfair discrimination. This policy deals with the latter.

2.2 POLICY OBJECTIVES:

The purpose of this policy is to ensure that:

1. The University fosters social cohesion through ensuring that the University community understands the importance of promoting a culture that supports all staff and students, irrespective of their membership of a particular group. Within this context, it must be understood that unfair discrimination and harassment will not be tolerated;
2. The University community understands what the institution regards as acceptable behaviours and attitudes;
3. Educational strategies are employed to ensure that the University staff and students understand what is regarded as unfair discrimination, harassment and prejudice and its impact on the individual, the collective, the institution and society;
4. Appropriate strategies are implemented to minimise the likelihood of unfair discrimination, harassment and prejudice where possible;
5. Appropriate strategies are implemented to support complainants of or those who witness seeing incidents of unfair discrimination and harassment;
6. Appropriate recourse is available to complainants who report unfair discrimination and harassment to allow them to pursue justice; and
7. Appropriate mechanisms are available to allow the institution to assess and monitor the nature and extent of unfair discrimination and harassment.

2.3 DEFINITIONS and EXAMPLES OF unfair discrimination, prejudice and harassment:

Unfair discrimination: Unfair discrimination is the less favourable treatment (intentional or not) of one or more people over others. Unfair discrimination on one or more of the following grounds is unacceptable by the terms of this policy:

race
colour
ethnicity
class
religion
national & geographic origin
language
culture
sex
age
sexual orientation
gender identity and expression
disability
parental status
family status
marital status
health status

Examples of unfair discrimination include denial of fair and equal access to employment, promotion, accommodation, and educational opportunities, and harassment (see below). Such discrimination may or may not be the product of prejudice (see below).

Harassment: Harassment is a sub-set of discrimination, characterised by unwanted physical or verbal behaviours and gestures that have the effect of offending, insulting, demeaning, humiliating, or intimidating someone. Harassment includes: unwelcome behaviour, hate speech, name calling, graffiti, ridicule, ‘put down’ jokes, pushing, shoving, bullying, and offensive, abusive or suggestive communications. The standard for determining whether conduct constitutes *harassment* is whether a reasonable person in the same or similar circumstances would find such conduct intimidating, hostile or abusive. A reasonable person’s standard includes consideration of the perspective of persons of the alleged complainant’s race, colour, religion, gender, national origin, age, disability, and so on.

Prejudice: In the context of this policy, “prejudice” refers to beliefs (isolated or systematic) and habits of belief formation which are biased against those groups (or perceived members of those groups) listed above. Examples of prejudice would include stereotyping and the tendency to form and hold, in the absence of sufficient evidence, false and negative beliefs about these groups. Prejudice may underlie or nurture unfair discrimination and harassment. As such, the elimination of prejudice, through educational measures, will further the aims of this policy to eliminate unfair discrimination and harassment.

3. POLICY IMPLEMENTATION

3.1 THE ACTIONS AND PROCESSES BY WHICH THE OBJECTIVES OF THE POLICY WILL BE ACHIEVED:

3.1.1 Educational strategies:

The University has a responsibility to ensure that appropriate educational strategies are implemented. Such strategies should also provide an environment where complainants of unfair discrimination and harassment are more likely to come forward.

Interventions should be innovative, proactive, constantly evolving and highly visible. Examples include educational workshops, use of drama/theatre, posters, inserts in orientation programmes for new staff and talk forums.

Educational strategies should seek to ensure that there is an awareness of:

- (i) What behaviours and attitudes will not be tolerated by the institution and its authorities and why this is important;
- (ii) The support available to those who experience unfair discrimination and harassment and where to access such support or further information of such support;
- (iii) The procedures that will be followed in addressing incidents of unfair discrimination and harassment; and
- (iv) The roles and responsibilities of those in authority in ensuring a culture of zero tolerance as regards unfair discrimination and harassment.

While synergies should be sought between the Dean of Students and the Human Resources Divisions in the running of educational programmes, the Dean of Students Division shall have responsibility for educational strategies targeted at students and the Human Resources Division for programmes targeted at staff.

Consideration must also be given to ensuring that these issues are infused into the formal Student curriculum and learning programmes. The Dean of Teaching and Learning is responsible for this. Synergies between the formal and extra-curriculum programme for students should be sought.

3.1.2 Principles that underpin the eradication of unfair discrimination and harassment:

The following are regarded as critical to eradicating unfair discrimination, prejudice and harassment and promoting a culture of acceptance of diversity and forging social cohesion:

- (i) *Commitment and Support by the executive and Senior management*
It is vital that executive and senior management vociferously, consistently and publicly reject any forms of unfair discrimination, prejudice and harassment and seek to ensure efficient and timely recourse where incidents of unfair discrimination, prejudice and harassment occur.

(ii) Implementation by Head of Departments and all managers

Heads of Departments/Divisions/Institutes and all managers are responsible for ensuring awareness of this policy, attending relevant workshops to ensure an understanding of the issues and of the institution's commitment to eradicating unfair discrimination, prejudice and harassment. They are also responsible for ensuring that staff are aware of the support offered by the University and where to find further information on the procedures available when incidents occur.

(iii) Allocation of resources and personnel and appropriate structures

Arrangements must be made to allocate resources particularly for the execution of the educational strategies and designate staff to implement this policy.

In order to encourage staff and students to come forward with complaints of unfair discrimination and harassment and to ensure that appropriate support is provided, appropriate structures should be in place (see point 3.1.3 below).

(iv) Orientation of new staff and students

The orientation for new staff and students must address the University's commitment to eradicating unfair discrimination, prejudice and harassment and its stance on dealing with such behaviours and attitudes.

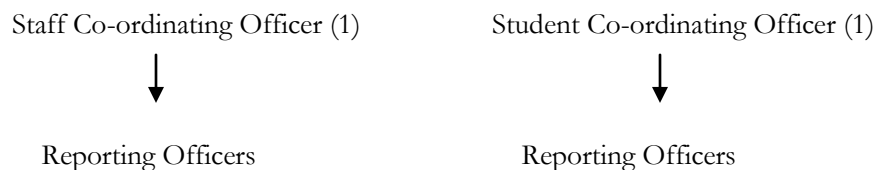
(v) Accountability

Within a context of adequate resources and personnel and with respect to the domains of authority and responsibility, the Dean of Students, Dean of Teaching and Learning and the Director: Human Resources shall be held responsible for the implementation of this policy.

3.1.3 Structures

The following structures shall be set up to provide the necessary support to complainants and to advise the individuals of the strategies available to them in dealing with a complaint. Such structures do not serve to replace an individual's desire to resolve the matter independently or to replace an individual's choice from whom to seek assistance. The provision of the following structures seeks to ensure that individuals get the necessary support they need and are provided with accurate advice.

The overarching structure is as follows:



Collectively these officers and the University Prosecutor make up the Fairness Forum.

(a) Identification of Reporting Officers

The Dean of Students Division and the HR Division shall be responsible for ensuring that a number of Reporting Officers are available to staff and students. Such individuals will be identified from amongst staff and students. Diversity in terms of race, gender, age, cultural and ethnic group, religion, disability, and sexual orientation will be important in identifying such individuals.

In addition, certain posts will encompass the responsibilities of a Reporting Officer. For staff, there shall be:

- Individuals within the Centre of Higher Education Research, Teaching and Learning (CHERTL);
- Individuals within the HR Division;
- Individuals within the Counselling Centre
- Individuals within the Sanatorium.

For students, these posts:

- All professional staff within the Counselling Centre
- Any nursing sister at the Sanatorium
- Hall Wardens
- SRC President and the SRC Activism and Transformation Councillor.

The names of these Reporting Officers will be made available to staff and students.

For students and staff, the names and location of these Reporting Officers will be communicated appropriately.

(b) Responsibilities of the Reporting Officers

The Reporting Officers shall be responsible for:

- Attending training arranged by the Dean of Students and Human Resources Division;
- Ensuring reasonable availability to complainants of harassment and/or unfair discrimination;
- Being the first port of call for complainants of harassment and/or unfair discrimination and providing appropriate support;
- Providing complainants with assurances that their complaints will be dealt with confidentially unless particular recourse is sought and confidentiality cannot be maintained;
- Where the complainant has been physically traumatised, encouraging the individual to take the necessary precautions in order to preserve evidence;
- Ensuring that complainants are aware of the services available to support them and outlining the benefits of seeking certain support;
- Outlining the options available to the individual (see point 3.1.5 below) being careful to ensure that the individual understands all the implications of the choices such that an informed choice can be made;
- Where the complainant chooses a particular option, facilitating this process, except where this is a formal complaint (3.1.5. (iv)) as this must be managed differently;
- Keeping in contact with the individual throughout whichever process is pursued, ensuring that they are being supported and assisted;
- Keeping reports of incidents and ensuring that these are forwarded to the Dean of Students Division (in the case of students) and the HR Division (in the case of staff) in line with point 3.1.6 below in dealing with the collection of statistics;
- Participating in the Fairness Forum (see point 3.1.3 (d)) when the complainant lays a formal complaint or the University wishes to pursue disciplinary action; and
- Meeting as a collective every quarter to discuss incidents on campus, to review statistics and discuss educational programmes.

The Reporting Officers (with the exception of those where these responsibilities are included in their jobs) shall receive an honorarium from the University for assuming these responsibilities.

(c) *Co-ordinating Officers*

There shall be two Co-ordinating Officers, one each within the Dean of Students Division and the Human Resources Division. Within the HR Division, this Co-ordinating Officer shall be the Employment Equity Manager.

The responsibilities of the Co-ordinating Officers shall be:

- Ensuring the selection of Reporting Officers;
- Ensuring that the educational strategies are identified, implemented and evaluated;
- Providing input into the orientation of new staff and students;
- Ensuring the training of Reporting Officers;
- Supporting the Reporting Officers in their responsibilities and monitoring of the execution of responsibilities;
- Collating individual records of incidents from the Reporting Officers into a quarterly report;
- Chairing (to be shared between the two officers) of the Reporting Officers Committee (ROC) on quarterly basis;
- Convening of the Fairness Forum to deal with complaints of discrimination, prejudice and harassment where the complainant has chosen to pursue disciplinary action;
- Preparing statistics of the relevant structures (as outlined in 3.1.5 below);
- Co-ordinating of the review of this policy (as outlined in point 3.2 below).

(d) *Fairness Forum*

The Forum shall be responsible for hearing formal complaints of unfair discrimination and harassment (see point 3.1.5 (iv) below).

For students, the Forum shall consist of the following members:

- Chair: University Prosecutor
- 3 Reporting Officers, chosen from amongst the Reporting Officers ensuring student representation
- Representative from the Dean of Students Division

For staff, the Forum shall consist of the following members:

- Chair: University Prosecutor
- 3 Reporting Officers, chosen from amongst the Reporting Officers ensuring staff representation
- Representative from the Human Resources Division

Where a complaint involves both staff and student, the Forum shall consist of the following members:

- Chair: University Prosecutor
- Representative from the Dean of Students Division
- Representative from the Human Resources Division
- Nominee of the SRC
- 1 Reporting Officer

In the choice of Reporting Officers, the diversity of the Forum shall be considered relative to the nature of the complaint. Neither the complainant nor the alleged transgressor shall have any input as regards the composition of the Board.

3.1.4 Strategies to support complainants of unfair discrimination and harassment

It is critical that complainants of unfair discrimination and harassment have access to support from appropriate agencies after an incident. It is also important that accurate information is provided to the complainant. Strategies must allow for the resolution of these complaints as quickly as possible.

3.1.3.1 *Initial support*

Initial support may be provided by the person whom the complainant first approaches.

Where such an individual is not a Reporting Officer, the complainant should be encouraged to contact and deal with such a Reporting Officer as these individuals have been especially trained to support individuals at these times.

Should the complainant not wish this, the individual should, at a bare minimum, be advised that a Reporting Officer will be contacted (preserving the complainant's name) to ensure that appropriate support and information is being provided. Under this circumstance, the Reporting Officer cannot be expected to pursue the matter. Should the complainant wish to take the matter further, then a Reporting Officer would need to be contacted.

Initial support may also include the complainant contacting the Sanatorium which has a 24 hour emergency service. This is encouraged where the complainant has experienced physical injuries and evidence needs to be collected. Collecting such evidence does not imply that the complainant will seek to lay charges against the alleged transgressor but doing so at least keeps this option open.

3.1.3.2 *Medium-term support*

Within the Dean of Students Division, there shall be agencies to provide psychological and emotional support as well as security to **student** complainants of unfair discrimination.

Psychological and emotional support to **staff** complainants of unfair discrimination and harassment is provided by the Sanatorium.. A future Employee Assistance Programme (which at the time of writing was under development) will provide more support.

3.1.5 Recourses available to complainants of discrimination, harassment and/or prejudice

In providing support to complainants, the options available to the complainant must be outlined. It is the complainant's choice as regards what recourse to follow.

The options available are:

- Consultation (seeking advice from the Reporting Officer)
- Direct Communication with the alleged transgressor
- Mediation
- Formal complaint which may or may not lead to disciplinary action

(i) *Consultation*

Consultation with a Reporting Officer provides an opportunity for the complainant to discuss an alleged incident of unfair discrimination and harassment. These consultations will be confidential and can be "off the record" if so requested. The complainant may simply wish to have the incident noted by the institution without seeking any further action.

A record is kept of this interaction. This record will only deal with the alleged incident and does not refer to the name of the complainant nor that of the alleged transgressor.

The benefit of this sort of interaction for the complainant is that it provides an opportunity to discuss the incident, seek emotional support, find out more about what assistance can be provided, and alert the institution to what type of unfair discrimination and harassment is taking place.

This sort of consultation with a Reporting Officer may result in the complainant deciding to pursue other avenues of recourse.

(ii) *Direct Communication*

A complainant may request that the Reporting Officer act on an alleged incident of unfair discrimination and/or harassment directly, by addressing the other party in person verbally or in writing. In this interaction, the Reporting Officer would describe the unwelcome behaviour and its effect, stating that the complainant has indicated that the behaviour must stop.

A record is kept of this interaction. This record will deal with the alleged incident and will refer to the name of the complainant and that of the alleged transgressor.

The purpose of this particular interaction is not for the accused to deny this allegation. Where the accused disputes this allegation, s/he could then seek to lay a formal complaint below.

(iii) *Mediation*

The complainant may request that third party intervention takes place. This will involve the use of an experienced mediator to mediate a meeting between the complainant and the alleged transgressor. This requires that the alleged transgressor is willing to participate in such a mediation. If this is not the case, the complainant may then elect to lay a formal complaint.

The University will ensure availability of suitable mediators for this intervention. If the alleged transgressor is willing to engage in mediation, then the choice of mediator will be discussed individually by the Reporting Officer with each party. If no consensus can be reached as regards a possible mediator, the complainant can then elect to forego mediation and lay a formal complaint.

A record is kept of this interaction. This record will deal with the alleged incident and the outcome of the mediation, referring to the name of the complainant, the alleged transgressor and the mediator. The Reporting Officer, at the request of the complainant, may observe the mediation process but may not participate.

Should the complainant or the alleged transgressor be unhappy with this process, both can lay a formal complaint.

(iv) *Formal Complaint*

The complainant may lay a formal complaint and ask that the alleged incident is investigated and where relevant, that the disciplinary process against the alleged transgressor is invoked.

Should the alleged transgressor believe that a false allegation has been made, a formal counter-complaint can also be made, asking that a disciplinary process be invoked to investigate the alleged incident and where relevant, action is taken against the complainant. This can however, only take place once the initial complaint has been dealt with and the outcome known.

These complaints are heard by the Fairness Forum subject to the procedures outlined in 3.1.5 below. Contingent on the seriousness of the alleged offence (refer to the disciplinary code below) the Reporting Officer must advise the complainant of the time urgency of pursuing disciplinary action.

A record is kept of the procedure. This record will deal with the alleged incident and the outcome of the disciplinary process, referring to the name of the complainant, the alleged transgressor, and the members of the Fairness Forum. The Reporting Officer, at the request of the complainant, may observe the process and provide support to the complainant but may not participate.

3.1.6 Disciplinary Procedures

Where a staff member or student member lays a formal complaint, a formal investigation will take place. Where there is sufficient evidence to proceed, disciplinary action will be taken.

3.1.6.1 Disciplinary procedure for allegations of unfair discrimination and harassment made against a staff member

- (i) When a complainant lays a formal complaint, the Fairness Forum shall usually meet within five working days to consider the nature of the complaint;
- (ii) At this meeting, the Fairness Forum shall meet with the complainant and gather the evidence related to the incident;
- (iii) The Fairness Forum shall then proceed by advising the alleged transgressor of the allegation and that an investigation is underway;
- (iv) Following the investigation and where the Fairness Forum believes that there is evidence of wrong-doing, the disciplinary process as per the Staff Disciplinary Code will be invoked;
- (v) Due process as outlined by the University's disciplinary process must be followed with the exception that according to 5.2.1. and 5.2.2 of the Staff Disciplinary Code, this process is usually followed by either the supervisor or Head of Department/Section. In this process, the supervisor or Head of Department/Section shall be the University Prosecutor;
- (vi) The Chair (University Prosecutor) has final decision-making powers as regards the outcome of a disciplinary hearing;
- (vii) The appeal of any decision reached shall be handled in section 6 of the Staff Disciplinary Code;
- (viii) Consistent with 5.2.3 of the Staff Disciplinary code, if the Fairness Forum decides to recommend a penalty more severe than the issue of a final warning letter, they shall forward the recommendation and all supporting documentation immediately to the Human Resources Division who will arrange for a Disciplinary Board. The Disciplinary Board should be held within twenty (20) days of the matter being heard by the Fairness Forum ~~save~~ that this period may be extended by the Chairperson if unavoidable practical reasons exist.
- (ix) The penalty determined by the Fairness Forum shall be contingent on the nature of the incident, aggravating and mitigating circumstances and consistent with the staff disciplinary code of the University.

3.1.6.2 Disciplinary procedure for allegations of unfair discrimination and harassment made against a student

- (i) When a complainant lays a formal complaint, the Fairness Forum shall usually meet within five working days to consider the nature of the complaint;
- (ii) At this meeting, the Fairness Forum shall meet with the complainant and gather the evidence related to the incident.;
- (iii) The Fairness Forum shall then proceed by advising the alleged transgressor of the allegation and that an investigation will be followed. The Chair/University Prosecutor will be in charge of this process;
- (iv) Due process as outlined by the University's student disciplinary process must be followed;

- (v) The Chair/University Prosecutor has final decision-making powers as regards the outcome of the disciplinary hearing;
- (vi) The Student Disciplinary Process notes the following:
 - (a) Rule 15.23: Any student who engages in conduct which is defamatory of any officer or any other member (which will include a student) or employee of the university which may reasonably be regarded as offensive shall be guilty of a disciplinary offence;
 - (b) Rule 15.27: Any student who utters, distributes, displays, shows, screens or projects any disparaging or derogatory remarks or innuendos based on a person's race, gender or sexual orientation, or any form of hate speech shall be guilty of a disciplinary offence;
 - (c) Rule 15.30: Any student who commits any form of racial, sexual, gender, religious or other form of harassment shall be guilty of a disciplinary offence.

3.1.6 Mechanisms to allow the institution to monitor the nature and extent of unfair discrimination and harassment:

The following mechanisms will be used to monitor the nature and extent of unfair discrimination, and harassment:

- (i) Each Reporting Officer will keep a record of each individual incident reported as outlined in 3.1.4 & 3.1.5 above;
- (ii) Using these individual records, the incidence and nature of incidents of unfair discrimination and harassment dealt with by Reporting Officers will be collated by the Co-ordinating Officers in the Dean of Students Division (for student records) and the HR Division (for staff records);
- (iii) These collated statistics will be presented at a quarterly meeting of the Reporting Officers;
- (iv) These collated statistics will be reported on an annual basis to the Employment Equity Committee (for incidents experienced by staff) by the Director: HR or his/her representative and the Equity Committee (for incidents experienced by students and staff) by the Dean of Students or his/her representative;
- (v) Regular student surveys, overseen by the Dean of Students Division, to assess the nature and extent of unfair discrimination, and harassment will be used; and
- (vi) Regular staff surveys, overseen by the Human Resources Division, to assess the nature and extent of unfair discrimination and harassment will be used.

3.2 REVIEW PROCEDURE:

On an annual basis, the Human Resources Division and Dean of Students Division will, through the Co-ordinating Officers, evaluate the success of the strategies, structures and processes outlined in this policy. This information shall be collated and used as a basis for reviewing this policy. In addition, the following structures will be asked to raise any concerns with current strategies, structures and processes:

- (i) Unions
- (ii) GENACT
- (iii) Women's Academic Solidarity Association
- (iv) Employment Equity Committee
- (v) SRC.

Last updated: 27 February 2009