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Message from the Executive Director

For quite some time the political discussion on Diversity included the fact that the National Commission for the Promotion of Equality will also become the Equality Body as described in Directive 2000/43/EC and therefore will be vested with the responsibilities that emanate thereof. In April 2007 Legal Notice 85 was published and the responsibilities given to NCPE were clearly spelt out.

The National Commission for the Promotion of Equality took a proactive stance in this sphere by first training and preparing its staff for this actuality and then by preparing documents that would help different sectors of the population adjust and cope with the changing social reality. It is for this latter reason that this document has been written.

NCPE sought funding support and found it at the Royal Embassy of The Netherlands. Besides helping with funds for this project, the Embassy had also helped NCPE by bringing to Malta a Diversity Expert from The Netherlands who not only trained NCPE staff but the training was also offered to the Chairs and Members of the Equality Committees set up in the Ministries in Malta and Gozo.

This Manual is meant to serve as a tool for employers and service providers so that they will be able to understand what is expected of them and what their responsibilities are. NCPE took this initiative to ensure that the 'new' concepts that are spelt out in LN 85 of 2007 can be easily understood and applied. In reality while the word 'new' has been used, the concepts are not new at all but are simply a more spelt out way of understanding the principle of equality and non-discrimination.

Prior to the transposition of Directive 2000/43/EC, Malta had long been committed to the promotion of equality for persons irrespective of their racial or ethnic origin. Over the years, Malta has signed and ratified a number of documents and these are listed on page 8 for ease of reference. Early in 1967 Malta ratified the European Convention on Human Rights and one can see a number of other international documents specifically on human rights that make reference to racial equality.

Clearly the subject is not new at all, it is that the obligations emanating out of Directive 2000/43/EC have become law through Legal Notice 85 of 2007 and must be respected and honoured. This toolkit will help all service providers achieve this smoothly and efficiently and will ensure that respect for all is at the base of all transactions.

Sina Bugeja
June 2007

1. Introduction

This document is intended to raise awareness on the legislation that has been adopted recently in Malta with regard to the grounds of racial and ethnic origin, and to shed light on the correct implementation and application of such legislation. The document is also intended to serve as a toolkit that provides tools to be used to counter discrimination and means of how organisations may improve their practices by mainstreaming equality.

This manual is mainly intended for employers, human resource managers and providers of goods and services, and presents them with initial guidance on the practices that they may introduce to comply with their obligation to prevent discrimination, and set standards for all employees of the organisation.

Towards the end of this toolkit, there is a suggested equality policy that may be adopted to send a positive message against discrimination, and to serve as clear guidelines to any action as may be appropriate.

2. The European Union and Equal Treatment – an Overview

The Treaty of Rome (1957), that was signed fifty years ago establishing the European Economic Community (EEC) contained only two non-discrimination clauses, namely the ban on discrimination on the basis of nationality and Article 119 about equal pay for equal work for men and women.

Since then, the EEC has developed several directives and regulation promoting gender equality as it became aware that unless there was a common foundation of equal treatment legislation, the social conditions that are necessary for economic growth and fair competition could not be reached. Until the 1990s however, this body of legislation had very little effect on other grounds of non-discrimination.

In 1997, the Treaty of Amsterdam brought recognition of other grounds of non-discrimination however. Article 13 of this Treaty in fact enabled the Council to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation.

Three years later, in 2000, the EU adopted two important directives in this regard. The first one was the Race Directive¹ regarding the grounds of racial and ethnic origin, while the other one was the Employment Framework Directive² regarding the grounds of religion or belief, disability, age and sexual orientation. Both directives provided for equal treatment in the areas of employment (private and public); self-employment; conditions of employment, including pay,

¹ Council Directive 2000/43/EC

² Council Directive 2000/78/EC

vocational training, promotion, and dismissals; and membership of and involvement in workers' associations and professional organizations. Furthermore, provisions within these directives prohibit direct and indirect discrimination; harassment; instructions to discriminate and victimisation. They also allow for positive action measures to be taken, in order to cater for structural discrimination and ensure full equality in practice.

In addition, the material scope of the Race Directive also extends to social protection, including social security and healthcare; social advantages, education; and access to and supply of goods and services which are available to the public, including housing. In addition, this Directive demanded that Member States designate an independent body to process complaints, conduct independent surveys concerning discrimination, publish independent reports and make recommendations.

The European Union is aware that legal developments by themselves, without a change in attitudes and behaviour, is not enough and would not have given the desired results. To this effect it set up the Community Action programme to Combat Discrimination 2001 - 2006 to promote equality, and has also funded major Europe wide promotional campaigns such as the "For Diversity Against Discrimination" campaign. In addition, the European Commission dedicated 2007 to the celebration of diversity and equal opportunities for all on the grounds of sex, racial or ethnic origin, religion or belief, age, sexual orientation, and disability. Furthermore, the PROGRESS fund 2007-13 shall continue the EU's fight against discrimination through the funding of various projects to tackle problems of discrimination.

3. Detailed Overview of the Race Directive (2000/43/EC)

Material Scope

Through the Race Directive the grounds of racial and ethnic origin enjoy wide protection against discrimination both with regard to employment and occupation and also the provision of goods and services. The material scope of Council Directive 2000/43/EC, in fact, provides protection against discrimination in the following areas:

- Access to employment, self-employment and occupation (including promotion);
- Access to vocational guidance and training;
- Employment and working conditions, including dismissal and pay;
- Membership of workers', employers' or professional organisations;
- Education;
- Social protection, including social security and healthcare;
- Social advantages;
- Access to and supply of goods and services which are available to the public, including housing.

This Directive prohibits discrimination in both the public and private sectors and protects individuals/organisations against racial or ethnic origin discrimination by any natural or legal person. It is important to note that, the ground of nationality is not covered by this Directive. Therefore, while this Directive also protects third country nationals from discrimination on the basis of their racial or ethnic origin, it does not have an effect with regard to their entry in and access to work in EU member states.

What is understood to constitute discrimination?³

Discrimination means the differentiation or the provision of differential treatment when there is no relevant difference between two persons or situations, or the treatment in an identical manner of two situations that are in fact different. Both direct and indirect discrimination against any person on the recognised grounds constitute a breach of the law.

Direct Discrimination occurs where a person is treated less favourably than another person is, has been, or would be, treated in a comparable situation. The issue here is therefore to identify a suitable comparator whose situation and treatment may be compared to that of the alleged victim. In the case that no such comparator is identified, it is possible to consider a hypothetical comparator and assess whether s/he would have been treated differently.

Examples of direct discrimination:

- A job advert that states, 'No black people need apply'.
- A worker of a particular racial or ethnic origin is denied a pay rise, in spite of his/her fulfilling of the minimum conditions of the pay rise, while it is provided to another worker in the same situation.
- Restriction of entry to a public place such as a nightclub, or to rental of accommodation such as a flat to a person or group of persons who belong to, or are presumed to belong to, a particular racial or ethnic group for no reason other than their presumed or actual racial or ethnic origin.

Indirect Discrimination occurs where an apparently neutral provision, criterion or practice puts persons of a racial or ethnic origin at a particular disadvantage compared with other persons. Such a provision, criterion or practice does not constitute indirect discrimination when it is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

³ This document is focused on the dissemination of knowledge on Council Directive 2000/43/EC referring to the grounds of racial and ethnic origin and to provide information on the correct implementation of the said Directive. The author would like to remind the reader that other grounds may be additionally covered by Acts of Maltese legislation, EU Directives and other international conventions.

Examples of indirect discrimination:

- Conducting an interview or test exclusively in Maltese or English or in both languages, when the language/s in question is/are not a genuine occupational requirement.
- Assigning different duties to persons of a different racial and ethnic origin even though their job description and/or title are the same.

Harassment is deemed to be discrimination as understood above, when an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. The definition of harassment was intentionally kept wide to include a wide range of unwanted conduct. When making an assessment of whether harassment has taken place, a comparator does not need to be identified.

Instruction to Discriminate against persons on grounds of racial or ethnic origin is deemed to be discrimination.

Examples of discriminatory instructions:

- An owner of a block of rental flats instructs a real estate agency to discriminate against a particular racial or ethnic group on his/her behalf.
- An owner of an entertainment establishment instructs the security personnel to restrict access to certain individuals/groups on the grounds of their racial or ethnic origins.
- An employer instructs the interviewing panel or the recruiting agency that s/he would not be content if a candidate from certain racial or ethnic groups is selected.

Victimisation occurs when a person or group of persons receive/s any adverse treatment or adverse consequence (such as dismissal) as a reaction to a complaint or to proceedings that he/she/they may have undertaken, or for supporting or providing testimony in the establishing of the facts of a complaint of a colleague.

Are there any situations in which discrimination would be permitted?

The Directive does allow certain discrimination to be made in very exceptional cases and only where certain tests are satisfied.

Such discrimination may be made as a *genuine occupational requirement* where it is shown that the selection of a person for a particular post should have a characteristic related to a racial or ethnic origin, provided that the objective is legitimate and the requirement proportionate. Long-established assumptions that certain persons belonging to a particular racial or ethnic are not able or suitable to do a particular job may not meet the test of legitimate objective and proportionality.

Example of a genuine occupational requirement:

- A film director issues a call for, and contracts a black male actor to perform the role of Martin Luther King.

Who has to shoulder the burden of proof in cases of discrimination?

Non-discriminatory legislation recognises that discrimination is difficult to prove. To this effect, Article 9 of the Race Directive provides for a shift of the burden of proof whereby the person who is alleged to have discriminated has to prove that s/he did not. This shift applies both in court proceedings and in front of any competent body – such as the National Commission for the Promotion of Equality (hereinafter NCPE) and the Industrial Tribunal. This shift however, does not apply in criminal proceedings.

Here a clarification needs to be made, the onus of proof does not shift automatically as soon as a plaintiff claims that they were discriminated against but only after they have established facts from which it may be presumed that discrimination has occurred.

4. Malta – Protection against Racial Discrimination

Malta has long committed itself towards the promotion of equality for persons irrespective of their racial or ethnic origin. Proof of this is found in Malta's ratification of various human rights documents that make specific reference to racial equality.

Malta has signed and ratified the following human rights documents as follows:

Human Rights Document	Ratification Date
European Convention on Human Rights	23/01/1967
ILO Convention N°111 on Discrimination	01/07/1968
Convention on the Elimination of All Forms of Racial Discrimination	26/06/1971
International Covenant on Civil and Political Rights	13/09/1990
International Convention on Economic, Social and Cultural Rights	13/12/1990
Framework Convention on the Protection of National Minorities	10/02/1998
Revised European Social Charter	27/07/2005

Some of the most recent developments in this area regard the implementation of Council Directive 2000/43/EC in Maltese legislation include the designation of the

Industrial Tribunal and NCPE as the entities that are empowered to investigate complaints of discrimination on the grounds of racial and ethnic origin with regard to employment and the non-employment provisions of the said Directive respectively.

5. Maltese Racial Equality Legislation

Reference to the principle of equal treatment is found in the *Constitution of Malta*, the *European Convention Act*⁴ and the *Criminal Code*⁵. The principles of equality of treatment and non-discrimination under Article 45 of the *Constitution of Malta* relate to the protection from discrimination on the basis of “race, place of origin, political opinions, colour, creed or sex”. This provision also provides that no law shall make any provision that is discriminatory either of itself or in its effect. The *Constitution of Malta* does not make specific mention of the words ethnic origin in Article 45. Despite this it is to be expected that with the use of the concepts of race, place of origin, colour and creed and since the domestic courts have given a wide interpretation to these concepts, one could still obtain a remedy under this provision. Furthermore, through the *European Convention Act* the protection given under the European Convention for the Protection of Human Rights and Fundamental Freedoms is rendered justiciable before the domestic courts. Consequently one may also find protection within the domestic judicial system under the European Convention Act.

Implementation of the Race Directive

Cap 452 The Employment and Industrial Relations Act

The main act of the *Employment and Industrial Relations Act* defines discrimination in a wide sense as “any distinction, exclusion or restriction which is not justifiable in a democratic society including discrimination made on the basis of marital status, pregnancy or potential pregnancy, sex, colour, disability, religious conviction, political opinion or membership in a trade union or in an employers’ association” and it provides protection from victimisation. This Act states that any person who believes that s/he has been discriminated against may lodge a complaint to the Industrial Tribunal within four months of the alleged breach.

LN 461 of 2004 Equal Treatment in Employment Regulations introduced the provisions of the Racial Equality Directive with regard to access to employment, access to all types and to all levels of vocational guidance, employment and conditions of employment, membership of, and involvement in, any organization of employees and employers.

These regulations protect the grounds of racial or ethnic origin and also religion

⁴ Laws of Malta Cap 319

⁵ Laws of Malta Cap 9

or religious belief, disability, age and sexual orientation from direct and indirect discrimination, and harassment. Furthermore these regulations deem that an employer or any person or organisation to have discriminated against a person if they provide instructions to discriminate or neglect their obligation to suppress any form of harassment at the workplace.

These provisions of The Employment and Industrial Relations Act as well as the Equal Treatment in Employment Regulations applies to the private sector and provide private individuals the possibility to seek redress at the Industrial Tribunal within four months of the occurrence of the alleged breach. Furthermore, this legislation allows any association, organization or other legal entity, that has a legitimate interest in ensuring that these regulations are complied with, to engage itself either on behalf or in support of the complainant, with his or her approval, in any judicial or administrative procedure provided for the enforcement of obligations under these regulations.

In 2007, the coming into force of *LN 54 of 2007 Extension of Applicability to Service with Government (Equal Treatment in Employment) Regulations* extended the protection afforded in the previous Regulations to employees of the public service and public sector, while *LN 86 Of 2007 Equal Treatment in Self-Employment and Occupation Order* further extended the protection to cover persons in self-employment and occupation from discrimination.

LN 85 of 2007 Equal Treatment of Persons Order

This legal notice took care of implementing the non-employment legal provisions that emanate out of Council Directive 2000/43/EC. It therefore refers to social protection, including social security and healthcare; social advantages; education; access to and supply of goods and services which are available to the public, including housing; and access to any other service as may be designated by law for the purposes of the regulation. This legal notice has included a clarification with regard to discrimination by banks, financial institutions and insurance companies.

The National Commission for the Promotion of Equality (NCPE) is the body that was entrusted to supervise the progress of this law and therefore receive and process complaints of discrimination.

Importantly, this Legal Notice extended additional protection than the basic requirements of the Race Directive in the area of discriminatory advertising, where it states that it is not lawful “for persons to publish or display, or cause to be published or displayed, any advertisements which promotes discrimination or which is discriminatory or which might reasonably be understood as indicating an intention to discriminate”.

6. Specialised Bodies

The Race Directive establishes that Member States are obliged to designate a body to promote equal treatment. Malta has opted to split this duty between the Industrial Tribunal and the National Commission for the Promotion of Equality as established in *SL 452.95 Equal Treatment in Employment Regulations* and *LN 85 of 2007 Equal Treatment of Persons Order* respectively.

Employers and service providers who are uncertain whether their practices fully comply with the provisions of the law, may discuss ways by which to improve their practices through discussions with the specialised bodies.

National Commission for the Promotion of Equality

LN 85 of 2007 Equal Treatment of Persons Order vested the National Commission for the Promotion of Equality with the power to keep under review the working of the provisions of the Order, and therefore to ensure that no discrimination on the grounds of racial or ethnic origin takes place in relation to: (a) social protection, including social security and healthcare; (b) social advantages; (c) education; (d) access to and supply of goods and services which are available to the public, including housing; and (e) access to any other service as may be designated by law for the purposes of the regulations.

The *Order* also extended the functions of the Commission as stated in *Ch 456 Equality for Men and Women Act* to apply *mutatis mutandis*, to issues of equal treatment of persons on the grounds of racial and ethnic origin and to issues of compliance with, and the enforcement of the rights protected in the Order. Persons who believe that they have been discriminated against on the grounds of racial or ethnic origin in relation to the areas highlighted above may therefore present a complaint in front of the NCPE.

Contact Details:

Executive Director,
National Commission for the Promotion of Equality (NCPE),
Gattard House,
National Road,
Blata l-Bajda FMR 9010

Tel: +356 2590 3850
Fax: +356 2590 3851
Email: equality@gov.mt
Website: www.equality.gov.mt

Industrial Tribunal

Ch 452 Employment and Industrial Relations Act and the subsidiary legislation promulgated under it prohibit discrimination in conditions for access to

employment and vocational training, employment, and membership of, and involvement in any organisation on a number of grounds including, marital status, pregnancy or potential pregnancy, sex, colour, disability, religious conviction, political opinion or membership in a trade union or in an employers' association, religion or religious belief, disability, age, sexual orientation, and racial or ethnic origin.

This *Act*, provided persons with the possibility of lodging a complaint to the Industrial Tribunal within four months of an alleged case of discrimination. The Tribunal shall then hear such complaint and carry out any investigations as it deems fit. If the Industrial Tribunal is satisfied that the complaint is justified, it may take such measures as it may deem fit including the cancellation of any contract of service or of any clause in a contract or in a collective agreement which is discriminatory and may order the payment of reasonable sums of money as compensation to the aggrieved party.

For the purposes of hearing and deciding cases of alleged discrimination, breaches of the principle of work of equal value, and victimisation or harassment, the Industrial Tribunal shall be composed of a chairperson alone in the manner set out in article 73(4).

Any action taken by a complainant in accordance with the provisions of this article shall be without prejudice to any further action that such complainant may be entitled to take under any other applicable law and shall also be without prejudice to any other action to which the respondent may be subject in accordance with any other applicable law.

Contact Details:

Mr Vincent Micallef
Industrial Tribunal

Tel: +356 2123 9821
Fax: +356 2122 3818
Email: vincent.a.micallef@gov.mt

7. Business Case for Diversity

What is in it for the Employer?

Research carried out in Europe during 2005 shows that beyond ethical and legal reasons, the implementation of diversity and equality strategy policies actually benefit business growth.

Among the various benefits, usually one finds that these strategies enhance employee recruitment and retention of high quality workers, provide access to a

new labour pool, improve the corporate image and reputation, provide for greater innovation and enhance marketing skills. Clearly, these benefits translate into substantial savings and return on investment.

A report that was issued by the European Commission, entitled *The Business Case for Diversity – Good Practices in the Workplace*, found that the business case for diversity was growing all around Europe, and in fact many companies were embracing diversity as one of their business practices.

Significantly, the vast majority (82%) of the 495 companies that replied to the European Diversity Test Panel (EBTP) agreed that diversity initiatives had a positive impact on their business. Furthermore, *The Business Case for Diversity* provides 19 good practice examples of various sized companies and indicates how they have gone about promoting diversity and the benefits that they have reaped as a result of their investment in this area.

Companies and organizations that intend to introduce a diversity strategy are therefore suggested to consult this document at:

http://ec.europa.eu/comm/employment_social/fundamental_rights/pdf/events/business_case_en.pdf.

8. Positive Action

What is positive action?

The term 'positive action' refers to those methods and strategies that are designed to counteract the effects of past discrimination and to help to abolish stereotyping.

Such action may be taken to encourage people from particular groups to take advantage of opportunities for work and training. This may be done when a particular group/s is found to be under-represented in a particular sphere such as employment, educations, sports etc.

As would be clear, the method that is adopted to provide positive action depends very much on the particular situation that is being tackled. These methods may include initiatives such as training programmes that may serve as special encouragement to a particular racial or ethnic group, and the introduction of non-discriminatory selection procedures and equality policies.

It needs to be noted that positive action is not tantamount to positive discrimination, as discrimination (of whatever form⁶) is unlawful. Any action taken thus needs to comply with the principle of merit, and any recruitment that is performed may not take into account any personal attributes other than one's

⁶ Other than in the case of *genuine occupational requirement/s* as indicated above.

merit. Likewise, positive action in the provision of goods and services could for example consist of the development of targeted material, such as the issuing of material in languages that are understood by underrepresented groups, or the development of specific products that cater for their need.

Practical examples of measures of positive action

- Job vacancy advertisements that are designed to reach members of under-represented groups, perhaps through additional advertising on publications that have wide circulation among these groups;
- Encouragement to employees from under-represented groups to apply for promotions and training opportunities through the inclusion of statements such as, “<Organisation name> is an equal opportunities employer. Members of racial or ethnic minorities are particularly encouraged to apply as they are under-represented in our employment structures” in vacancy announcements;
- The provision of additional training for employees of under-represented groups to ensure that they have an equal footing for promotions within the company.

How does an organisation determine when and with whom to perform positive action?

Prior to considering the provision of positive action, an organisation needs to have monitored the recruitment processes and distribution of promotions within the organisation and thus established which groups are under-represented. Once such groups are identified the organisation may then devise the right method to ensure that the group/s in question is provided with the right encouragement.

9. Equality Monitoring

Maltese legislation does not put a direct obligation on employers to monitor the effects of their policies and practices. Nonetheless, monitoring is an effective tool to assess whether such policies and practices have an adverse effect on any racial or ethnic minority.

Employers who intend to introduce monitoring as one of the tools to fight discrimination and promote equality, could first introduce an Equal Opportunities Policy to ensure that the information that is gathered is used effectively and for the purposes of promoting equality and diversity, and also to provide the persons being monitored with the necessary information (See Addendum). Persons filling in the Equal Opportunities Monitoring Form need to be assured that the information that they are supplying shall remain confidential and shall be processed in line with the *Data Protection Act*.

Monitoring may only be effected to extrapolate data that may then be used to correct discrepancies or discrimination (whether direct or indirect) against a given minority.

Why, Who and How?

Monitoring can tell how the various policies affect different racial and ethnic groups. It provides information such as:

- Over or under representation of certain racial or ethnic groups.
- Whether a policy is having a positive or adverse effect on certain racial or ethnic groups.

Monitoring can be undertaken with regard to various processes, such as recruiting of employees, provision of health care, and provision of social services. In addition to the above list, such monitoring could provide information such as:

- Satisfaction with a service by the different racial or ethnic groups
- Effectiveness of the service in reaching the different racial and ethnic groups.

In monitoring one collects data at various stages of a process and assesses how the various racial or ethnic groups are impacted.

Example:

An Employer employs 250 employees who are distributed as follows: 150 Whites, 50 Arabs, 25 Blacks and 25 Asians – equally distributed at all the occupational levels. The employers offers a promotion for 10 employees from the grade of Officer to the grade of Executive and 30 employees apply: 21 Whites, 3 Arabs, 3 Blacks, 3 Asians. Following an interview the results were announced. Those that were selected were as follows: 8 Whites, 1 Arab, and 1 Asian.

The employer therefore drew the following table for analysis:

	Total Population	Whites	Arabs	Blacks	Asians
Number of Employees	250 100%	150 60%	50 20%	25 10%	25 10%
Number of applicants	30 100%	21 70% (+10%)	3 10% (-10%)	3 10%	3 10%
Number of selected applicants	10 100%	8 80% (+20%)	1 10% (-10%)	0 0 (-10%)	1 10%

The employer therefore finds out that in the current setup Whites are more likely to progress than Arabs and Blacks, while Asians perform well. S/he therefore decides to provide additional training to Arabs and Blacks to ensure that in future calls for promotions they will perform better.

As indicated in the example above, monitoring may reveal the success of the diversity strategy of the company/organisation and any need of redress that may be necessary.

Example of an Equal Opportunities Monitoring Form

<Company Name>

Racial and Ethnic Origin Equal Opportunities Monitoring Form

To which of these ethnic groups do you consider you belong? Please pick one from sections 1-6 and mark one box.

1. *White:*

White Maltese White European

Other White background:

2. *Black:*

Black Maltese Black African Black European

Other Black background:

3. *Arab:*

Maltese Arab North African Arab Middle Eastern Arab

Other Arab background:

4. *Asian:*

Maltese Asian Chinese Asian South East Asian

Other Asian background:

5. *Mixed:*

White & Black White & Arab White & Asian

Other Mixed background:

6. *Other ethnic background:*

10. Equality Proofing

Equality Proofing is one of the tools that an organisation may use in order to determine how compatible it is with national legislation and equality standards. The template below may therefore be used by any organisation that employs personnel and/or provides goods and services.

Part 1 – Employment

		Yes	Partial	No
1.1	Does the organisation have a written Equality and Diversity policy?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Does it offer protection against:			
	a. Direct discrimination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	b. Indirect discrimination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	c. Harassment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	d. Sexual Harassment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	e. Instruction to Discriminate	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	f. Victimisation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.2.1	Does this contain a clear statement of the organisation's commitment to achieve Equality and Diversity that amongst other grounds makes express reference to colour, racial or ethnic origin as grounds of non-discrimination?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.2.2	Has the policy been communicated to:			
	a. All employees?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	b. Trade unions?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1.2.3	Has the responsibility for implementing the policy been clearly assigned?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.1	Does the organisation use a job evaluation system that is designed and implemented so as not to discriminate on grounds of colour, racial or ethnic origin?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.2	Has the organisation carried out an equal opportunities review of its:			
	• Vacancy advertisements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	• Interview questions and setup	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	• Distribution of training opportunities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	• Distribution of duties	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	• Distribution of promotions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

		Yes	<i>Partial</i>	No
2.3	Did the review cover all aspects of the pay package and employment benefits?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Basic pay	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Total earnings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Benefits	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Specialist allowances	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Overtime	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Regional/local rates	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Other factors specific to the organisation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.4	Did the review cover patterns of work (including part-time workers, short term contracts and outsourcing)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.5	Did the review identify any significant discrepancies, omissions or inadequate structures that hinder equal treatment? If yes what is being done?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.6	Did the review look into whether any harassment and other forms of discrimination on the grounds of colour, racial or ethnic origin was observed since the last review?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2.7	What plans are in place to eliminate these gaps?			
3	Is the data collected and monitored adequate (including that of the distribution of the racial and ethnic background of job applicants, persons interviewed, and selected persons)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4	Did the review also cover other grounds? If so which ones?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	• Marital status	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	• Pregnancy or potential pregnancy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	• Sex	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	• Family responsibilities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- | | Yes | Partial | No |
|-------------------------------|--------------------------|--------------------------|--------------------------|
| • Racial or ethnic origin | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| • Colour | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| • Disability | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| • Religious or other belief | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| • Religious conviction | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| • Political opinion | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| • Membership in a trade union | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| • Sexual orientation | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| • Age | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Other (please list) | | | |

.....

5.1 Did the organisation fully review its practices in line with *Cap 452 Employment and Industrial Relations Act*?

5.2 Did the organisation also take into account subsidiary legislation referring to equal treatment of the *EIRA* including *SL 452.95 Equal Treatment in Employment Regulations*?

6 Are there arrangements in place to ensure that Equality and Diversity reviews are carried out regularly?
 How often?
 When was the last review conducted? / /
 Bt whom?
 When is the next one due? / /

Endorsed by CEO

Date:

Part 2 – Provision of goods and services

		Yes	Partial	No
7	Does the organisation have a written Equality and Diversity policy?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Does it cover the provision of goods and services?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8.1	Does this contain a clear statement of the organisation's commitment to non-discrimination on the grounds of racial or ethnic origin in the provision of whatever goods and services the organisation offers?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8.2	Has the policy been communicated to all employees?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Has training been provided	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8.3	Has the responsibility for implementing the policy been clearly assigned?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9.4	Did the review cover all aspects of the provision of the goods and services?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Advertising	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Equal access to goods and services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Equal customer service	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Investigation of any complaints that are received	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9.5	Did the review identify any significant discrepancies, omissions or inadequate structures that hinder equal treatment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9.6	Did the review look into whether any harassment and other forms of discriminations on the grounds of racial or ethnic origin was observed since the last review?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9.7	Are there plans in place to eliminate these gaps?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9.8	Did the review also cover other grounds?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	If so which ones?			
	• Marital status	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	• Pregnancy or potential pregnancy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	• Sex	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	• Family responsibilities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	• Racial or ethnic origin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	• Colour	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- | | Yes | Partial | No |
|-------------------------------|--------------------------|--------------------------|--------------------------|
| • Disability | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| • Religious or other belief | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| • Religious conviction | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| • Political opinion | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| • Membership in a trade union | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| • Sexual orientation | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| • Age | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Other (please list) | | | |

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- | | | | | |
|----|--|--------------------------|--------------------------|--------------------------|
| 10 | Do the criteria on which goods and services are offered take into consideration non-discrimination and equality issues? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 11 | Did the organisation fully review its practices in line with <i>LN 85 of 2007 Equal Treatment of Persons Order</i> ? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 12 | Are there arrangements in place to ensure that Equality and Diversity reviews are carried out regularly?
How often?
When was the last review conducted? / /
Bt whom?
When is the next one due? / / | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Endorsed by CEO

Date:

Addendum

EQUALITY POLICY⁷

Introduction

Whereas legislation is increasingly becoming stringent on direct and indirect discrimination in the provision of employment, and goods and services;

Whereas recent research has repeatedly shown that companies that value equality and diversity reap economic advantages due to greater competitiveness, and a more committed workforce;

<Name of organisation> is committed to provide good-quality employment and efficient goods and services. <Name of organisation> believes that an essential part of providing such good-quality employment and efficient goods and services is making sure that everyone has equal access to employment opportunities and employment conditions including training and promotions, as well as goods and services that are offered by us.

This policy binds all the employees, sub-contractors, sub-agents, and other service providers acting on behalf of *<name of organisation>*.

Statement of Commitment

The Management of *<name of organisation>* is committed to equality and to make fair treatment an important part of everything we do. Therefore, we make this commitment because we want to provide the best occupational environment we can offer to our current and prospective employees and the provision of the best 'goods and services' to our valued customers.

<name of organisation> values the contribution of all our employees, sub-contractors, sub-agents, and other service providers make to help us achieve this.

The Aim of Our Equality Policy

<name of organisation> aim to make sure that all our current and prospective employees, and all those persons that we work with, have equal opportunities, and that goods and services are provided fairly to all of our customers. We will take action to identify and get rid of any direct or indirect discriminatory practices, which act as barriers to achieving these aims. We affirm that we oppose all forms

⁷ While this toolkit is intended to disseminate knowledge and good practices with regard to the grounds of racial and ethnic origin. It was deemed appropriate to develop a more inclusive Equality Policy that refers to all the grounds protected under the Employment and Industrial Relations Act and Subsidiary Legislation promulgated under it.

of unlawful or unfair discrimination, on any grounds which is not justifiable, including discrimination on the basis of marital status, pregnancy or potential pregnancy, family responsibility, sex, gender, colour, racial or ethnic origin, disability, religious conviction, religion or other belief, political opinion, age, sexual orientation, membership in a trade union or an employers' association, or any other condition or requirement that cannot be justified and which places a person or category of persons at a disadvantage (Hereinafter referred to as the *grounds of non-discrimination*).

Applicability of the Equality Policy

This policy statement applies to all our activities.

Putting our Equality Policy into Practice

To achieve the aims of the equality policy statement in our working environment and delivery of goods and services, we will do the following:

- Continually monitor our employment standards and the provision of goods and services to make sure that they are accessible and provided fairly to everyone.
- Ensure that this policy is operating effectively (and for no other purpose) by maintaining records of employees' and applicants' racial and ethnic origins.
- Understand that some groups of people experience more disadvantage than others, and promise to take steps to counter such disadvantage through targeted action to meet their particular needs.
- Make sure that all employees, sub-contractors, sub-agents, service providers, and customers are treated with dignity and respect, and that we recognise and value people's differences.
- All vacancy advertisements issued by the company will include an appropriate short statement on equal opportunity, and shall include inclusive language and images as appropriate.
- Take care of the need of special needs of certain customers in the design of our goods and services.
- Make sure that complaints procedures are easy to use, and that we respond to complaints efficiently and promptly.
- Communicate our equality policy to contractors, sub-contractors, sub-agents and other service providers delivering goods and services on our behalf, and take account of equality factors when we award and monitor contracts.
- Communicate our expectation to our customers and goods and service providers that they must not discriminate against our employees.

To achieve the aims of our equality policy statement in employment, we will do the following:

- Make sure that our recruitment, selection, training and promotion processes support us to appoint the best people for the job, and to develop and maintain the highest standards of skills and expertise.

Equality Policy Statement

<name of company> binds itself to:

- Create and maintain a workplace where all employees are treated with dignity and respect, and where the need to achieve a balance between work and personal responsibilities is recognised.
- Continue to develop fair and flexible employment policies and practices that respond to the different needs of employees, and include employees in the development process (training).
- Provide effective procedures for reporting incidents of discrimination or harassment, from colleagues or service users that make sure complaints are dealt with fairly and promptly.

To help us put our equality policy statement into practice, we will do the following:

- Act in line with all relevant legislation and codes of practice, for example:
Persons with Disability (Employment) Act, 1969
Employment and Training Services Act, 1990
Equal Opportunities (Persons with Disabilities) Act, 2000
Employment and Industrial Relations Act, 2002
Equality for Men and Women Act, 2003
Equal Treatment in Employment Regulations, 2004
Equal Treatment of Persons Order, 2007
- Make sure that all employees and other people who help us deliver services are aware of this policy statement.
- Develop and train our members and employees to help them recognise equality issues and further understand their role and responsibilities in achieving equality.
- Include equality in all management processes so that it becomes part of everything we do.
- Develop effective auditing and monitoring procedures for services and employment, and report, at least once a year, to members, employees and the community on how we put this policy statement into practice.
- Promote the principle of equality whenever possible, share successes and good practice, and promise to provide a positive role model to other organisations and employers in our community.

We are developing a programme of action to put our equality statement into practice, and will monitor its progress against the relevant equality standards, including those that may be issued by the National Commission for the Promotion of Equality.

Responsibility for carrying out our equality policy

<name of organisation> is responsible for creating a framework through which equality in employment and service delivery are provided. Directors and

managers are responsible for taking active steps to put the policy into practice and for making sure that their employees act in line with it. However, all employees have a role in putting the policy into practice and supporting it. In particular they must:

- act in line with the policy and its related procedures;
- promote equal opportunities;
- treat colleagues and service users with dignity and respect;
- not unlawfully or unfairly discriminate;
- not harass or victimise others;
- challenge discrimination or inappropriate behaviour; and
- report suspected discriminatory actions.

Breaching our equality policy

If we find that anyone has breached our equality policy, we will take the matter extremely seriously and carry out a formal and thorough investigation, which will result in disciplinary action where appropriate.

Any act or failure to act that breaks the relevant legislation may also result in legal action being taken against us, and possibly against the employee responsible for that act or failure to act.

Further Information

Anyone seeking additional advice or guidance on equality issues particularly with regard to the grounds of sex, family responsibilities, and racial and ethnic origin both in relation to employment and the provision of goods and services may contact the National Commission for the Promotion of Equality (NCPE). Our information and advice services are guaranteed to be free and confidential.

NCPE may also provide professional assistance such as the vetting of Equal Opportunities Policies and advertising campaigns.



National Commission for the Promotion of Equality (NCPE)

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