

**Policy and Disciplinary Procedure
On Sexual and Gender-Related Misconduct**

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1. CONTEXT/BACKGROUND

11. The Gender Equity Office (the GEO) was established at the University of the Witwatersrand (University) in February 2014 in response to recommendations of the August 2013 Report of the Independent Inquiry into Allegations of Sexual Harassment at the University of the Witwatersrand (Independent Inquiry Report).
12. The Independent Inquiry Report found that the University's functions in relation to sexual or gender-related misconduct were too decentralised and fragmented to offer an effective mechanism of prevention, intervention and accountability. The Report consequently recommended the establishment of a single office institutionally located in the Vice Chancellor's Office (VCO) to deal with all sexual or gender-related misconduct affecting employees or students, and to do so through dedicated advocacy, counselling and complainant-centred interventions, including disciplinary hearings. The GEO is accordingly tasked with all these functions.
13. In addition to the GEO, the University also established a Gender Equity Advisory Committee (GEAC) in 2013, which comprises experts on sexual or gender-related misconduct from across the university community. The main role of GEAC is to support and guide interventions regarding sexual and gender related misconduct, and specifically to provide advice to the GEO.
14. The University has also introduced additional policies and procedures to address sexual or gender-related misconduct, which is how the University defines and codifies sexual or gender-related misconduct. These include the Policy on Sexual and Romantic Relationships between Staff and Undergraduate and Honours Students (C2016/611) and the Policy on Declaration of Interests (C2014/294). These policies are embedded within the University's rules pertaining to misconduct, as well as other relevant University policies, including policies on HIV/AIDS; Anti-Discrimination Policy and Procedures (C2015/24); and Disability.
15. In addition to introducing these specific measures, the University is also committed more broadly to creating and maintaining a safe institutional environment in which sexual and gender-related misconduct is not tolerated, and all may learn, work and go about their activities free from gender-based harm and sexual misconduct.
16. This policy and disciplinary procedure is designed to provide a framework for responding effectively to complaints of sexual or gender-related misconduct, and to provide appropriate support to victims wherever sexual or gender-related misconduct takes place, either within or outside of the University environment, or in relation to South African society more broadly. In order to encourage the reporting of complaints and the uptake of support, a complainant-centred approach is pursued in which complainants are supported without compromising the rights of respondents.

2 DEFINITIONS

2.1 Words that appear in bold have a specific meaning or definition as explained below:

Academic concessions	Include allowing a student complainant to change classes, to change courses, preventing a lecturer or tutor who is an alleged perpetrator from grading or evaluating the student complainant's academic work, or allowing and arranging deferred examinations or extensions of deadlines for academic work.
Allegation	An assertion that one intends to prove, on a balance of probabilities, through an investigation procedure and disciplinary hearing.
Alleged perpetrator	Someone alleged to have committed an act of sexual or gender-related misconduct.
CCDU	Counselling and Careers Development Unit
Applicant	Any party (whether a complainant, respondent or university representative) who embarks on an appeal or review process following the outcome of a disciplinary hearing.
ARC	Appeal and Review Committee established by Legal Services
Complainant	A person who lodges a complaint under this policy. This could include, but is not limited to, current or past staff or students, as well as visiting staff or students, provided that the respondent is a member of the University community.
Confidentiality	Ensuring that information is accessible only to those people who are authorised to have it and that such information is kept secret or private.
Consent	<ul style="list-style-type: none"> a) Parties involved in interpersonal relations must agree to any interpersonal activities; b) It is the responsibility of the person who initiates any type of sexual activity to obtain the other person's consent; c) Consent should be affirmative and explicit; d) A verbal 'no', even if it may sound indecisive or insincere, constitutes lack of consent; e) Silence or indecisiveness does not imply consent; f) Consent to one type of act does not imply consent to other forms of sexual activities; g) Relenting or submitting does not equate to consent; h) A previous sexual or other relationship between the parties does not imply consent; i) In situations of unequal physical and/or socio-economic status, particular care should be taken to ensure consent; j) Consent cannot be assumed from a person's manner of dress; Accepting a social invitation or socio-economic benefit is not consent to any sexual act; and k) Consent is not effective when it is obtained from a person whose capacity to consent is diminished because they are asleep, unconscious or in an altered state of consciousness resulting from the use of alcohol, medicines or drugs, to the extent that it adversely affects their judgment
Days	Refers to working days; the first, but not the last day is counted
Employee	An individual who has concluded a contract of employment with the University, including students employed by the University, or any person who has agreed to be bound by the rules and policies of the University relating to staff
Evidence	The available body of information to support whether a belief or proposition on sexual and gender-related misconduct is valid, purely on a balance of probabilities.
GEO	Gender Equity Office
Gender-related misconduct	(As encompassing "sexual misconduct") refers to any conduct of a sexual or gender-related nature that constitutes an impairment of the dignity and/or bodily integrity of a member of the University community. This includes, though not exclusively, acts of violence (such as sexual assault, domestic and intimate relationship violence and rape), bullying, discrimination, harassment and victimisation. Gender-related misconduct should be understood within the University's misconduct frameworks for staff and students

Manager	Any employee of the University with managerial, supervisory or warden responsibilities
Ombudsperson	Person who has expertise in law and sexual violence, is independent and external to the University and who is appointed by Council to investigate complaints of sexual and gender-related misconduct against the Vice Chancellor
Psycho-social support	Professional support for the psychological and social consequences of trauma
Rape	Non-consensual penetration, however slight, of the vagina, anus or mouth by a penis or another body part or object
Respondent	Member of the University community who has been alleged to have contravened this policy
Sexual harassment	A wide range of unwelcome conduct of a sexual nature. The inappropriate conduct includes physical, verbal or non-verbal conduct, which is perceived as unwelcome, taking account whether the conduct abuses a position of power over the complainant, and whether it constitutes a breach of other University policies including the Policy on Sexual and Romantic Relationships between Staff and Undergraduate and Honours Students (C2016/611); and the Policy on Declaration of Interests (C2014/294). Sexual harassment includes, but is not limited to, the following specific forms:
Grooming	An action or series of actions that can initially appear to be conducted within the context of the academic project, but which is undertaken with the overall aim of befriending and establishing a psychological and/or material connection with a person in order to facilitate subsequent sexual harassment and/or to hinder the reporting of various acts of harassment. This includes grooming by means of communication platforms such as mobile phones and the internet.
Quid pro quo harassment	Occurs when an alleged perpetrator influences or attempts to influence a person's circumstances by coercing or attempting to coerce that person to engage in unwelcome sexual conduct and may include, circumstances relating to one's employment, admission of a student to the University or access to opportunities within the University, offering special treatment or influence the grading, evaluation or professional advancement of an individual.
Sexual misconduct	(as encompassing "gender-related misconduct") refers to any conduct of a sexual or gender-related nature that constitutes an impairment of the dignity and/or bodily integrity of a member of the University community and includes, though not exclusively, acts of violence (such as sexual assault, domestic and intimate relationship violence and rape), bullying, discrimination, harassment and victimisation. Sexual misconduct should be understood within the University's misconduct frameworks for staff and students
GEAC	Gender Equity Advisory Committee
SRC	Student Representative Council
Staff	The collective group of employees as defined above
Student	A registered (full or part-time) student of the University who has agreed to be bound by the rules and policies of the University relating to students, including visiting students.
University	University of the Witwatersrand
University process	The investigation of any complaint according to the University policies, rules and procedures. The University process does not include, and is independent of, any civil, criminal or other forms of judicial intervention the complainant may wish to pursue.
VCO	Vice Chancellor's Office and includes the Deputy Vice Chancellors and other members of the Senior Executive Team
Victim	A person against whom an act of sexual and gender-related misconduct has allegedly been perpetrated

Victimisation	Occurs when a person is intimidated, targeted or sanctioned for refusing to submit to sexual advances, and/or for participating in a complaint of misconduct under this policy.
Whistle-blowing	The act of informing the University authorities and/or senior management that another party/third party has violated this policy

3. PURPOSE

- 31 Sexual or gender-related misconduct is a serious human rights violation which affects far too many people in South Africa. The University is a microcosm of a patriarchal and misogynist society. Within the University, sexual or gender-related misconduct undermines the dignity and/or bodily integrity and autonomy of those victimised and erodes the mutual trust and respect that are essential to personal, academic and professional wellbeing.
- 32 When perpetrated by University employees or students, acts of sexual or gender-related misconduct constitute serious disciplinary offences and will not be tolerated by the University. Disciplinary action, including summary dismissal or University exclusion, may result following a finding of guilt pursuant to due process under the disciplinary procedure set out below.
- 33 Within the University working environment, sexual or gender-related misconduct is also a form of unfair discrimination under the Employment Equity Act 55 of 1998 (EEA). Therefore, the EEA, and also the Amended Code of Good Practice on The Handling of Sexual Harassment Cases in the Workplace Notice 1357 of 2005 (2005 Code), along with any other applicable labour legislation and policies are relevant, as well as the constitutional rights to equality, dignity, life, and freedom and security of the person contained in sections 9, 10, 11 and 12 of the Constitution of the Republic of South Africa Act 108 of 1996.
- 34 This policy and procedure recognises that disciplinary procedures can be extremely alienating for complainants of sexual and gender-related misconduct. This is a grave concern for a University that seeks to identify and act against sexual or gender-related misconduct. In line with this recognition and acknowledging the need to ensure that complainants come forward while still ensuring fairness in respect of the respondent, the University has established a specific disciplinary procedure for sexual or gender-related misconduct, which is set out below. While distinct, this disciplinary procedure operates within the University's general disciplinary rules and is designed to provide prompt, thorough, and equitable investigation and resolution of complaints that involve allegations of sexual or gender-related misconduct.

- 35 The University operates in a civil law environment. Nothing in this policy and procedure prevents complainants from, or requires them to report any violations that constitute criminal offences to the relevant authorities. Where complainants have opened criminal cases, the University will share only such evidence with the criminal justice authorities as authorised by the relevant parties.

4 SCOPE

The provisions of this policy shall apply to the entire University community, including students, employees, joint staff, service providers and visitors.

5 ROLES AND RESPONSIBILITIES

The Gender Equity Office (the GEO)

5.1 The GEO reports directly to the VCO or Council, and the Director of the GEO is a member of the Senior Management Group.

5.2 The GEO comprises a Director, a prevention unit, an intervention unit and an accountability unit, with the following personnel:

- i) Director, with experience in management, law and sexual/gendered and other forms of power relations;
- ii) Prevention unit member, who is responsible for training and advocacy;
- iii) Intervention unit member, trained as a social worker or psychologist, who is responsible for receiving complaints and providing on-going psycho-social support to the complainant throughout any University processes; and
- iv) Accountability unit member, a practicing lawyer, who is responsible for investigating complaints, writing investigation reports, and directly managing and participating in the disciplinary process on behalf of the GEO.

5.3 The GEO is responsible for:

- i) Advocacy, awareness raising and training in relation to sexual and gender-related misconduct at the University. In addition, the GEO undertakes broader community discussions and programmes regarding sexual and gender privilege and sexual or gender related misconduct.
- ii) Receiving and responding to all complaints of sexual or gender-related misconduct.
- iii) Providing psychosocial support for complainants for as long as they want it, including following the resolution of any disciplinary process or intervention. Where the complainant requires or requests alternative counselling or where the alleged perpetrator requires or requests counselling, such complainant or alleged perpetrator will be referred to the University's Counselling and Careers Development Unit (CCDU) to receive free counselling.
- iv) The GEO, along with the Campus Health and Wellness Centre has a special role to play regarding incidents of sexual assault and rape:
 - a) The GEO must be informed of any reports of sexual assault or rape.

- b) When an incident of sexual assault or rape is reported to anyone in the University, the victim must be informed of the importance of receiving immediate medical attention, including post-exposure prophylaxis (PEP) for HIV, sexually transmitted infections and potential pregnancy.
- c) All reasonable efforts must be made to support the victim and, where necessary, to transport them to Milpark Hospital.
- d) When a rape occurs in a campus residence, the Director of Campus Housing and Residence Life and the GEO must be informed.
- e) Where the victim chooses to report the matter to the South African Police Services, the GEO will assist, where possible, by arranging for an investigating officer to come to the GEO to take the victim's statement; or by arranging University transport for the victim and any additional persons chosen by the victim to go to the relevant police station.
- v) Capturing statistics and analysing trends of all complaints of sexual or gender related misconduct received from members of the University community.
- vi) Investigating allegations of sexual or gender-related misconduct where these allegations are brought to the attention of the GEO by members of the University community, including in instances when information has been received but no formal complaint has been lodged, understanding that not all investigations will result in a formal disciplinary process.
- vii) Where appropriate, pursuing disciplinary processes in terms of the disciplinary procedure set out in part C below.
- viii) Maintaining current and full records of all interventions, including ensuring for all disciplinary procedures that the correct processes are pursued and documented.
- ix) Communicating with the complainant and respondent throughout any intervention process and ensuring that the complainant and respondent are regularly provided with feedback on the status of the process and the outcome of any proceedings.

5.4 The GEO provides regular reports to the VCO regarding the nature and outcome of complaints.

5.5 In order to optimise the University's processes and responses, the GEO also regularly discusses complaints and disciplinary hearing cases with the GEAC. All information discussed must be anonymous to maintain the confidentiality of the parties. In addition, care must be taken to maintain the integrity of any disciplinary hearing process. This includes ensuring that colleagues from the GEAC who are on hearing panels are not involved in any deliberations between the GEO and GEAC about disciplinary cases such colleagues are involved with.

5.6 Reports on complaints to the VCO and the GEAC should include:

- i) The number and nature of the complaints;
- ii) The course of action pursued;

- iii) Whether the complainant is a staff member or a student and whether the alleged perpetrator is a member of the University and, if so, whether they are a staff member or student; and
- iv) The outcome of the complaint.

5.7 **The Gender Equity Advisory Committee (GEAC)**

The GEAC comprises experts in sexuality, gender, identity and power. It is governed through its own internal processes and structures, in line with University Advisory Committees.

The GEAC's roles include:

- i) Providing on-going and ad hoc advice and support to the GEO.
- ii) Assisting the GEO with raising awareness and education in relation to sexual or gender related misconduct at the University.
- iii) Identifying policy and systemic issues that frustrate the operation of sexual and gender justice at the University and proposing recommendations.
- iv) Assisting with policy- and procedure-related drafting and revision.
- v) Receive complaints where students or staff members feel this is the most appropriate channel.
- vi) Report complaints of sexual or gender-related misconduct to the GEO.

- vii) In order for this policy and disciplinary procedure to be effective, and to enable the University community to be empowered to utilise it fully, it must be widely disseminated.
- viii) While the primary role-players regarding communication initiatives are the GEO and the GEAC, effective rollout relies on communication efforts by the University community more broadly, including Human Resources, Deans, the Dean of Students and student organisations.

5.8 **Human Resources must ensure that:**

- i) Information about this policy and disciplinary procedure is attached to all employment contracts and is included in all induction processes for staff, which are mandatory.
- ii) Information about sexual and gender-related misconduct is included in training provided to all staff members, especially managers.
- iii) All prospective employees are professionally vetted with background checks that focus on past sexual or gender-related misconduct.
- iv) All prospective employees must be asked during any interview process whether they have previously been accused of sexual or gender related misconduct.
- v) All exit interviews include a question on staff experiences of sexual and gender-related misconduct at the University.
- vi) Every University manager must take reasonable steps to create and maintain an environment that is free from sexual and gender-related misconduct. In this regard, Managers are required to:
 - a) Know and understand this policy and disciplinary procedure.
 - b) Attend training and educational sessions on this policy and disciplinary procedure.
 - c) Communicate the policy to all employees, students and third parties in their respective areas of responsibility.

5.9 The Deans must:

- i) Communicate this policy and disciplinary procedure to employees, students and third parties within their Faculties.
- ii) Communicate with Heads of School and other managers in the Faculty the importance of effectively implementing this policy and disciplinary procedure.

5.10 The Dean of Students must:

- i) Ensure that this policy and disciplinary procedure is included in the documents provided to students during orientation.
- ii) Ensure that all orientation programmes include briefing to students on this policy and procedure, and sexual and gender-related misconduct more broadly.
- iii) Communicate regularly the seriousness of sexual and gender-related misconduct and the existence of this policy and disciplinary procedure.
- iv) Communicate this policy and disciplinary procedure to employees and third parties within the residences of the University.
- v) Communicate annually, in writing, this policy and disciplinary procedure to the Student Representative Council (SRC) and other student governance structures.
- vi) Ensure that all student bodies and staff members falling within the office of the Dean of the Students receive training on this policy and disciplinary procedure.

6. PROCESS:

	APPENDIX
Behaviour constituting sexual or gender related misconduct	A
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Retaliation, victimisation and interference	P
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VERSION HISTORY

Version	Date	Summary of changes	Changed By	Date of next review
1	20 July 2020		C Beukes	
2	29 July 2020		Registrar's Office	
3	September 2021		Legal Services	

Appendix A – Behaviour constituting sexual or gender related misconduct.

- a) Sexual or gender-related misconduct is unwelcome conduct of a sexual or gendered nature that causes harm or discomfort and/or creates an environment that makes the complainant feel offended, humiliated and/or intimidated.
- b) This includes physical, verbal or non-verbal conduct, which is perceived as unwelcome. When making a determination regarding sexual or gender-related misconduct, the following non- exhaustive list of factors should be taken into account:
- i) Whether the conduct is based on the sex and/or gender and/or gender performance, and/or sexual orientation (self-identified or perceived) of the complainant;
 - ii) Whether the conduct abuses a position of power by the alleged perpetrator over the complainant;
 - iii) The short- and long-term impact of the conduct on the complainant;
 - iv) The nature and extent of the conduct;
 - v) The presence of victimisation, where a person has been intimidated, targeted or sanctioned for refusing to submit to sexual advances, and/or for participating in a complaint of misconduct under this policy; and
 - vi) The extent to which a hostile work or learning environment has been created, making it difficult for the victim to work or pursue their studies.
- c) Sexual or gender-related misconduct may take the form of any physical, verbal or non-verbal conduct, as follows:
- i) **Physical conduct**, which is unwelcome physical contact. This includes but is not limited to touching, sexual assault, rape, patting, pinching, fondling and strip searches.
 - ii) **Verbal conduct**, which includes but is not limited to unwelcome advances, interferences, propositions or pressure for sexual activity or offensive flirtations; requests for sex; innuendos, rude and lewd comments and gestures, sex-related comments, stories or jokes; suggestions or hints of a sexualised nature, sexual advances, sexual threats, comments with sexual overtones, gaslighting; abusive language which denigrates or ridicules; condescending remarks; insulting, demeaning or derogatory conduct toward a person because of their gender or sexual orientation (including homophobic or sexist name-calling); gender-based slurs, offensive comments about dress, appearance, age, physique, and private life; repeated and unwelcome social invitations for dates or physical intimacy.

- iii) **Non-verbal conduct**, which includes but is not limited to the inappropriate display or transmission of gender-degrading material, pornography or sexually suggestive pictures; offensive objects or written materials; making abusive, sexually- suggestive or offensive gestures including leering and whistling; the display or creation or transmission of sexually offensive written or visual material, including electronic pornography, revenge pornography, graffiti; sending sexually explicit messages by electronic means, such as text messages, email, or through social media; open or covert hostility to employees on the grounds of their sex or gender or sexual orientation.

Appendix B - Purposes of the policy and disciplinary procedure

- i) To advocate for a safe, inclusive and welcoming institutional culture that is free of sexual or gender-related misconduct.
- ii) To establish a common understanding of what constitutes sexual or gender-related misconduct.
- iii) To ensure that all staff and students receive appropriate information about sexual or gender-related misconduct and the procedures which should be followed when misconduct occurs.
- iv) To create an institutional culture in which complainants feel safe to report sexual or gender-related misconduct without fear of reprimand or victimisation.
- v) To ensure that any staff member or student who experiences sexual or gender-related misconduct is offered appropriate support.
- vi) To provide for the investigation of complaints in a speedy and professional manner that is fair to both the complainant and respondent.
- vii) To establish a disciplinary procedure to be followed against a staff member or student from the University who is alleged to have committed sexual or gender-related misconduct.
- viii) To provide mechanisms to address allegations of sexual or gender-related misconduct by any person who has dealings with the University.
- ix) To establish clear lines of accountability for the implementation and management of this policy.

Appendix C - Policy Jurisdiction

- i) Anyone can be a victim of sexual or gender-related misconduct. The University recognises that harm may occur between people of the same sex, gender or sexual orientation.
- ii) This policy is applicable to sexual or gender-related misconduct that can occur either on or off campus. The off-campus provision covers all interactions which are associated with University activities or which take place under University auspices. This includes travel, such as field trips or conferences, or studying or working abroad. The key threshold is when, in the judgement of the GEO, the alleged conduct has a negative impact on the University community, the pursuit of its mission, or the broader community in which we live.
- iii) The policy and disciplinary procedure apply to any person who has dealings with the University. This includes but is not limited to, all students, employees at all levels, applicants for employment, managers, directors, senate and council members, interns, fellows, post-doctoral fellows, consultants and contractors and their employees, visiting academics, employees and board members of institutions carrying the University logo or representing the Wits 'brand'.
- iv) This disciplinary procedure does not apply where the alleged perpetrator of the sexual or gender-related misconduct is not connected with the University. In such circumstances, the University neither has authority, nor bears any obligation, to take action in respect of the alleged perpetrator. However, in such situations, the University still has the obligation to provide support through counselling and the like to any members of the University community who are impacted by the sexual or gender-related misconduct.

Appendix D - Confidentiality and integrity of the disciplinary procedure

- i) This disciplinary procedure adheres to the principle that information related to complaints of sexual and gender-related misconduct is made available to only a limited number of authorised people.
- ii) Allegations of sexual and gender-based misconduct are distressing to the complainant, as well as to the person accused of the misconduct. Such allegations may negatively impact the reputation and position within the University of both an alleged perpetrator and a complainant. For this reason, all complaints of sexual and gender-based misconduct will be investigated and dealt with in a manner that seeks to ensure that the identities of the persons involved are kept confidential. Any testimonies, whether written or oral, presented by the complainant, perpetrator or witnesses during the proceedings, and all documents provided in preparation for or during the proceedings, may not be disclosed to anyone other than the parties directly concerned (and/or their representatives) and the hearing panel members.
- iii) The GEO retains the right to inform relevant parties within the University of any protective measures instituted (if necessary), as well as the outcomes of any disciplinary hearing.
- iv) The VCO, in consultation with the GEO, has the right to publicly disclose the name of the perpetrator and the nature of their offence/s when found guilty. The VCO also retains the right to inform prospective employers, higher education institutions, or other relevant bodies regarding the name of the perpetrator and the nature of their offence/s.
- v) The VCO cannot deal with a complaint, which is made against one of its members. Where a complaint is laid against a member of the VCO, the Director of the GEO must report directly to Council, which must appoint an independent Ombudsperson to oversee any disciplinary process.

Appendix E – Requests for Anonymity

- i) The GEO must strive to accommodate a complainant's wish to remain anonymous and/or to not pursue any disciplinary process against an alleged perpetrator.
- ii) The University must do all it can to protect complainant and whistle-blower anonymity, where this is required.
- iii) When considering whether they wish to remain anonymous and/or to not pursue a disciplinary process, complainants must be advised that the GEO's ability to respond to the alleged misconduct may be constrained if the complainant chooses not to participate in the process and/or to remain anonymous.
- iv) Where a complainant wishes to remain anonymous other interventions may be pursued, including:
 - a) A discussion between the alleged perpetrator and the GEO, during which it is explained - without revealing the identity of the complainant – that certain forms of conduct constitute sexual and gender-related misconduct, are offensive and unwelcome, make staff/students feel uncomfortable, and/or interfere with their work/studies.
 - b) A discussion between the GEO and Human Resources and/or the line manager of the alleged perpetrator, advising the line manager of the allegations and requesting them to discuss the matter with the alleged perpetrator.
 - c) Retaining a record of the complaint on file in the GEO.

Appendix F – Reporting or initiating a complaint of sexual and gender-related misconduct

- i) Anyone who is part of the University community who believes that they have been subjected to sexual or gender-related misconduct, as defined by this policy, or who would like to report on behalf of another person, is encouraged to bring the complaint to the GEO.
- ii) Such complaints may also be brought to the attention of the GEAC, which must report it to the GEO as soon as possible.
- iii) To accept a complaint, the GEO considers whether the complaint has a gender or sexual-related misconduct component, as defined in this policy. If this criterion is met, the GEO can pursue the complaint, taking into consideration the needs and wishes of the complainant.
- iv) The GEO must respond to any reported complaint by:
 - a) Offering the complainant counselling and, where necessary, supportive and protective measures, as well as advising the complainant of the options available to address the misconduct; and
 - b) Following this policy and disciplinary procedure, in a manner that is procedurally and substantially fair.
- v) Anyone reporting an incident of sexual and gender-related misconduct must be informed of their rights including all aspects of confidentiality and anonymity, the options available to them, the steps and procedural timelines of any disciplinary procedure, and the possible outcomes of both informal processes and the formal disciplinary procedure.
- vi) In general, the process is guided by the needs and wishes of the complainant. A complainant may choose inter alia to:
 - a) Not proceed with any action or intervention;
 - b) Participate in counselling, mediation or another informal process;
 - c) Pursue a disciplinary process; and/or
 - d) To pursue action outside the University in terms of labour, civil and/or criminal law remedies.
- vii) In general, the GEO should be guided by the wishes of the complainant regarding whether to pursue a disciplinary process. However, in exceptional circumstances the GEO can nonetheless pursue a disciplinary process against the alleged perpetrator even if the complainant does not wish to pursue action. This requires a determination by the GEO, in discussions with the GEAC, that the misconduct which has been alleged presents an ongoing risk to the university community. Conversely, the GEO, in discussion with the GEAC, may decline to pursue a disciplinary process where it is determined there is insufficient evidence available. In making such decisions, the GEO and the GEAC must consider all relevant information including:
 - a) Any risk to the complainant;
 - b) Any risk or threat to other persons at the University, especially where there is a likelihood that the alleged perpetrator might commit additional acts of misconduct;

- c) Educational and occupational circumstances which generate an increased risk of future acts of sexual or gender-related misconduct occurring.
 - d) The severity of the harm that might result from a failure to act against the alleged perpetrator;
 - e) The history of the alleged perpetrator, including previous complaints of sexual and gender-related misconduct; and
 - f) The availability and strength of corroborating evidence.
- viii) Any delay in reporting an incident of sexual and gender-related misconduct does not prejudice the complaint or the complainant.
- ix) Where a complainant wishes to pursue a disciplinary process, the GEO is first required to conduct an investigation to determine whether any disciplinary hearing is warranted. An investigation of potential misconduct is not the same thing as a formal disciplinary hearing.
- x) A complainant may choose to report any incident of sexual and gender-related misconduct to the South African Police Services or any other relevant authority as well as, or instead of, to the GEO.
- xi) It is possible to consolidate multiple complaints and/or incidents as a single complaint/case in the following circumstances:
- a) The alleged perpetrator is alleged to have been involved in multiple incidents of sexual or gender-related misconduct with the same complainant;
 - b) The alleged perpetrator is alleged to have been involved in the same incident(s) or closely interrelated incident(s) of sexual or gender-related misconduct with multiple complainants; and/or
 - c) More than one alleged perpetrator is involved in the same incident(s) or closely interrelated incident(s) of sexual or gender-related misconduct with the same complainant.

APPENDIX G - Pursuing an informal process

- i) It may sometimes be appropriate for a complaint of sexual and gender-based misconduct to follow an informal process. This may be advanced in different ways, including:
 - a) **An approach to the respondent:** An appropriate person (agreed to by the complainant) may be requested to approach the respondent, with or without revealing the identity of the complainant, and explain to the respondent that their conduct constituted sexual or gender related misconduct, are offensive and unwelcome, and make the complainant feel uncomfortable and/or interfere with their work;
 - b) **An internal informal discussion/mediation:** A discussion or internal mediation between the parties facilitated by the GEO may be pursued. The GEO shall give an opportunity to the respondent to respond to the complaint; ensure that the respondent understands the complaints mechanism; facilitate discussion between both parties to achieve an informal resolution which is acceptable to the complainant; ensure that a confidential record is kept of what transpires; and follow up with the complainant after the finalisation of the internal mediation process to ensure that the behaviour has not persisted; or
 - c) **External mediation:** The GEO shall make arrangements for an external mediator, drawn on from the University's Department of Psychology and/or the University's pool of accredited mediators, to be appointed to resolve the complaint. Facilitators can guide a dialogue between the parties, either with both parties present, or with both parties separately, with the goal of identifying how the harm(s) alleged by the complainant can be repaired. If the mediation results in a mutually acceptable agreement, copies of the agreement shall be forwarded by the mediator to the GEO for review and monitoring. Such an agreement may include items such as apology letters, agreement to a no contact order, special supervision, gender sensitisation training and/or any other appropriate remedial action.
- ii) Choosing an informal process does not preclude the right to pursue a disciplinary hearing process should the complainant not be satisfied with the outcome of the informal process.

APPENDIX H - Contacting the respondent

- i) The GEO informs the respondent in person or via the email address provided to the University that a complaint has been filed and will be investigated by the GEO, and provides the respondent with a letter containing the allegations against them as well as a copy of this policy and disciplinary procedure. The respondent must confirm receipt of both the letter and policy either by signing in person or emailing confirmation of receipt.
- ii) The GEO informs the respondent that a formal investigation is to be conducted within thirty days and that they may elect to submit a written statement of response to the complaint, but that there is no requirement for them to do so at this stage.
- iii) Any respondent wishing to submit a written response at this stage must do so within five days of being notified of the complaint.
- iv) Depending on the facts of the complaint – and particularly in the case of protective measures being taken – the GEO can inform the Dean of Students and/or Director of Campus Housing and Residence Life in the case of students or relevant Dean/Head/Director in the case of staff, or any other relevant University role player of the status quo.

APPENDIX I - Supportive and protective measures

- i) The GEO can recommend supportive and protective measures that are reasonable to ensure the safety and wellbeing of the complainant, respondent, and other affected parties, or to guard against potential harm. Any protective measure must be premised on an assessment of the balance of potential harm to both the complainant and the respondent.
- ii) Supportive and protective measures can be imposed regardless of whether a disciplinary hearing takes place.
- iii) Supportive and protective measures are dependent on circumstances and may include but are not limited to:
 - a) On-going psycho-social support from the GEO;
 - b) Access to further/alternative free counselling through the CCDU;
 - c) Special leave for the complainant, on the request of the complainant;
 - d) Additional paid sick leave in cases of serious misconduct and trauma, where an employee's sick leave entitlement has been exhausted;
 - e) Cease and desist orders;
 - f) Change of University student residence;
 - g) Change of academic classes, assessment venues and academic concessions;
 - h) Suspension or special leave (staff) or leave of absence (students); and
 - i) Education and/or training.
- iv) The GEO must inform the respondent of any protective measure that the GEO is proposing and its reasons for pursuing the protective measures.
- v) The respondent must be given a fair opportunity to contest the factual premise of the reasons through providing exculpatory evidence.
- vi) For staff members, the VCO; and for students, the Dean of Students; decides on whether to impose protective measures, taking all relevant factors into account and making the decision based on the best interests of the University. Representations on protective measures are made by the GEO.

APPENDIX J - Proceeding to a disciplinary hearing

- i) To proceed to a disciplinary hearing requires a written statement of the complaint. The statement of complaint can be written by the complainant or the GEO on the instructions of the complainant.
- ii) The statement must state the name of, or clearly identify, the alleged perpetrator and describe with reasonable specificity any of the alleged incident(s).
- iii) The GEO must conduct a full investigation and submit an investigation report within thirty days of the respondent being informed of the complaint. If further time is required, reasons for such must be provided to the VCO, which will approve or deny the request.
- iv) The investigation report must conclude, on the basis of available evidence, whether there is a prima facie case of sexual or gender-related misconduct. If it is determined that a prima facie case exists, the matter must proceed to a disciplinary hearing.
- v) The complainant and respondent will receive access to the investigation report and may each submit a written response within seven working days of receiving the report. Complainants and respondents are not permitted to share the report with any individual(s) other than their representatives, where permitted.
- vi) Within five days of the investigation report being completed and a prima facie case has been established, a hearing panel will be appointed to conduct the formal disciplinary hearing. A disciplinary hearing will be scheduled as soon as possible.
- vii) In order to settle on a mutually acceptable hearing schedule, the Chair may communicate with the parties, but if no agreement can be reached, the date of the hearing may be decided by the Chair at their discretion.
- viii) At least fifteen days before the scheduled hearing, the GEO provides the investigation report to the hearing panel, along with the date and location of the hearing.
- ix) All parties to the hearing must make a good faith effort to be available. This includes providing a specific range of dates where they will be available to attend a hearing, and also providing supporting evidence to confirm a schedule conflict if they are unavailable on specific dates.
- x) If the respondent engages in a pattern of unreasonable delays which prevents a suitable date for the hearing to be determined, then the Chair and/or GEO can approach the VCO to intervene in order to finalise the schedule. This may include moving the date of the hearing forward (i.e. within the fifteen-day window) in order to resolve otherwise intractable scheduling conflicts.

- xi) The hearing panel may not receive any *ex parte* correspondence regarding the complaint, the investigation, or any evidence.

- xii) If the respondent chooses to resign or de-register prior to the disciplinary hearing taking place, the University reserves the right not to accept the resignation or de-registration and to proceed with the hearing. In the event that an accused staff member resigns with immediate effect, or a student de-registers, the University may proceed with the matter in the respondent's absence. The decision to proceed must be made within thirty working days of the resignation or de-registration.

- xiii) Members of the University community have a positive obligation to assist preparations for a disciplinary hearing by providing relevant testimony or other supporting evidence in a timely fashion, and to make themselves available to contribute to any proceedings, which take place.

APPENDIX K - The disciplinary hearing panel

- i) If a disciplinary hearing is to take place, a hearing panel will be responsible for hearing any formal disciplinary process. The panel will:
 - a) Adjudicate the matter impartially based on the GEO's investigation report, as well as presentations on behalf of the GEO, the complainant, the alleged perpetrator, as well as other interested parties;
 - b) Reach a finding based on the allegations and the evidence; and
 - c) Propose an appropriate ruling.

- ii) Each hearing panel comprises the following members, as identified by the GEO:
 - a) A Chair, who must be a legal professional or legal academic;
 - b) A member of the University's Gender Equity Advisory Committee (GEAC) or other appropriate gender expert; and
 - c) A member of Senate where the respondent is a staff member; or a member of the Student Representatives Council (SRC) or another representative student body where the respondent is a student.

- iii) The hearing panel members must have reasonable and appropriate levels of experience, taking into account the complexity and seriousness of the complaint and must consist of representatives who collectively have the following expertise:
 - a) Knowledge of sexual and/or gender-based misconduct;
 - b) Knowledge of the law; and, if necessary,
 - c) Knowledge of labour law.

- iv) Hearing panel members may be internal or external to the University depending on the nature of the charge and the seniority of the alleged perpetrator.

- v) Hearing panels cannot include anyone who has participated in any prior intervention regarding the complaint.

- vi) Hearing panels cannot include anyone with personal or professional conflicts in relation to the parties mentioned in the complaint. To ensure that there are no conflicts, the GEO contacts potential panel members to ascertain if there are any conflicts.

- vii) Once appointed to a hearing panel, the GEO panel members receive copies of the investigation report and any other relevant material.

- vii) The GEO informs the complainant and the respondent of the hearing panel composition and notifies them of their right to object to the participation of a panel member, as long as the objection is grounded on a direct conflict of interest, such as. a personal acrimonious history. The objection cannot be on the basis of a perceived but unfounded 'bias' e.g. as a gender expert.
- viii) Any objection to a hearing panel member/s must be made in writing to the GEO and must be received within three days of the date of notification of the panel composition, stating the grounds of objection.
- ix) The Chair of the hearing panel decides whether an objection to a hearing panel member is justified, and this decision is final.
- x) If deemed necessary, at their discretion the Chair may substitute a hearing panel member, and may do so in consultation with the GEO and/or the GEAC.
- xi) If there is an objection to a hearing panel Chair, this must be considered by the VCO in consultation with GEO. If deemed necessary, the Chair can be substituted.

APPENDIX I - Subsequent withdrawal of the complaint by the complainant

- i) The complainant may, at any time before the day scheduled for the disciplinary hearing, request in writing to the GEO that the complaint be withdrawn.
- ii) If a hearing panel is already constituted, the Chair of the hearing panel, in consultation with the GEO, considers whether the request is fully voluntary and whether the interest of the University community would be better served by continuing with the complaint in the absence of the complainant.
- iii) The Chair's decision whether to approve or deny the request for withdrawal of the complaint, and proceed in the absence of the complainant, is final.
- iv) If the Chair decides to proceed with the complaint despite a request for withdrawal, the complainant will not be required to participate in the subsequent hearing, in which case the GEO will have to rely on other evidence.
- v) If a hearing panel has not been constituted, the GEO considers whether the request is fully voluntary and whether the interest of the University community would be better served by continuing with the complaint.
- vi) The GEO's decision on whether to approve or deny the request for withdrawal of the complaint and proceed in the absence of the complainant is final.
- vii) If the GEO decides to proceed with the complaint despite a request for withdrawal, the complainant will not be required to participate in the subsequent hearing, in which case the GEO will have to rely on other evidence. Alternatively, the GEO can request that the complainant provides a written affidavit granting the GEO permission to use their statement of complaint as part of an ongoing proceeding.

APPENDIX M - The hearing

- i) At least fifteen days before the scheduled hearing, the GEO notifies the complainant and respondent of the date and location of the hearing. In cases of insufficient notice of the hearing a respondent may waive compliance with this requirement. Where a hearing cannot be concluded in one sitting, the Chair will determine subsequent hearing dates and notice periods.
- ii) A hearing is postponed only if there are compelling reasons, such as being hospitalised, suffering a family bereavement or, in the case of students, a direct exam clash. Any decision to postpone is taken by the Chair in consultation with the GEO and is final. In such cases, the hearing may proceed without the complainant and/or respondent, but the panel may still consider any subsequent written representations.
- iii) If a complainant or respondent wishes to request a postponement, they must do so in writing as soon as reasonable, setting out the reasons for the request made in an application to the GEO and the Chair, with any relevant supporting documentation.
- iv) At least five days before the scheduled hearing, the respondent must provide the GEO with an outline of the grounds of their defence of no more than twenty pages, as well as a list of witnesses they wish to call to the hearing. If the respondent does not provide such information, the Chair may in their discretion require a pre-hearing meeting to settle their defence, evidence and witnesses. If the respondent does not attend such a pre-hearing meeting, during the hearing the Chair may use their discretion to prevent irrelevant issues from being raised.
- v) Any party can request to amend the grounds of their argument or list of witnesses at any point before or during the hearing. The Chair, at their discretion, will grant such application where good cause is demonstrated.
- vi) The GEO's investigation officer attends all hearings and maintains records of hearings. All hearings are recorded, and any party to a hearing seeking to listen to the recordings after the hearing may do so at the GEO's offices. As a matter of course, hearing recordings are not transcribed. If a party wants a transcript, they must pay for this. Any hearing recordings or transcripts must be kept strictly confidential.
- vii) The Chair determines whether witnesses are relevant to the substance of the proceedings. Outside of deliberations over sentencing, witnesses may not appear for the sole purpose of testifying about a party's character.
- viii) If deemed necessary, the GEO may call a gender expert to give evidence. If a gender expert is called, they should normally give evidence prior to any witnesses or parties.

- ix) The complainant and the respondent can each have a supporting person of their choosing throughout the hearing proceedings to provide personal and moral support. The support person may not be a legal practitioner, but they could be a union member or a friend or family member. The support person may not be a witness, speak, or otherwise participate on behalf of either party. Timelines and/or deadlines for submission of materials may not be altered to accommodate the schedule of a supporting person. Supporting persons may not receive any documentation in connection with the complaint and any information that the supporting person has been privy to during the proceedings must be kept strictly confidential.
- x) In order to maintain a relatively non-adversarial process, neither the complainant nor the respondent should have legal representation. However, if there are compelling reasons, any party may apply to the Chair within five days of being notified about the hearing to be allowed to bring their own legal representative (at their own expense) to the hearing. The decision of the Chair regarding representation is final and should not be the basis of granting any postponement. If a request for legal representation is granted, the Chair must ensure that the legal representative adheres to the principles and processes set out in this policy, specifically to maintain an inquisitorial approach. If the Chair grants one party legal representation, they must offer other parties an opportunity to similarly apply for legal representation within an additional five day period. Granting a right to legal representation to one party does not automatically entitle any other party to legal representation.
- xi) Unless the complainant opts to appear with the respondent, the complainant and respondent do not appear together in the hearing, but at all material times are connected via an audio feed. This separation is designed to minimize the power dynamics which typify sexual and gender-related misconduct.
- xii) The hearing is aimed primarily at allowing the panel to interview the parties on the basis of the investigation report. Supporting and contextual material such as photos, cell phone and social media records can be accepted unless reasonably disputed by either party – the Chair decides on the admissibility of such evidence. More generally, the Chair decides any question of procedure and any question on the admissibility of evidence, as well as the acceptability/relevance of any witnesses. These decisions are based upon the dictates of fairness, justice and relevance, rather than formal rules of criminal procedure or evidence, since these are not criminal proceedings.
- xiii) At the outset of the hearing, the Chair confirms that appropriate procedures have been followed. The hearing panel may call on the GEO for any questions of clarity.
- xiv) If this has not already occurred during any pre-hearing deliberation, the Chair may exclude any areas that are not in dispute following separate consultations with the parties.
- xv) Thereafter, the panel interviews the complainant and any witnesses, and then the respondent and any witnesses (separately). The witness being led or cross-examined, as well as the respondent, may submit

questions at any point, which the panel asks, retaining the discretion to decline to ask any inadmissible questions. At its discretion, the panel may ask for the testimony of further witnesses. Any such further testimony will be subjected to the same rules.

- xvi) Evidence and testimony provided by any party should be limited to first-hand factual or circumstantial knowledge of the matter. The Chair may remove and/or redact any evidence that they deem necessary to ensure a fair and equitable process, such as, but not limited to: character assessments, prejudicial testimony, irrelevant evidence, and/or duplicative information. Additionally, information from either a privately hired investigator and/or polygraph examination is not permitted.
- xvii) The deliberations at this stage of the hearing are exclusively concerned with factual questions, and do not cover the separate issue of sanctions, which only arises if a finding of guilt is made.

APPENDIX N -Findings and Sanctions

- i) Once all the evidence has been tabled and evaluated, the panel then considers, on a balance of probabilities, whether the respondent's action constitutes misconduct as defined in this policy and disciplinary procedure or any other relevant University policies, rules and procedures.
- ii) Having discussed the evidence, the panel decides by majority vote (with no abstentions) whether they confirm or reject the complaint, or any aspect thereof.
- iii) If a finding of guilt is reached, the panel then hears arguments by the respondent for leniency and/or mitigation, as well as arguments by the complainant in aggravation. At this point character witnesses may be called if the Chair determines their input may be relevant.
- iv) The GEO then presents its recommended course of action, taking into account these arguments, and may also bring to the panel's attention any previous complaints relating to gender misconduct against the respondent.
- v) The hearing panel then privately deliberates and determines an appropriate sanction, taking into account the various submissions. Any sanction must be decided by a majority vote of the hearing panel members.
- vi) In considering the appropriate sanction(s), the hearing panel must take into account several factors, including:
 - a) The nature of the violation/s;
 - b) The respondent's conduct history; and/or
 - c) Any other aggravating, mitigating, or relevant factors.
- vii) The hearing panel may recommend, inter alia, the following sanctions:
 - a) A verbal or written warning;
 - b) An adverse performance evaluation;
 - c) Gender sensitisation intervention;
 - d) Suspension;
 - e) Demotion;
 - f) Exclusion from student leadership;
 - g) Exclusion from a University residence;
 - h) Exclusion from re-registering as a student, either permanently or temporarily;
 - i) Academic exclusion, either for a specific course or in general;
 - j) Suspended exclusion;
 - k) Cancelling of service delivery contracts;
 - l) Dismissal; or
 - m) Any other sanction deemed appropriate.

- viii) The Chair panel writes its judgment within ten days of the conclusion of the hearing, and submits the judgment to the GEO for dissemination to all the relevant parties, including the VCO and Human Resources (in the case of a staff member) and the Registrar (in the case of a student). A judgment template is provided by the GEO.

- ix) The University has the discretion to publish details, excluding the names of the complainants, of the violation and mandated course of action in accordance with its disciplinary rules and policies. The severity of the misconduct and the seniority of the offender will be taken into account when determining whether to publish details.

APPENDIX O - Appealing or reviewing a judgment: Students

- i) The finding/s and/or sanction/s of a disciplinary hearing may be appealed or taken on review by the complainant and/or respondent (the applicant) by submitting a written application for appeal or review to the GEO.
- ii) Appeals concern a challenge to the merits of the findings and/or the decision.
- iii) The basis for a review is a procedural error that amounts to a failure of natural justice that prevented the hearing panel from judging the matter fairly and caused a material prejudice.
- iv) For both an appeal and a review, the burden of proof rests on the applicant to establish their case on a balance of probabilities.
- v) An applicant must submit their appeal/review application within seven days of receiving the hearing panel's judgment. The GEO must forward this application to all relevant parties.
- vi) Any course of action ordered by the original hearing panel will remain in force until the outcome of the appeal/review panel decision. In exceptional circumstances, the VCO may, in consultation with the GEO, temporarily suspend the imposition of specific sanctions pending the outcome of the appeal/review.
- vii) The applicant can ask the GEO to examine the original case file and listen to the audio recordings while they prepare their appeal/review application. Any access to such material occurs at the GEO offices.
- viii) After an appeal or review application has been submitted by the applicant, the GEO convenes an Appeal and Review Committee (ARC) to consider the appeal or review as soon as it is reasonably possible.
- ix) The ARC comprises three members: a legal professional or legal academic as the Chair, a GEAC member or other appropriate gender expert; and a member of the SRC or another representative student body. None of the members of the ARC can have been involved in any of the preceding deliberations, and none can have a personal or professional conflict of interest with any of the parties to the appeal or review.
- x) Each party may submit to the GEO a written response to the other party's appeal/review application within five days of receiving the application. The response must address the specific ground(s) for appeal/review.
- xi) The ARC reviews the appeal/review application and, within five days of receiving the appeal/review request, the ARC makes a decision on whether to grant the appeal/review application. This decision is final and must be communicated by the GEO to all relevant parties.

- xii) If the appeal/review application is granted, the ARC hears the appeal/review as soon as possible.

- xiii) The ARC decides and communicates to the relevant parties what evidence is required and what process to pursue to ensure a fair appeal/review.

- xiv) The following decisions, on a majority basis, may be made by the ARC:
 - a) Confirm the finding and sanction of the hearing panel; or
 - b) Confirm the finding and alter the sanction of the hearing panel; or
 - c) Overturn both the finding and the sanction and return the matter to the GEO for action consistent with the ARC's determination.

- xv) In the event that the ARC imposes a higher sanction than the hearing panel, the applicant is not entitled to withdraw the appeal/review.

- xvi) The Chair of the AR is responsible for compiling and communicating the judgment to the GEO within fifteen days of the conclusion of the appeal/review hearing.

- xvii) The GEO communicates the judgment to all relevant parties.

- xviii) The ARC's decision is final and binding on all parties and is not subject to further internal review or appeal.

APPENDIX P - Retaliation, victimisation and interference

- i) It is a disciplinary offence to retaliate against, victimise, or interfere with, any person who participates in any proceeding under this policy and disciplinary procedure, or to pressure any relevant party to withdraw or revise a complaint of sexual or gender-related misconduct.

- ii) Any member of the University community who believes that retaliatory actions have been taken against them for having lodged a complaint or provided testimony in an investigation of sexual or gender-related misconduct may seek redress through the GEO.

- iii) The University must take all reasonable measures to prevent retaliation, victimisation or interference, including protecting anonymity and prohibiting interpersonal interactions where necessary.