



**HRG/10
S2013/2046**

**SEXUAL HARASSMENT, SEXUAL ASSAULT AND RAPE
POLICY AND PROCEDURES¹**

Original draft prepared by Professor Dee Smythe and amended by Jameelah Omar, Antje Schuhmann, Joel Quirk and David Hornsby on 10 October 2013, for approval by the Sexual Harassment Advisory Committee. Amended by Antje Schuhmann and Bonita Meyersfeld by including the comments provided by members of the Sexual Harassment Advisory Board on 26 October 2013.

A. POLICY

1. Policy Statement

1.1. The University of the Witwatersrand commits itself to providing a safe institutional environment where all may learn, work and go about their duties and activities free from sexual harassment and sexual violence. Sexual harassment and sexual violence undermine the dignity and autonomy of those victimised and erodes the mutual trust and respect, which are essential to personal and academic well-being. Sexual harassment and sexual violence constitute serious disciplinary offences and will not be tolerated at the University of the Witwatersrand.

1.2. This policy focuses on the University's commitment to preventing sexual harassment and sexual violence, responding effectively where formal or informal complaints of sexual harassment, rape or

¹ This policy replaces HRG/10 C2006/466 SEXUAL HARASSMENT: POLICY AND PROCEDURES.

sexual assault are received, and providing appropriate support to victims. It should be read in the context of other University policies and guidelines, including the policies on *HIV/AIDS, Discrimination and Harassment, Disability, the Relationships between Staff and Students Policy* and the *University Code of Conduct Relating to Staff-Student Engagement*; the constitutional rights to equality, dignity and freedom and security of person; and specific laws governing labour practice and sexual offences.

2. Purpose of the Policy

The objectives of this policy and the procedures detailed herein are:

- 2.1. To create a safe campus environment, which is free of sexual harassment and sexual violence;
- 2.2. To establish a common understanding of what constitutes sexual harassment and sexual violence;
- 2.3. To ensure that all staff and students receive appropriate information about sexual harassment and other forms of sexual violence and the procedures which should be followed if sexual harassment, sexual assault or rape occurs;
- 2.4. To ensure that any staff member or student who experiences sexual harassment or any other form of sexual violence is offered appropriate support;
- 2.5. To provide for disciplinary steps to be taken against a staff member or student alleged to have committed an act of sexual harassment, sexual assault or rape; and
- 2.6. To establish clear lines of accountability for the implementation and management of this policy.

3. Confidentiality

Allegations of sexual harassment, sexual assault or rape are distressing to the complainant as well as to the person accused of the conduct. Such allegations may negatively impact the reputation and position within the University of both an alleged perpetrator and a complainant, even before a matter has been heard by the University. For this reason, all complaints of

sexual harassment, sexual assault and rape will be investigated and dealt with in a manner that seeks to ensure, that the identities of the persons involved in a complaint are kept confidential.

4. Definitions

- 4.1. **Academic Concessions** include, but are not limited to, 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.
- 4.2. **Alleged perpetrator** means a person alleged to have committed an act of sexual harassment.
- 4.3. **Complainant** means a person who lodges a complaint under this policy.
- 4.4. **Confidentiality** means ensuring that information is accessible only to those who are authorised to have access to it.
- 4.5. **Consent** means free and informed agreement. In deciding whether such consent was present in an alleged incident, the University will be guided by the circumstances listed in s1(3) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 and the following considerations:
 - i. Parties involved in interpersonal relations must be able to communicate effectively and agree to any interpersonal activities;
 - ii. It is the responsibility of the person that initiates any type of sexual activity to obtain the other person's consent;
 - iii. Consent to one type of sexual act does not necessarily imply consent to other forms of sexual activities;
 - iv. Silence does not imply consent;
 - v. A previous or present sexual or other relationship between the parties does not imply consent;

- vi. Consent is not implicit in a person's manner of dress;
 - vii. Accepting a social invitation is not consent, nor does it imply consent; and
 - viii. Consent will not be 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 judgement.
- 4.6. **Employee** means an employee of 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.
- 4.7. **Manager** means any employee of the university with managerial, supervisory or Warden responsibilities.
- 4.8. **Ombudsperson** means a 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 harassment against the VC.
- 4.9. **Psycho-social support** means professional support for the psychological and social consequences of trauma.
- 4.10. **Rape** is defined in terms of Section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 to mean an unlawful and intentional act of sexual penetration of any part of another person with any body part or object, without their consent.
- 4.11. **Sexual Assault** is defined in terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 to mean an unlawful and intentional act of sexual violation of another person, without their consent.
- 4.12. **Sexual harassment** refers to a wide range of practices, including unwelcome conduct of a sexual nature, or other unwelcome conduct as defined in paragraph 5 below, sexual assault and/or rape.
- 4.13. **SHSO** means the Sexual Harassment and Safety Office.

- 4.14. **Staff** means the collective group of employees as defined above.
- 4.15. **Unwelcome sexual conduct** includes behaviour that is perceived by the complainant as demeaning, compromising, embarrassing, threatening and/or offensive, in some cases even where the alleged perpetrator did not intend to harass the complainant. It may include, amongst other types of conduct:
- i. Unwelcome non-verbal conduct including gestures, behaviour with sexualised overtones, indecent exposure and the display of, or sending by electronic or other means, sexually explicit pictures or messages;
 - ii. Unwelcome verbal conduct includes innuendos, suggestions or hints of a sexual or sexualised nature, sexual advances, sexual threats, comments with sexual overtones, sex-related jokes or insults, graphic comments about a person's body, inappropriate enquiries about a person's sex life, whistling of a sexual nature and the sending by electronic means or otherwise of sexually explicit text; and / or
 - iii. Unwelcome physical conduct ranging from touching to sexual assault and rape.
- 4.16. **Student** means a registered (full or part-time) student of the University or a person who has agreed to be bound by the rules and policies of the university relating to students, including visiting students.
- 4.17. **University** means the University of the Witwatersrand.
- 4.18. **University process** means 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.
- 4.19. **VC** means the Vice-Chancellor of the University.
- 4.20. **Victim** means a person against whom an act of sexual harassment, sexual assault or rape has allegedly been perpetrated.

5. Sexual Harassment Meaning

5.1. Sexual harassment means rape, sexual assault, unwelcome conduct of a sexual nature, or other unwelcome conduct based on the gender or sexual orientation of the victim, affecting the dignity of all people working, studying, visiting or living at the University. Sexual harassment includes same-sex harassment. This conduct includes physical, verbal or non-verbal conduct, which is perceived as unwelcome taking account of the following factors:

- i. Whether the harassment is on the grounds of the sex and/ or gender and/or gender performance, and/or sexual orientation (self-identified or perceived) of the complainant;
- ii. Whether the conduct, either formal or informal, abuses a position of power by the perpetrator over the complainant;
- iii. The short- and long-term impact of the sexual conduct on the complainant;
- iv. The nature and extent of the sexual conduct; and / or
- v. Whether the conduct constitutes a breach of the Relationships between Staff and Students Policy or conduct prohibited by the University Code of Conduct Relating to Staff-Student Engagement.

5.2. Specific Forms of sexual harassment: In addition to the definition of sexual harassment above, sexual harassment may take a number of specific forms, including:

- i. *Special Victimization*, which occurs when a person is victimized or intimidated for refusing to submit to sexual advances;
- ii. *Grooming*, which involves an action or series of actions, which can initially appear to be conducted within the context of the academic project, but are taken with the overall aim of befriending and establishing a psychological and/or material connection with a person in order to facilitate subsequent sexual harassment or sexual assault and/or to hinder the reporting of various acts of harassment or assault. This includes 'online

grooming,' which refers to grooming by means of modern-day technology, such as mobile phones and the internet;

- iii. *Quid Pro Quo Harassment* of staff, which occurs when an alleged perpetrator influences or attempts to influence a person's employment circumstances by coercing or attempting to coerce that person to engage in unwelcome sexual conduct; and
- iv. *Quid Pro Quo Harassment* of students, which occurs when:
 - An alleged perpetrator influences or attempts to influence the admission of a student to the University or access to opportunities within the University, by coercing or attempting to coerce that person to engage in unwelcome sexual conduct or offering special treatment in exchange for unwelcome sexual conduct; and / or
 - An alleged perpetrator influences or attempts to influence the grading, evaluation or professional advancement of the student, by coercing or attempting to coerce them to engage in unwelcome sexual conduct;
- v. *Creation of a Hostile Work or Learning Environment, which occurs where the purpose or effect of the conduct is to interfere with another person's performance at work or study.*

5.3. In determining whether conduct amounts to sexual harassment, the following considerations will be taken into account:

- i. Previous consensual participation in sexual conduct does not mean that the conduct continues to be welcome;
- ii. A single incident of unwelcome sexual conduct can constitute sexual harassment;
- iii. The assessment of what is unwelcome should be informed by the subjective perception of the complainant;
- iv. That the victim has indicated that such conduct is considered to be offensive;

- v. That some forms of sexual harassment are such that the alleged perpetrator should have known that the behaviour would be unwelcome or inappropriate; and / or
- vi. When a victim has difficulty indicating to the alleged perpetrator that the conduct is unwelcome, that the victim seeks the assistance and intervention of another person in order to make it clear that the conduct is unwelcome.

B. PROCEDURES

6. The Sexual Harassment and Safety Office

6.1. The SHSO will be responsible for:

- i. Providing psycho-social support for complainants;
- ii. Advocacy, awareness-raising and training in terms of sexual harassment and related issues at the University. The SHSO will contribute to larger community discussions and programmes regarding sexuality, sexual harassment and sexual assault at the University;
- iii. Capturing statistics and keeping record of trends of sexual harassment, sexual assault or rape at the University;
- iv. Hearing complaints of sexual harassment, sexual assault or rape;
- v. Investigating and taking the matter forward to completion within the University process;
- vi. Communicating with the complainant throughout the process and ensuring that the complainant is regularly provided with feedback on the status of the process and the outcome of any proceedings, along with;
- vii. Investigating allegations of sexual harassment, sexual assault or rape where such allegations are brought to the attention of the SHSO by the University community, but there is no formal complaint laid.

- 6.2. The SHSO will report directly to the VC and Council. The SHSO will be on the same level as the Deputy Vice-Chancellors and Senate.
- 6.3. The SHSO will report periodically (and at least annually) to the Sexual Harassment Advisory Committee on statistics, trends and an overview of how cases were handled for the purposes of obtaining advice from the Sexual Harassment Advisory Committee.
- 6.4. The SHSO will consist of a Director, a prevention unit, an intervention unit and an accountability unit, with the following personnel:
- i. **Director**, with experience in management, law and 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 hearing initial complaints of sexual harassment and providing ongoing psycho-social support to the Complainant throughout the University process; and
 - iv. **Accountability unit member**, who is a lawyer by profession, who is responsible for investigating the matter and conducting the disciplinary process on behalf of the Complainant.
- 6.5. An initial complaint of sexual harassment, sexual assault or rape may be made to any individual. However, staff and students are advised that it is most appropriate to make a complaint to the SHSO.
- 6.6. Any person receiving a complaint must refer it to the SHSO as soon as possible. Where the complainant does not wish to make a formal complaint, the complaint will be referred to the SHSO on a no-name's basis.
- 6.7. In urgent cases, if no one from the SHSO is available, the matter should be reported to the Sexual Harassment Advisory Committee or their designated representatives for this purpose, following which they will refer the matter to the SHSO as soon as possible.

6.8. If a complainant does not wish to pursue the matter, or wishes to remain anonymous, and the complaint is judged by the SHSO to be of a serious nature, the SHSO may discuss the matter with the Sexual Harassment Advisory Committee to determine whether the University should nonetheless pursue the matter. In making this decision, the SHSO and the Sexual Harassment Advisory Committee shall consider all relevant information, including but not limited to:

- i. Any risk to the complainant
- ii. Risk to other persons in the University;
- iii. The severity of the harm;
- iv. The history of the alleged perpetrator with regard to previous cases and complaints of sexual harassment, sexual assault or rape.

6.9. If it appears to the SHSO or to the Sexual Harassment Advisory Committee that there is a significant risk of harm to other persons, a formal procedure may be recommended. In such an event the complainant must be advised accordingly and the SHSO, in consultation with the Sexual Harassment Advisory Committee, must prepare a written recommendation to the VC for a final decision. The recommendation shall include the following:

- i. A description of the alleged sexual harassment or assault;
- ii. The complainant's reasons for being unwilling to pursue the matter further or to be called as a witness;
- iii. The reasons in support of proceeding with a formal procedure.

6.10. In cases where the University believes it is necessary to implement a formal procedure, protecting the identity of the complainant will be the highest priority. In addition, the complainant will be offered free counselling, support and assistance throughout the process.

6.11. Other procedures may be followed where the complainant wishes to remain anonymous, including but not limited to:

- i. A discussion between the alleged perpetrator and the SHSO, where it is explained, without revealing the identity of the complainant or factors that could speak to the identity of the complainant, that certain forms of conduct constitute sexual harassment, are offensive and unwelcome, make employees/students feel uncomfortable and interfere with their work/studies;
- ii. A discussion between the SHSO, the Director of Employment Relations and the line manager of the alleged perpetrator, advising the line manager of the allegations and requesting him or her to discuss the matter with the alleged perpetrator; and / or
- iii. Keeping a record of the complaint on file in the SHSO.

7. The Legal Office

- 7.1. The Legal Office will be responsible for representing the University's interests at the disciplinary hearing in instances where the alleged perpetrator is a student;
- 7.2. The Legal Office will not engage directly with the complainant or the alleged perpetrator, but will work with the SHSO and/or the alleged perpetrator's representative where necessary.

8. Employee Relations

- 8.1. Employee Relations will be responsible for representing the University's interests at the disciplinary hearing in instances where the alleged perpetrator is a staff member.
- 8.2. Employee Relations will not engage directly with the complainant or the alleged perpetrator, but will work with the SHSO and/or the alleged perpetrator's representative where necessary.
- 8.3. Employee Relations will be responsible for ensuring that any employment-related issues are facilitated.

9. CCDU

- 9.1. Psycho-social support will be provided to complainants by the SHSO. Where the complainant requires or requests additional

counselling or where the alleged perpetrator requires or requests counselling, such complainant or alleged perpetrator will be referred to CCDU to receive free counselling.

10. The Sexual Harassment Advisory Committee

10.1. The Sexual Harassment Advisory Committee will be constituted from certain University structures, including academics and support staff by virtue of their expertise in issues of sexual harassment, gender and power dynamics, staff representatives and student representatives. The Sexual Harassment Advisory Committee will be proposed by the VC and confirmed by Senate.

10.2. The Sexual Harassment Advisory Committee will be responsible for:

- i. Receiving complaints where students or staff feel comfortable to do so;
- ii. Referring complaints to the SHSO. If the complainant does not want their specific matter referred, the Sexual Harassment Advisory Committee must submit numbers of complaints to the SHSO without naming or identifying complainants for the purposes of capturing trends;
- iii. Identifying policy and systemic issues that frustrate the operation of this policy and proposing recommendations;
- iv. Providing advice and support to the SHSO; and
- v. Assisting the SHSO with raising awareness and education in relation to sexual harassment at the University.

11. The Disciplinary Hearing Panel (Panel)

11.1. The Panel will be responsible for hearing formal disciplinary processes in terms of this policy and will:

- i. Adjudicate the matter based on presentations of the SHSO on behalf of the complainant and other representatives on behalf of other interested parties, including but not limited to, the alleged perpetrator, the University, the Legal Office and/or Employee Relations;

- ii. Reach a finding based on the charges; and
 - iii. Proposing an appropriate ruling.
- 11.2. The Panel will be appointed by the SHSO on a case-by-case basis, taking into account the specialised knowledge required for cases involving sexual harassment. In appointing the Panel, the Sexual Harassment Advisory Committee, the Legal Office and the SHSO are all entitled to recommend a maximum of two candidates, out of which the SHSO will determine the Panel.
- 11.3. The Panel must consist of representatives who collectively have the following expertise:
- i. Knowledge of sexual harassment and gender-based violence;
 - ii. Knowledge of the law; and, in necessary,
 - iii. Knowledge of employment relations.
- 11.4. Panel members may be internal or external to the University depending on the nature of the charge and the seniority of the alleged perpetrator if the alleged perpetrator is an employee.
- 11.5. If a Panel made up of internal persons is to be used, the following people may be called upon, namely, academics in the Law School, academics with expertise in gender-based violence or academics with expertise in psychology or social work.
- 11.6. If a panel made up of external persons is to be used, as far as is possible, persons must be chosen from the legal profession with expertise in sexual crimes or organisations that deal with gender-based violence or sexual crimes.

12. Supportive and Protective Measures

- 12.1. The SHSO will coordinate a comprehensive sexual harassment response for the University. This will include the provision of supportive and protective measures to the complainant, regardless of whether disciplinary proceedings are instituted.
- 12.2. Supportive measures may include, but are not limited to:

- i. Ongoing psycho-social support throughout the process from the SHSO;
- ii. Access to further free counselling through the CCDU; and
- iii. Access to free medical services for advice and treatment through Campus Health.

12.3. Protective measures may include, but are not limited to:

- i. No-contact orders, where appropriate;
- ii. Change of University student residence, where appropriate;
- iii. Change of academic classes and academic concessions, where appropriate; special leave (staff) or leave of absence (students), where appropriate.

12.4. Any intimidating behaviour or secondary harassment by the accused or orchestrated by the accused towards the complainant will be a disciplinary offence.

13. Additional Procedures for Sexual Assault and Rape

13.1. In addition to the processes and supportive and protective measures outlined above, the following special procedures are applicable to victims of sexual assault and rape:

13.2. When an incident of rape or sexual assault is reported to any person at the University, the victim must be informed of the necessity of receiving immediate medical attention, including post-exposure prophylaxis (PEP) for HIV, and all reasonable efforts must be made promptly to transport the victim to Campus Health or to another hospital in close proximity to the university.

13.3. The Director of the SHSO must be informed immediately of any complaint of rape or sexual assault on campus.

13.4. When a rape occurs in a campus residence it must be reported to the Head of Residence Life, who must ensure that it is reported as soon as possible to the Director of the SHSO, who will inform Campus Control where necessary.

13.5. The SHSO will:

- i. Ensure that the victim has received medical attention, including post-exposure prophylaxis for HIV, sexually transmitted infections and pregnancy;
- ii. Ensure that the victim has been informed of the availability of further free counselling through CCDU;
- iii. Ascertain whether the victim has made a complaint to South African Police Service and provide support where she or he chooses to do so.
- iv. Where the victim chooses to report the matter to the police, the SHSO will assist, where possible, by arranging for an investigating officer to come to the SHSO to take the victim's statement; or by arranging University transport for the victim and an additional two persons chosen by the victim to go to the relevant police station.
- v. Liaise with local police stations and hospitals for the purpose of providing a comprehensive service to the victim, including ensuring proper forensic evidence is captured.

14. Formal Disciplinary Process

14.1. The process will, in general, be guided by the needs and wishes of the complainant.

14.2. The complainant may choose:

- i. Not to pursue any process involving the alleged harasser.
- ii. To participate in counseling.
- iii. To follow a process of mediation.
- iv. To lay a formal internal complaint, resulting in a formal grievance and / or formal disciplinary process.
- v. To take action outside of the University (in terms of criminal, civil, or labour law).

14.3. Disciplinary processes for staff and students will run in accordance with the University's Disciplinary Procedure (HRG08) and Rules for Student Discipline respectively.

14.4. Only such people as are entirely necessary will be permitted to be present during these proceedings.

14.5. If a disciplinary process is instituted, the complainant, the alleged offender and their representatives will be provided with such information as is reasonably necessary to enable the parties to prepare for these proceedings.

15. Mediation

15.1. Complainants may elect to make use of the Mediation Procedures for Staff and Students (C2003/337) in dealing with a complaint made under this policy.

15.2. Choosing to mediate does not preclude the right to pursue formal proceedings.

16. Ombudsperson

16.1. Where a complaint is laid against the VC, the Director of the SHSO must report directly to Council, who will appoint an independent Ombudsperson to oversee the process.

17. Education and Communication

17.1. The SHSO will keep detailed records of sexual harassment, sexual assault and rape and report quarterly to the VC and to the Sexual Harassment Advisory Committee on:

- i. The number and nature of all referrals made in terms of this policy;
- ii. The process followed in respect of each case;
- iii. The outcome of each case;
- iv. The effectiveness of the policy; and
- v. Information on education and awareness efforts.

17.2. The VC will issue a public report to the University community on an annual basis, in relation to the number and nature of complaints laid under this policy, a brief overview of the processes followed and the outcome achieved, and information of training and awareness efforts. All information contained in this public report will be anonymised to maintain the confidentiality of all parties concerned.

17.3. The Employee Relations Office will ensure that:

- i. Information about this policy and procedures is attached to the employment contract and is included in all induction processes for staff, which will be mandatory; and
- ii. Information about sexual harassment is included in training provided to Managers.

17.4. Every Manager must take reasonable steps to create and maintain an environment that is free from sexual harassment. In this regard Managers are required to:

- i. Know and understand the terms of this policy;
- ii. Attend training and educational sessions on this policy offered by the SHSO, CCDU and the Centre for Learning Teaching and Development (CLTD);
- iii. Communicate the policy to all employees, students and third parties in their respective areas of responsibility.

17.5. The Deans shall:

- i. Communicate the existence of this policy and its salient features to employees, students and third parties within their Faculties;
- ii. Communicate with Heads of School and all other managers in the Faculty the importance of effectively implementing this policy.

17.6. The Dean of Students shall:

- i. Ensure that this Policy is included in the documents provided to students during orientation;

- ii. Ensure that orientation programmes include briefing to students on this policy and sexual harassment more broadly;
- iii. Communicate regularly the seriousness of the issue and the existence of this policy and its salient features to students via email;
- iv. Communicate the existence of this policy and its salient features to employees and third parties within the residences of the University; and
- v. Communicate annually, in writing, the contents of this policy to the Students' Representative Council (SRC).

17.7. The Transformation and Employment Equity Office shall:

- i. Liaise and work with the SHSO, CCDU and CLTD in organising and developing training and advocacy campaigns on sexual harassment and related matters.
- ii. The SHSO shall facilitate regular workshops on sexual harassment for staff and students, in support of the role-players identified above.

POLICY RECORD

TITLE		SEXUAL HARASSMENT, SEXUAL ASSAULT AND RAPE POLICY AND PROCEDURES
POLICY NUMBER		HRG10
COMPILED BY		Human Resources
EFFECTIVE DATE		
POLICIES/GUIDELINES		
REPEALED/REVISED		
DATES OF APPROVAL		
	COUNCIL	2013/12/06
REVIEW YEAR		1/1/2015
REVISION HISTORY		V1
IMPLEMENTATION LEVEL		All Staff
RESPONSIBILITY		Human Resources