

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case No.: 42162/18

In the application of:

NASREEN RAJAB-BUDLENDER

NOZIZIWE SILINDILE VUNDLA

CAROL KHOLEKA ZAMA

PENELOPE JOY PARENZEE

NICOLE LOUISE FRITZ

Acting in their capacity as

WOMEN'S LEGAL CENTRE TRUST

Amicus Curiae

to be admitted as *amicus curiae* in the matter between:

KM

Applicant

and

UNIVERSITY OF SOUTH AFRICA

First Respondent

PROFESSOR KGOMOTSO MASEMOLA

Second Respondent

**UNIVERSITY OF SOUTH AFRICA:
THE OFFICE OF THE DEAN OF STUDENTS**

Third Respondent

CHAIRPERSON OF THE DISCIPLINARY COMMITTEE

Fourth Respondent

UNIVERSITY OF SOUTH AFRICA:

**THE EXECUTIVE DIRECTOR: LEGAL SERVICES AND
INFORMATION OFFICER, MR JAN VAN WYK**

Fifth Respondent

UNIVERSITY OF SOUTH AFRICA:

THE INFORMATION OFFICER

Sixth Respondent

NOTICE OF MOTION

KINDLY TAKE NOTICE that the Applicant hereby makes application in terms of Rule 16A (5) of the Uniform Rules of Court for the following order:

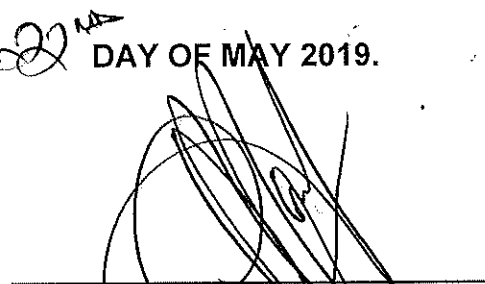
1. Condoning the Applicant's late filing of their application to be admitted as *amicus curiae*;
2. Granting leave to the Women's Legal Centre Trust to be admitted as *amicus curiae* in the abovementioned matter;
3. The Women's Legal Centre Trust is permitted to lodge written submissions with the Court;
4. The Women's Legal Centre Trust is permitted to make oral submissions before the Court; and
5. Further and/or alternative relief.

TAKE FURTHER NOTICE that the affidavit of **SEEHAAM SAMAAI** will be used in support of this application.

TAKE NOTICE FURTHER that any party to the proceedings who wishes to oppose this application to be admitted as an *amicus curiae* shall file an answering affidavit within five (5) days of the service of such application. The answering affidavit shall clearly and succinctly set out the grounds of such opposition.

TAKE FURTHER NOTICE that the Applicant has appointed the address of their attorneys below as the address at which they will accept service of all process in these proceedings.

SIGNED AND DATED AT CAPE TOWN ON THIS 22nd DAY OF MAY 2019.



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c/o

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Fax: (012) 320 6852
REF: COR/LOU/W39

**TO: THE REGISTRAR OF THE
ABOVE HONOURABLE COURT
PRETORIA**

**AND TO: LEGAL RESOURCES CENTRE
APPLICANT'S ATTORNEYS**

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AND TO: **MASERUMULE ATTORNEYS**
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UNIVERSITY OF SOUTH AFRICA:
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FOUNDING AFFIDAVIT

I, the undersigned,

SEEHAAM SAMAAI


do hereby take oath and state:-

1. I am an adult female employed as the Director of the Women's Legal Centre ('WLC' or 'the Centre'), situated at 7th floor Constitution House, 124 Adderley Street, Cape Town.
2. I am duly authorised to institute these proceedings and to depose to this affidavit on behalf of the *amicus* applicant. I attach a resolution adopted by the WLC Board of Trustees on 18 April 2019 marked as annexure 'SS1'.
3. The facts deposed to herein are within my personal knowledge unless stated to the contrary or otherwise appears from the context, and are to the best of my knowledge true and correct.
4. I have read the affidavits and the annexures filed in the main application.

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I INTRODUCTION

5. Sexual harassment has been a systemic problem at educational institutions for decades. In different countries, the intersectionality between class, economic status and race is a decisive factor in the continued prevalence of sexual harassment and is a primary reason women choose not to come forward and embark on a process to vindicate their rights.
6. In recent years there has been an increase in sexual harassment complaints as different movements have emerged, globally speaking out against violence against women and, in particular, sexual harassment in the workplace. Where women have found the courage to share publicly their experiences of sexual harassment, this has occurred predominantly where women feel safe and supported.
7. There remains considerable underreporting of sexual harassment in colleges and universities. The educational institution is an arena characterised by asymmetrical power relations and a gendered hierarchical structure. The imbalance of power between students, especially female students, and male lecturers or professors who are appointed to positions of trust and authority contributes to the high rate of underreporting. The particularly invidious dynamics apparent in the academic environment was assessed by Janice Joseph in a study titled 'Sexual Harassment in Tertiary Institutions: A Comparative Perspective'.
8. Sexual harassment is largely recognised within our criminal justice system but is otherwise still predominantly defined and regulated within an employment law context. As such it sets out defined conduct, specific recourse for complainants, and imposes liability for wrongdoing as between an employer and employee. This legal framework poses great difficulty in tertiary educational institutions where students interact with lecturers and professors.



- 8.1. The power imbalance in the relationship between a student and lecturer operates in a manner akin to that of the power imbalance between an employer over an employee.
 - 8.2. The lecturer (a staff member) as a consequence of the employment relationship with the academic institution holds an entrenched position of power over a student's ability to progress in their education. Yet students, who are victims of sexual harassment at the educational institution with whom they have a contractual relationship, are not defined as employees and therefore not entitled to the same recourse within a University's sexual harassment policy governing the employment relationship or under the current employment law framework.
9. The review application starkly illustrates the lacuna in the legal framework and the WLC seeks to intervene in the application as an *amicus curiae* to draw to the Court's notice to the importance and necessity of a victim-centred approach in the handling of sexual harassment matters. In doing so, this affidavit deals with the following:
- 9.1. Part II outlines the WLC's interest in the current proceedings;
 - 9.2. Part III discusses the WLC's proposed submissions, namely:-
 - 9.2.1. The constitutional rights infringed when a complainant experiences sexual harassment, and the laws that have been implemented to protect against this infringement and ensure vindication of the impugned rights;
 - 9.2.2. The meaning of a victim-centred approach, which we argue is necessary in the handling of sexual harassment matters;
 - 9.2.3. The application of a victim-centred approach to the facts of the matter, and the relief sought by the applicant in the main application; and

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9.2.4. The relevant international law and regional law that may assist the Court in its determination of this matter; and

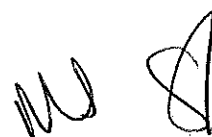
9.3. Part IV concludes with an application for condonation.

II THE WOMEN'S LEGAL CENTRE TRUST'S INTEREST

10. The Women's Legal Centre Trust (**'the Trust'**) is a juristic person created in terms of a Trust Deed dated 03 August 1998. The Trust Deed as amended, attached herein marked as annexure "**SS2**", authorises the Trust to conduct litigation in its own name.
11. The detailed objectives of the Trust are set out in clause 4 of the Trust Deed. A core objective of the Trust is to advance and protect the human rights of women and girls in South Africa, particularly those women who suffer multiple and intersecting forms of disadvantage, so as to contribute to redressing systematic discrimination and disadvantage.
12. The Trust fulfils its main object by providing free legal assistance to women and through *amici curiae* submissions to assist courts in constitutional and public interest matters that concern women's rights and gender equality. To this end, the Trust established the Women's Legal Centre in order to conduct public interest litigation including constitutional litigation to advance women's rights. Since its inception, the WLC has participated in numerous cases concerning the rights of women.
13. The Trust acts in the interest of women in South Africa who have experienced sexual harassment, predominantly in the labour context.
14. One of the WLC's focused programme areas is the Vulnerable Worker's Project. The advocacy and litigation in response to sexual harassment operates within this programme.

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- 14.1. The WLC recognises that sexual harassment is intersectional. It cuts across many facets in life, and the work of the Centre is cognisant of the fact that sexual harassment does not merely occur within the strict labour context but can also occur by virtue of it.
- 14.2. This means that third parties to an employment relationship may be complainants of sexual harassment, which does trigger the legal duty on an employer to take steps to ensure a safe working environment that respects the dignity not only of its employees but also of those who come into contact with its employees.
15. It is this recognition, coupled with the objective of ensuring the rights of women are protected and vulnerabilities recognised, that the Centre assists women in sexual harassment matters.
16. The Centre recognises that sexual harassment is a pervasive, ever-present scourge in our society. However, despite this acknowledgment and recognition, when women come forward with sexual harassment complaints they frequently face backlash, stigmatisation, and secondary victimisation. This status quo must be challenged and reversed.
17. The approach adopted by the WLC is a strict one in that we only assist women. Women remain marginalised and comprise a vulnerable class of persons in our patriarchal society. The Centre therefore has focused its efforts on ensuring that women are supported during sexual harassment processes as these processes frequently do not hold women's interests as a priority, do not offer adequate protection to women complainants, and do not appreciate the difficulties women face when reporting sexual harassment.



18. As a result of the failure of sexual harassment policies to adequately ensure that the interests of women complainants are protected, the WLC advocates strongly for a victim-centred approach in these matters. We represent complainants, and therefore hold at the centre of our work their interests. The Centre advocates that institutions recognise that the procedures adopted, purportedly to address sexual harassment, often incorporate latent power inequality and marginalisation. This approach is inherent in the manner in which sexual harassment complaints are addressed. We advocate for this recognition so that this structural victimisation is addressed and rectified.
19. The WLC has been involved in a number of sexual harassment matters, advocating and arguing for a victim-centred approach as central to the remedial policies and procedures adopted. The Centre is well-placed to make submissions to the Court on the need for a victim-centred approach in the handling of sexual harassment matters. This is a key concern for the Centre.
20. The factual matrix of the present application is not unique to the Centre. The WLC in the past has dealt with the type of process implemented by the first respondent (UNISA) and has repeatedly seen the way in which a procedure that prefers form over substance has failed the woman complainant. It is dismaying to recognise the commonplace nature of the procedural failings, and the WLC seeks to intervene so as to ensure that women are protected in future sexual harassment matters through the Court's recognition of the importance of a victim-centred approach in sexual harassment enquiries.

III THE WLC'S PROPOSED SUBMISSIONS

21. Paragraph 4 of the replying affidavit states that the "*matter raises important issues about the treatment of victims and the handling of claims of sexual harassment and abuse by persons in positions of power at a public university*".

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22. This is evident from the averments in the founding affidavit. The processes followed by UNISA at the preliminary, investigative stage of proceedings and later during the disciplinary hearing expressly marginalised the complainant. The implementation of the disciplinary procedures, which are meant to be a measure of recourse for the complainant, amounted instead to a series of failures on the part of the first respondent to protect the rights of the applicant as a complainant of sexual harassment. This case further illustrates the extent to which the policy approach of the university is not victim-centred or implemented in a manner that is victim-centred.
23. In a subversion of the apparent objective of any disciplinary policy, the implementation of the disciplinary process in the present matter brought to fore the following serious problems:
- 23.1. There is no clear, accessible procedure to be followed by a student complainant should she experience sexual harassment by a UNISA staff member;
- 23.2. Complainants are given no immediate guidance on existing policies, and how to address sexual harassment when they approach the Dean of Students for assistance;
- 23.3. There are lengthy and unexplained delays in the processing of a complaint;
- 23.4. Complainants are not timeously informed of the process to follow on reporting sexual harassment;
- 23.5. The delays experienced are coupled with institutional / departmental inaction;
- 23.6. At the disciplinary hearing, complainants are relegated to the role of a witness and treated as such, consequently complaints are denied legal representation during the hearing;



- 23.7. On the averments of both the applicant and the respondents, there is no meaningful appreciation of the psychological trauma faced by a complainant during the process, as well as complainants more generally;
- 23.8. The process was riddled with a lack of communication, alternatively that inadequate communication strategies are adopted in relation to a complainant; and
- 23.9. Reasons for the finding and outcome of the disciplinary process are not communicated to the complainant, on the basis that she is dealt with as no more than a witness to the process.
24. The approach taken by UNISA, evidenced above, illustrates that the applicant's complaint was not handled in a manner sensitive to the rights of the complainant who experienced and came forward to complain of sexual harassment. Essentially, it was not victim-centred. This is reflected throughout the replying affidavit by reference to the features of a 'perfect victim' – this stance shows the respondents to be wholly ignorant of the complexities that come with suffering sexual harassment and sexual assault.
25. The Centre's interest in this matter is therefore limited to arguing for the inclusion of a victim-centred approach in sexual harassment matters at UNISA so as to avoid a repetition of the above circumstances which only serve to violate the rights of the complainant, and cause secondary victimisation.

Constitutional and statutory framework

26. The WLC will make submissions at the hearing of the application that when a woman experiences sexual harassment, it constitutes an unjustified infringement on her constitutional rights to equality (section 9), human dignity (section 10), and freedom and security of her person and the right to bodily and psychological integrity (section 12).



27. Where the sexual harassment procedures that are implemented by an institution fail to protect a complainant, respect their interests, and ensure that a complainant feels safe throughout the process, this results in further trauma to the complainant and causes secondary infringement of the above rights.
28. Legislation has been enacted within the employment law context to safeguard against the perpetration of sexual harassment against women, and therefore the abovementioned rights. This gives effect to social and government recognition that sexual harassment remains an ongoing problem in the workplace, and is a problem experienced predominantly by women in this country.
29. In the present case the basis of the applicant's interaction with Mr Masemola, is solely as a result of her registration and contractual relationship with UNISA. But for the context of student and lecturer within the confines of the University campus, the parties would not have met. It is not disputed that the applicant approached Mr Masemola because of his employment with UNISA. It is this nexus that triggered legal responsibility for both the UNISA and Mr Masemola in terms of employment law. The steps taken by UNISA following the complaint lead to the clear inference that this legal obligation and responsibility was not disputed by the University and it purportedly acted in accordance with this assumed liability.
30. As a result of this employment relationship, the applicant is brought under the protection of employment legislation, policy, and legal principles.
31. South Africa has a suite of complimentary employment laws that aim to provide a safe and non-discriminatory working environment. This is in line with South Africa's international law obligations to ensure fair and favourable working conditions for all persons, in particular women. Then WLC has found these laws to be progressive on paper but, in practice, often do not provide substantive equality to women.



The Labour Relations Act

32. The Labour Relations Act 66 of 1995 ('LRA') seeks to give effect to section 23 of the Constitution which provides that "[e]veryone has the right to fair labour practices" and addresses all aspects of the working environment. It strives to advance economic development, social justice, labour peace and the democratisation of the workplace by regulating the fundamental Constitutional rights and to give effect to international labour laws and obligations.
33. It is in terms of the LRA that the 1998 Code on the Handling of Sexual Harassment Matters was published, which provides the backbone for many workplace sexual harassment policies. The Code is a guideline to employer-entities for the adoption and application of workplace policies.

The Employment Equity Act

34. The Employment Equity Act 55 of 1998 ('EEA') seeks to achieve employment equity in the workplace by promoting the constitutional right of equality and the elimination of unfair discrimination in employment. It further seeks to give effect to the obligations that South Africa has as a member of the International Labour Organisation. Most importantly, the EEA provides that sexual harassment is a form of unfair discrimination (and therefore a barrier to equality) on the basis of sex, gender, and sexual orientation.
- 34.1. Section 6 of the EEA places a positive duty on every employer to "*promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice.*"
- 34.2. Section 6(1) of the EEA provides that "*no person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds including race, gender, sex...*" It further provides in s6(3) that "*harassment of an employee is a form of unfair discrimination and is*

prohibited on any one, or a combination of grounds of unfair discrimination listed in subsection 1.”

- 34.3. Section 60 of the EEA places a statutory obligation on employers to take the necessary steps not only to create a safe working environment but to eliminate any alleged discriminatory or harmful conduct from the workplace. Should an employer fail to take reasonable steps to eliminate the alleged conduct, section 60 of the EEA states that an employer may be found guilty of having contravened the relevant provision.

The Amended Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace

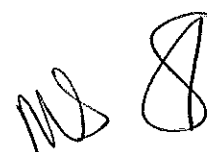
35. The Amended Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace (**‘the Amended Code’**), published in terms of the EEA and operating alongside the 1998 Code published in terms of the LRA, records its principal objectives as eliminating sexual harassment in the workplace; providing appropriate procedures to deal with the problem and prevent its occurrence; and encouraging and promoting the development and the implementation of policies and procedures that will lead to the creation of workplaces that are free of sexual harassment, where employers and employees respect one another’s integrity and dignity, their privacy, and their right to equity in the workplace.
36. The Amended Code describes persons who may be either victims or perpetrators of sexual harassment and extends the classification to “*others having dealings with a business*” and provides that a non-employee, who is a victim of sexual harassment, may lodge a grievance with the employer of the harasser where the harassment has taken place in the workplace or in the course of the harasser’s employment.



37. Section 6 of the Amended Code deals with guiding principles in relation to sexual harassment matters and, in section 5(c), creates an obligation whereby *"employers/management should attempt to ensure that persons such as customers, suppliers, job applicants and others who have dealings with the business, are not subjected to sexual harassment by the employer or its employees"*.
38. The WLC will argue that UNISA has a specific statutory obligation in relation to its employees to create a safe and equal working environment as provided for in our Constitution and employment legislation. This obligation, we will argue, extends to students at educational institutions as a class of persons who regularly interact with employees as part of their contractual relationship with universities, and consequently are directly affected by the working environment and institutional employee relationship.
39. In the present case, the UNISA policy and the investigation implemented failed to consider the student as an important and vulnerable class of persons in the university workplace environment, and a specific partner to the employment relationship. Instead, UNISA elected to adopt a blinkered approach that treats students as an outside complainant (or witness) with no direct interest in, or relationship to, the process. This is incorrect and must be recognised as such.

A victim-centred approach

40. A victim-centred approach to disciplinary proceedings, and tribunal and court procedures more generally, is one which places at the centre of an inquiry the rights and interests of the victim or complainant who submitted the complaint, comprising the subject of the inquiry.
41. The following features are fundamental to any victim-centred approach:
- 41.1. Implementation of sexual harassment policies: The recognition by those charged with implementation of the vulnerable position of women in our society, the



complexities women face when they experience sexual harassment, and the effect of this on a their decision to report their experiences of sexual harassment.

- 41.2. Informing the complainant of the choices before her: When a woman chooses to report an incident or incidents of sexual harassment, it is necessary to sensitively present the options available to her should she wish to pursue the matter in terms of the relevant sexual harassment policy adopted by the institution. This means placing the relevant information before her transparently and noting the shortcomings and realities of the procedure. It is imperative that women are made to feel safe and to be placed in a position to make a fully informed decision fully aware of her rights and available recourse.
- 41.3. Fairness in the process includes fairness to the complainant: Should a woman elect to follow an inquiry procedure within the institution, and in accordance with applicable policies, it is necessary to implement these policies in a manner that not only respects the rights of the perpetrator, but equally that of the complainant. This means that information sharing must take place on an equitable basis, in protection of the interests of both parties. To this end institutions must accept that a complainant is uniquely placed in the inquiry and cannot in fairness be relegated to the status of a witness on behalf of the employer party.
- 41.4. The provision of support services: This should be offered immediately to the complainant, ensuring that they and any other potential future complainants feel safe, their integrity is respected, and they are given access to the necessary physical and psychological protections that may be required under the circumstances.
- 41.5. Access to legal representation: The complainant must have access to, or be advised of her right to approach and consult with a legal representative, and to have a legal representative present during the proceedings should she so wish.

- 41.6. A victim-centred approach will proceed from the point of asking a victim/complainant what it is they want out of the process, and how they want the process to unfold. It is important to ensure women feel safe during a process that seeks to uncover the issues raised by the complaint.
42. The WLC accepts that these features that underpin a victim-centred approach are non-negotiable. They serve not only a policy objective but a practical role in ensuring that complainants feel safe and protected when coming forward with complaints about sexual harassment, and that the procedures adopted by an institution have as a primary aim to be responsive and to provide relief to the complaint lodged.
43. Importantly, a victim-centred approach is necessary in sexual harassment matters so as to move forward and transform the existing procedures that continue to fail women. It is a necessary first step towards respecting the rights of women, to empower and protect women, and to ensure that sexual harassment is dealt with in a manner that will not treat women as a class of people with dispensable interests, who are unworthy of recognition and respect. This is in accordance with statutory objectives underpinning employment law, the broader legal framework dealing with sexual harassment, and, most importantly, the constitutional imperatives that demand we transform our society into one that is just and that respects human dignity, equality, and freedom.
44. The victim-centred approach position to be advanced by the WLC is grounded therefore in established legal principles and the vindication of the infringed rights of sexual harassment complainants.

The application of a victim-centred approach in the relief sought

45. We intend to make the following submissions in relation to the relief sought in the notice of motion.

UNISA's 2014 process and remittal of the matter in terms of existing policy

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46. From the pleadings it is apparent that the disciplinary inquiry and the hearing that followed in 2014 was not victim-centred.
47. An evaluation of the allegations against the core features of a victim-centred approach discussed above, show the extent to which the procedure adopted by UNISA did not comply with or even appreciate the obligations that ought to be afforded to the complaint in sexual harassment cases.
48. In the event the Court determines that the matter ought properly to be remitted to a newly constituted disciplinary committee, as requested in the applicant's alternate relief, then it is imperative that the matter be handled with a victim-centred approach.

Systemic relief and the need for the formulation of an inherently victim-centred sexual harassment policy

49. The applicant seeks a mandamus that UNISA develop a policy specific to the handling of sexual harassment matters, and which is inclusive of third parties who experience sexual harassment at the hands of an employee of the University.
50. The WLC supports this relief and, if granted, the policy must be victim-centred; not only in its guiding principles but in the prescripts of the manner in which an investigation and any subsequent inquiry ought to be conducted. To do so will guarantee that the sensitive and intimate issues that may arise in an inquiry will be handled so that women will feel safe and their integrity respected should they report incidents of sexual harassment. This protection ought to be afforded to complaints with equal fervour as it has historically been granted to alleged perpetrators. The policy must assure that women who come forward with complaints are no longer treated as a disposable means to an end in a process that does not envision them as rights-bearing individuals.

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51. In order to be victim-centred, and to give effect to the features of a victim-centred approach, the following necessary elements or conditions must be incorporated in the policy, in recognition of the unique nature of sexual harassment matters:
- 51.1. Complainants are to have access to legal representation to protect their rights and ensure that their interests are respected during the complaints process;
 - 51.2. Counselling must be offered to those who complain of sexual harassment. An appreciation of the psychological effects of sexual harassment requires that institutions do not undermine or disregard the psychological effects incidents of sexual harassment have on individuals, and the re-traumatisation experienced when undergoing an investigation and disciplinary process (be it formal or informal);
 - 51.3. Where a formal process is followed, an impartial, independent third party chairperson who is not an employee of the institution is appointed to preside over the matter. The chairperson must have the necessary qualifications, training and expertise in employment law, with a preference for those with specialised knowledge of sexual harassment law;
 - 51.4. The complainant must be entitled to hear the testimony of the alleged perpetrator, unless they elect otherwise or exceptional circumstances exist;
 - 51.5. Where the complainant gives testimony, the aim must be to protect the complainant. Unless the complainant chooses otherwise, protective measures must be put in place for the complainant to give their account without intimidation, fear and re-traumatisation. This includes the availability of mechanisms such as the use of an intermediary, delivering testimony with the perpetrator in another room, providing testimony anonymously through affidavit, and providing testimony via telephone or skype, as is practical. The policy must allow for the



complainant to choose the manner in which she is most comfortable delivering her testimony in the matter.

- 51.6. The ability to impose a suspension during the investigatory phase of the inquiry or at the stage of the disciplinary hearing and until the finalisation of the process must be available to the institution.
- 51.7. Investigations and disciplinary hearings must be held off-campus.
- 51.8. When a complaint of sexual harassment is received, the matter must be dealt with expeditiously, in a manner that is respectful of the rights of the parties, while cognisant of the context within which complainants come forward. This is of particular importance where there may be more than one complainant, and the process requires an extended period of time within which to receive complaints. In this respect, steadfast, meaningful communication is key. The process ought not to exceed six months, or such longer period as deemed reasonable in the circumstances.
- 51.9. Investigations must be conducted by an independent, impartial third party who is not employed by the University. This maintains the integrity of the process. Furthermore, a perpetrator, who is the subject of the investigation, must not be involved in the investigation or influence it in any manner.
- 51.10. The language of the policy must speak about the complainant, and their rights. In its current formulation, the UNISA Code of Conduct under which the second respondent was charged, does not speak about the complainant where misconduct involves a third party.
- 51.11. The policy must be drafted in an inclusive manner and, to this end, the input of the UNISA employee, management and student body ought to be solicited;



- 51.12. Separate complaints mechanisms that cater to staff members and students as well as the broader University community (all those who may interact with the community and be susceptible to sexual harassment by a student or staff member);
- 51.13. Safe and sensitive reporting mechanisms through both formal and informal measures (such as an anonymous hotline or postbox facility on campus);
- 51.14. The policy names designated bodies and reporting persons to deal with sexual harassment claims;
- 51.15. There are accountability measures put in place for those who are responsible to resolve complaints but fail to do so timeously or in line with the policy recommendations;
- 51.16. That the University allocates a student ombud office which is able to receive complaints confidentially and with sensitivity;
- 51.17. The University establishes an awareness programme to educate the University community on the new policy by way of pamphlets and brochures and other social media means;
- 51.18. UNISA redefines sexual harassment to consider the different ways in which sexual harassment can occur while being cognisant of power disparities within the University community; and
- 51.19. A review mechanism which on a quarterly basis reviews the effective implementation of the policy and tracks complaints, the manner in which the complaints are handled, and the outcome of complaints.

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52. The WLC recommends that the UNISA develop a sexual harassment policy that is inherently victim-centred not only in its draft but also in its implementation and consultation of any future policy.

International and regional law

UNISA status in relation to international laws and obligations

53. The University of South Africa (UNISA) was founded in 1873 and in 1946 became the first public university in the world to teach exclusively by means of distance education. The UNISA Council (the Council) is ultimately responsible for the governance and management of the University in accordance with the law and recognised principles of good governance.
54. The Higher Education Act 101 of 1997 (**'Higher Education Act'**) seeks to, among others, facilitate the relationship between higher education institutions to enjoy freedom and autonomy in their relationship with the State within the context of public accountability, and the national need for advanced skills and scientific knowledge.
55. In terms of the Higher Education Act and the UNISA Statute, the composition of the Council and governance of the University is regulated. The statutes do not extend any obligations on the university to create policies and procedures in relation to members of the University and the student body. UNISA is thus an organ of State and a public institution. As such it is obligated to observe and to act in accordance with the State's assumed international law obligations and, at the very least, not to act in contravention thereof.
56. UNISA has a direct obligation to take measures and create specific policies that give effect to and are not in contravention of the international obligations identified below. In paragraph 3.11.2 of the UNISA Code of Ethics the university has assumed the



responsibility that “UNISA will, in all of its local and international operations, uphold internationally proclaimed human rights or labour standards”.

Applicable international law pertaining to sexual harassment

57. South Africa is bound by international laws and obligations that it has ratified and accepted. Our Constitutional Court has pronounced on the importance of considering international law in accordance with section 8 and section 39(1) of the Constitution when pronouncing on constitutional matters.
58. South Africa is a signatory to the Convention on the Elimination of All Forms of Discrimination against Women (**‘CEDAW’**) and therefore obligated to realise CEDAW’s provisions and aims, which are ultimately to ensure the elimination of all acts of discrimination against women by persons, organizations or enterprises.
59. Article 1 of CEDAW defines discrimination against women as:
- “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”*
60. The Declaration on the Elimination of Violence against Women (**‘DEVAW’**) compliments the CEDAW in that it seeks to realise the effective implementation of the CEDAW and aid in the elimination of violence against women. It is unique in the sense that it specifically speaks to violence against women extending to violence which occurs at “educational institutions.”
61. General comment No. 23 (2016) on the right to just and favourable conditions of work (Article 7 of the International Covenant on Economic, Social and Cultural Rights) recognises the right of everyone to the enjoyment of just and favourable conditions of

work as recognised in the International Covenant on Economic, Social and Cultural Rights and other international and regional human rights treaties.

62. The General Comment provides that "*all workers should be free from physical and mental harassment, including sexual harassment*" and sets out specifically that all states should create legislation, policies and codes which define and sanction sexual harassment. It recognises that although these obligations fall squarely on the state, that non-state actors also have the responsibility to secure favourable and just conditions of work.
63. In South Africa under the EEA, an employer escapes liability if it can show that it acted reasonably in its attempts to avoid sexual harassment in the workplace. The amended Code on the Handling of Sexual Harassment further encourages all employers to institute a sexual harassment policy as a first attempt to create a safe working environment free from sexual harassment.
64. A sexual harassment policy implemented without training, sensitisation and the specific inclusion of students, however, will be of little effect for students trying to access their rights in relation to sexual harassment complaints. Further obligations on employers, and the University Council, are necessary to ensure that all staff and persons who interact within the university environment are aware of the policy and its respective procedures, and training on the policy is required.

Applicable foreign law examples pertaining to sexual harassment

65. We refer to two examples that illustrate the manner in which a victim-centred approach may be given effect to in a university sexual harassment policy.
66. The first is that of Australia. The country has four Australian anti-discrimination Acts which specifically seek to realise equality, one of which is the Sex Discrimination Act 1984.



67. Section 28(a) of the Sex Discrimination Act sets out the definition of and factors to consider when dealing with sexual harassment. It defines sexual harassment as when *"the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or engages in other unwelcome conduct of a sexual nature in relation to the person harassed; in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated."*
68. These guidelines contained in the Act have been incorporated and used in policies drafted by organisations and educational institutions in Australia. The University of South Australia has a comprehensive sexual harassment policy which has specific mechanisms for complaints made by either students or staff members. The policy is unique from others in its specific provision for students and mechanisms they can use to report and hold perpetrators accountable whether it be a fellow student or University staff member. A copy of the policy is attached hereto as "SS3".
69. The University Policy is framed in a manner that captures the wider community of persons who interacts with the University and its staff members. The policy is worded to extend acts of sexual harassment or sexual violence to the university community and all university premises including work or study related activities which include excursions and all university related events. The policy specifically provides for student mechanisms and process in relation to sexual harassment complaints and has a student ombud set up as a last resort to dealing with any sexual harassment claims made by a student against another student or staff member.
70. The policy outline has two appendices which set out diagrams of reporting structures and mechanisms, and provides for two mechanisms for a student complainant to follow, one internal and the other external. In terms of the policy, a student who has a sexual harassment complaint against a staff member can choose to report the incident online



or to a first responder who can provide support with the process and interim measures that need to be put in place. The student then lodges the complaint and the Executive Director will assess the complaint and initiate the investigation.


71. We make reference to this policy as only one example of what a victim-centred approach could look like in relation to students and all persons who interact within the University community at UNISA. It is our recommendation that any policy UNISA develops should include a specific section which deals with student complaints and processes.
72. In America, the University of Massachusetts Amherst has a sexual harassment policy that aims to *“provide faculty, staff and students with an environment where they may pursue their careers or studies without being sexually harassed.”* A copy of the policy is attached as **“SS4”**.
73. The policy provides that *“[a]nyone who, at the time of the alleged harassment, was either employed by or enrolled at the University of Massachusetts Amherst may file a complaint alleging violation of this policy”* and delegates specific offices which complaints should be directed to depending on whether the perpetrator is a fellow student or staff member.
74. The University of Massachusetts Amherst’s approach towards effective implementation of their sexual harassment policy is in line with the American Council on Education Sexual Harassment Guidelines. It has a campus programme about the sexual harassment policy that comprises five elements:

“(a) a basic definition of what constitutes sexual harassment; (b) a strong policy stating clearly that sexual harassment will not be tolerated; (c) effective communication channels for informing students, faculty, staff, and administrators of the campus policy against sexual harassment; (d) educational programs designed to help all members of the community recognize and discourage sexual harassment; and (e) an accessible, effective, and timely grievance procedure”

75. During the period the policy was introduced to the university, brochures were handed to the entire university community including both staff members and students so as to draw awareness to content thereof.
76. Both the Australian and American university examples include a relevant designated complaints body for students, separate and independent from any employee workplace mechanisms already in existence.
77. The WLC submits that these international and regional principles and obligations extend to the UNISA to create a safe working environment which not only considers and safeguards employees but also seriously considers and provides for students who interact with employees through their work at the educational institution.
78. These obligations, albeit that it rests predominantly on the State to enforce and uphold, also apply to the public and private spaces where women fall subject to violence and abuse. These international obligations rest on both state and non-state actors to ensure that women are protected from sexual harassment and discrimination within their workspace, even more so at educational institutions.

IV CONDONATION

79. The applicant filed its Rule 16A notice on 07 March 2019, inviting *amici curiae* to be admitted into the matter by seeking written consent from the parties within 20 days of the posting of the 16A notice. The period within which to obtain this written consent expired on 05 April 2019.
80. With the matter launched in the Gauteng High Court sitting in Pretoria, and the WLC's offices in Cape Town, the WLC learned of the application from the applicant when the

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papers in the matter were forwarded to us on 25 March 2019. This, however, was not the complete set of the application.

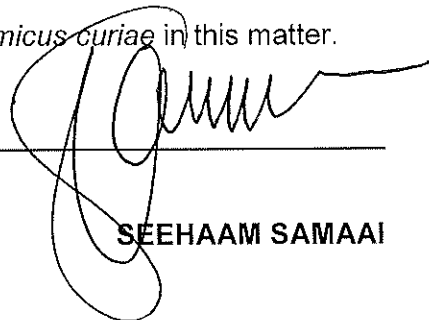
81. The Centre then received the remainder of the application, that is the annexures in the matter, on 11 April 2019.
82. The WLC conducts its business of providing services and instituting litigation based on available funding. It was necessary for the Centre to first establish whether or not it had the necessary funds and human resources to intervene in the matter, which includes briefing counsel in the matter. It was also necessary to plot out the limited points in terms of which the Centre would enter the matter.
83. Engaging in these processes placed the Centre out of time for seeking the written consent of all parties to enter the matter as *amicus curiae*. However, we nonetheless sent letters of consent to the attorneys representing the parties in the matter on 16 April 2019, a copy of which is attached as "SS5". Attorneys for the applicant provided consent on 17 April 2019 (attached as "SS6"), but the attorneys for the respondents refused consent to the Trust joining the matter as *amicus curiae*. The letter communicating the refusal is dated 18 April 2019 and attached as "SS7".
84. The Rule 16A notice required that where an interested party is unable to obtain the written consent within the 20-day period, then they may apply to Court to be admitted as an *amicus curiae*. This application was to be brought within five days of the expiration of the 20-day period. Therefore, this application was to be lodged by 12 April 2019.
85. The Centre was unable to meet this deadline due to the internal processes it had to follow, as set out above, which also depended on having access to the complete application (which it only received on 11 April 2019).
86. The Centre has provided a full and reasonable explanation for the failure to comply with the strict requirements of Rule 16A.

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87. No prejudice has resulted or will result against any of the parties as the matter has not yet been set down for hearing, and the parties have not yet filed heads of argument in the matter. The Centre will be in a position to file written argument in accordance with timelines set by the Deputy Judge President, or as agreed between the parties.

V CONCLUSION

88. The WLC accordingly prays for an order admitting it as *amicus curiae* in this matter.



SEEHAAM SAMAAI

I certify that on this 22nd day of May 2019, in my presence at CAPE TOWN the deponent signed this declaration and declared that she:

- a) knew and understood the contents hereof;
- b) has no objection to taking this oath;
- c) considered this oath to be binding on his/her conscience and uttered the words "I swear that the contents of this declaration are true, so help me God".

M. Smit

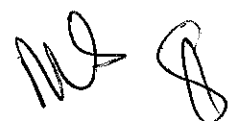
COMMISSIONER OF OATHS

Michelle Smit
 MACDONALD ATTORNEYS
 6th Floor, Constitution House
 124 Adderley Street, CAPE TOWN, RSA
 Commissioner of Oaths
 Practising Attorney

RESOLUTION OF THE WOMEN'S LEGAL CENTRE TRUST

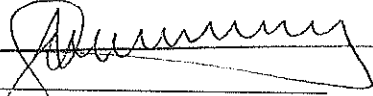
The Trustees of the Women's Legal Centre ("Trust") resolve that:

1. The Trustees on behalf of the Trust will bring an application to intervene as *amicus curiae* in the matter of **KM v UNIVERSITY OF SOUTH AFRICA AND FIVE OTHERS**, in the High Court of South Africa, Gauteng Division, Pretoria, under case number 42162/18, in order to make submissions on the impact of sexual harassment on the constitutional rights of women, and the need for a victim-centered approach in the handling of sexual harassment matters; and in particular:
 - 1.1. The infringement of the constitutional rights of women who experience sexual harassment, namely the rights to dignity, equality, privacy, and freedom and security of the person;
 - 1.2. Outline the meaning of a victim-centred approach, and its practical implementation in sexual harassment matters;
 - 1.3. That in its current sexual harassment and complaints policy framework, the University of South Africa must adopt a victim-centred approach in the handling of sexual harassment matters at the university;
 - 1.4. That, if granted, the sexual harassment policy to be formulated by the University of South Africa must be inherently victim-centred, and the features of such a policy;
 - 1.5. The applicable international and regional instruments guarding against the occurrence of sexual harassment, and the impact thereof on a victim-centred approach in the handling of sexual harassment matters.
2. The Trustees hereby delegate authority to **Seehaam Samaai** who is an admitted attorney employed as such at the Women's Legal Centre:
 - a. To take all necessary steps to sign all papers in order to bring the application on behalf of the Trust;



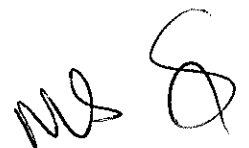
- a. To take all necessary steps to sign all papers in order to bring the application on behalf of the Trust;
- b. Brief Counsel to argue the matter; and
- c. To take all necessary steps on behalf of the Trust to advance arguments in the application.

Dated at **CAPE TOWN** on this 18th day of **April 2019**.



Nozizwe Silindile Vundla

(Chairperson of the Women's Legal Centre Trust)



AMENDED DEED OF TRUST

in respect of

THE WOMEN'S LEGAL CENTRE TRUST

entered into by

MARY SUSAN CAESAR

YASMIN TAYOB CARRIM


LEBOGANG TEMPERANCE MALEPE

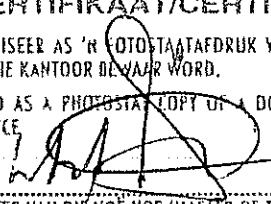
HAPPY MASONDO

ALISON RACHELLE TILLEY

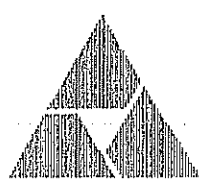
("the Trustees")

I certify this to be a true copy of the original
Commissioner of oaths


Name: JENNIFER WILLIAMS
Practising Attorney
WOMEN'S LEGAL CENTRE
7th Floor, Constitution House
124 Adderly Street
Cape Town 8001

SERTIFIKAAT/CERTIFICATE
GESERTIFISEER AS 'N FOTOSTAATAFDRUK VAN 'N DOKUMENT
WAT IN DIE KANTOOR DE WAAR WORD.
CERTIFIED AS A PHOTOSTATIC COPY OF A DOCUMENT FILED IN
THIS OFFICE

MEESTER VAN DIE HOË HOF/MASTER OF THE HIGH COURT
MEESTER SE KANTOOR KAAPSTAD/MASTERS OFFICE CAPE TOWN

MASTER OF THE HIGH COURT
CAPE TOWN
2009-04-03
KAAPSTAD
MEESTER VAN DIE HOË HOF



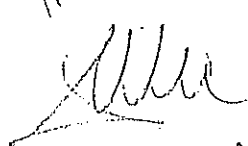
MALLINICKS
ATTORNEYS

Telephone +27 21 410 2200
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3rd Floor Granger Bay Court
Beach Road, V&A Waterfront
Cape Town 8001
PO Box 3667 Cape Town 8000

Mil

MC

HM


MU


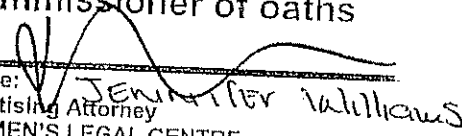


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I certify this to be a true copy of the original
Commissioner of oaths


 Name: Jennifer Williams
 Practising Attorney
 WOMEN'S LEGAL CENTRE
 7th Floor, Constitution House
 124 Adderly Street
 Cape Town 8001

Handwritten initials and signatures:
 WJC, [Signature], HM, JTC, MSQ

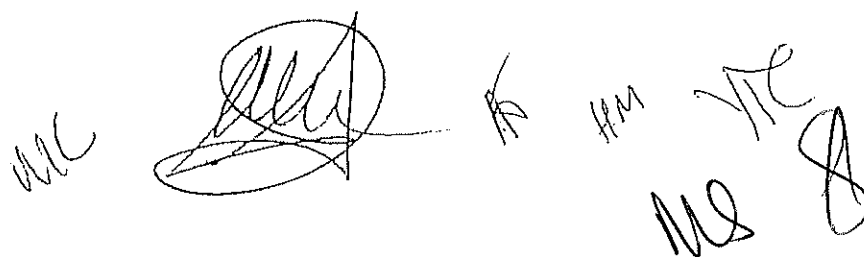
1. INTERPRETATION

In this trust deed:-

- 1.1 clause headings are for convenience only and may not be used in its interpretation;
- 1.2 unless the context clearly indicates a contrary intention:-
- 1.2.1 words indicating the singular includes the plural and vice versa;
- 1.2.2 words indicating any one gender includes the other genders;
- 1.2.3 any reference to a natural person includes a juristic person and vice versa;
- 1.2.4 the words "capital" and "amount" are given their widest meanings and shall include assets or rights of any kind;
- 1.2.5 the word "pay" and its derivatives means and includes the words "pay", "deliver", "give possession", "cede" or "transfer" and their respective derivatives.
- 1.3 the following words and expressions shall bear the meanings assigned to them and cognate words and expressions shall bear corresponding meanings, namely:-
- 1.3.1 "Act" means the Income Tax Act No. 58 of 1962, as amended from time to time, or any statute replacing it;
- 1.3.2 "auditors" means the auditors of the company for the time being;
- 1.3.3 "beneficiaries" means those who benefit in terms of the purpose and objects of the trust;
- 1.3.4 "Commissioner" means the Commissioner for the South African Revenue Services;
- 1.3.5 "the Founder" means Coriaan De Villiers;
- 1.3.6 "initial trustees" means:

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- 1.3.6.1 Victoria Jane Mayer;
- 1.3.6.2 Coriaan De Villiers;
- 1.3.6.3 Karrisha Pillay;
- 1.3.6.4 Alison Rachelle Tilley;
- 1.3.6.5 Michelle Anne O'Sullivan;
- 1.3.6.6 Happy Masondo; and
- 1.3.6.7 Sandra Liebenberg;
- 1.3.7 "net income" means the gross income of the trust less the costs of its administration;
- 1.3.8 "Trustees" means the Trustees for the time being of the trust;
- 1.3.9 "trust" means the Women's Legal Centre Trust, constituted in terms of this trust deed;
- 1.3.10 "trust assets" means all income and capital of the trust and shall include:-
 - 1.3.10.1 all receipts, accruals, assets and rights of whatsoever nature which the Trustees may acquire in their capacities as such or which may accrue to or in favour of the Trustees in their capacities as such, including without restricting the generality of the foregoing, any right of whatsoever nature in or to immovable property; and
 - 1.3.10.2 all additions, accruals, income, profit or interest arising out of the receipts and accruals referred to in 1.3.10.1 and/or the exercise by the Trustees of their powers in terms hereof;
- 1.3.11 "WLC" means the Women's Legal Centre.

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- 1.4 reference to any statutory provision includes a reference to that provision as modified, amended, extended or re-enacted from time to time and to any statutory replacement thereof from time to time.
- 1.5 when a company is referred to it includes a close corporation or any other type of legal entity whether registered or not and any reference to shares in a company shall include interests in a close corporation or other legal entity.
- 1.6 reference to a month means a calendar month reckoned from the first of the month to the end of that month.
- 1.7 reference to days means calendar days, which shall be counted by excluding the first day and including the last day, unless the latter falls on a Saturday, Sunday or public holiday, in which event the last day shall be the first business day thereafter.
- 1.8 if any provision in the definitions is a substantive provision conferring rights or imposing obligations on either party, then notwithstanding that such provision is contained only in the definitions, effect shall be given thereto as if such provision were a substantive provision in the body of this agreement.

2. RECORDAL

- 2.1 The Founder and the initial trustees established a trust called the WLC Trust for the sole purpose of establishing, managing and controlling a Women's Legal Centre or Centres:
 - 2.1.1 where legal assistance will be given free of charge to the public, particularly to women, in cases which involve public interest or constitutional litigation;
 - 2.1.2 where legal research, education and training may also be undertaken; and
 - 2.1.3 for the purpose and objects as set out in clause 4 below.
- 2.2 The trust was registered by the Master of the Cape High Court on 18 September 1998 under trust registration number IT 3486/98.
- 2.3 Since the establishment of this trust, the Founder has resigned and various of the initial trustees have been substituted. The current trustees have decided

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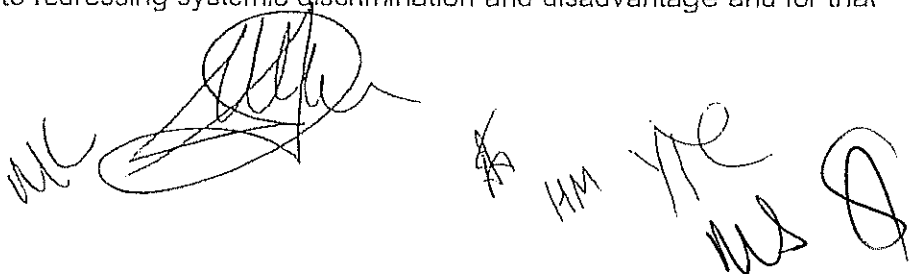
to make various amendments to the WLC Trust and accordingly have executed this amended WLC Trust without altering the philosophy, purpose and objects of the WLC Trust as established by the initial trustees.

3. CREATION OF TRUST

- 3.1 A trust is hereby constituted and shall be known as the "Women's Legal Centre Trust".
- 3.2 The initial capital of the trust consisted of R100.00 (one hundred Rand) which the Founder donated. The Trustees hereby accept such donation, subject to the terms and conditions of this trust deed.
- 3.3 The initial subject matter of the trust shall be capable of being added to and increased from time to time and the trust capital shall consist of all assets, corporeal or incorporeal, which the trust may from time to time acquire pursuant to this trust deed and shall include any part of the net income of the trust which is not distributed.
- 3.4 The payment, delivery, cession or transfer of any asset to the Trustees shall be sufficient to vest the same in trust on the terms and conditions and for the purposes set forth in this trust deed.
- 3.5 The Trustees have agreed to accept office and to administer the trust for the objects set forth in this trust deed, and to enter into this written Deed of Trust to give effect to the said objects, as they hereby do.

4. PURPOSE AND OBJECTS OF THE TRUST

- 4.1 The trustees recognize the systemic discrimination and disadvantage suffered by women in South Africa.
- 4.2 The trustees therefore wish to manage, control and provide legal assistance to the WLC.
- 4.3 The main objects of the Trust and the WLC are to advance and protect the human rights of all women in South Africa, particularly black women, who suffer many different and intersecting forms of disadvantage and in so doing to contribute to redressing systemic discrimination and disadvantage and for that purpose:



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- 4.3.1 the main activity of the WLC is conducting public interest litigation, including constitutional litigation to advance the human rights of women;
- 4.3.2 the WLC Trust may conduct such litigation in its own name, including intervening in court proceedings as *amicus curiae* ("friend of the court");
- 4.3.3 the WLC provides legal services and representation free of charge, particularly to women, who would not otherwise be able to afford such services in conducting such litigation;
- 4.3.4 the WLC may employ and/or instruct counsel, attorneys, and other persons for the purposes of implementing the objects of the WLC;
- 4.3.5 other activities of the WLC, in furtherance of its objectives; may include:
 - 4.3.5.1 advocacy, policy and legal interventions, other than litigation;
 - 4.3.5.2 engaging in legal research;
 - 4.3.5.3 conducting training, workshops and seminars;
 - 4.3.5.4 publication of legal research and information dissemination;
 - 4.3.5.5 promotion of the development of women lawyers; including but not limited to establishing a scholarship;
 - 4.3.5.6 developing links and networks with groups who promote the objects of the trust;
 - 4.3.5.7 where possible, assisting groups to formulate their policy and legal interventions;
 - 4.3.5.8 developing a database of national and international organisations committed to human rights;

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- 4.3.5.9 referral of cases which can more appropriately be dealt with by persons other than the WLC; and
- 4.3.5.10 providing assistance and training to legal clinics, para-legals and advice offices at which services are rendered to the public free of charge.

5. GUIDING PRINCIPLES AND NATURE OF THE TRUST

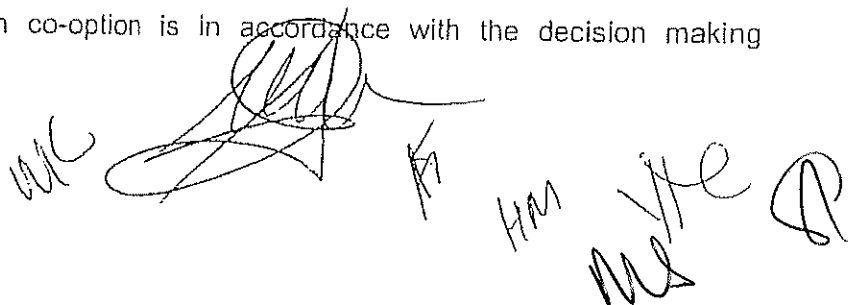
- 5.1 The Trustees in making their decisions in terms of this trust deed shall do so in a manner which is non-racial, non-sexist, impartial, democratic, accountable and financially responsible.
- 5.2 The Trust shall be:
 - 5.2.1 an independent organisation and shall not engage in any activities of a party-political nature;
 - 5.2.2 a non-governmental organisation; and
 - 5.2.3 a not-for-profit organisation.

6. TRUSTEES

- 6.1 The current Trustees are:
 - 6.1.1 ALISON RACHELLE TILLEY;
 - 6.1.2 MARY SUSAN CAESAR;
 - 6.1.3 HAPPY MASONDO;
 - 6.1.4 YASMIN TAYOB CARRIM;
 - 6.1.5 LEBOGANG TEMPERANCE MALEPE;

and such Trustees by their signature hereto accept and confirm their appointment as such.

- 6.2 The Trustees shall at all times have the right to co-opt further Trustees, provided that such co-option is in accordance with the decision making



procedures set out herein, and such further Trustees are authorised to act as such by the Master of the High Court, in terms of the relevant statute.

6.3 There shall at all times be not fewer than 3 Trustees in office for the valid exercise of the powers and discharge of the duties of the Trustees in terms of this trust deed. In the event of the above requirement not being fulfilled at any time, then the Trustees remaining in office shall be empowered to act only to appoint such further Trustees as are required to make up the minimum number of Trustees whereafter they shall again be charged with the duty of administering the trust.

6.4 The following persons shall be disqualified from serving or being appointed as Trustees:-

6.4.1 any person who is disqualified in terms of the company laws for the time being of South Africa from occupying office as a director of a company;

6.4.2 a person whose estate has been sequestrated (provisionally or finally) and has not been rehabilitated;

6.4.3 a person who has been found, by a competent authority, to be of unsound mind or a lunatic or declared incapable of managing his own affairs;

6.4.4 an employee of the WLC;

6.4.5 a person, other than an employee of the WLC, who provides (paid) legal services to the WLC.

6.5 A trustee shall cease to hold office if:-

6.5.1 he or she is disqualified from holding office as such in terms of clause 6.4 above;

6.5.2 if he or she dies;

6.5.3 he or she resigns his office as trustee by notice in writing to the Trustees;

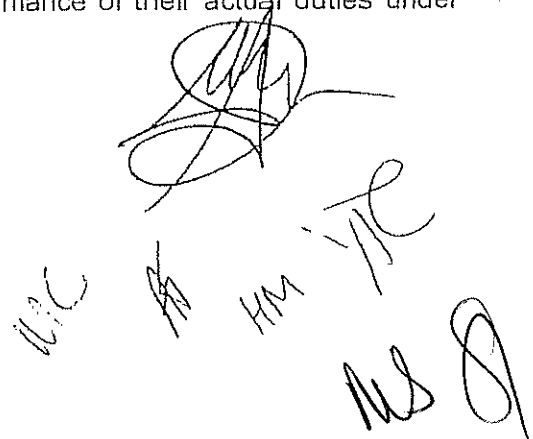
6.5.4 he or she becomes disqualified in law to hold the office of trustee;

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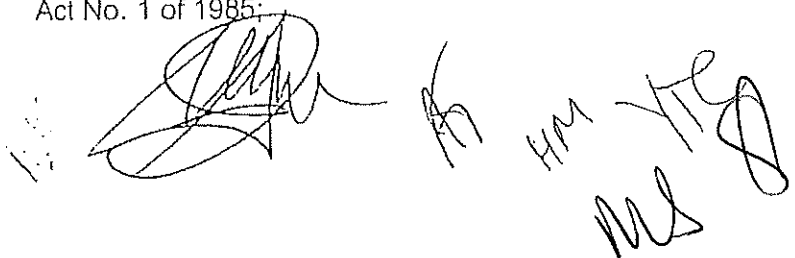
- 6.5.5 he or she is replaced as a trustee in accordance with the provisions of this trust deed
- 6.5.6 he or she is removed as a trustee by a resolution of two-thirds of the Trustees duly passed.
- 6.6 If a trustee wishes to apply for a position of employment at the Centre, she must resign prior to applying for such position.
- 6.7 Notwithstanding 6.4 and 6.6 a trustee may be appointed by a majority of the trustees in an acting capacity in the Centre for a period of 6 months in the event of an emergency.
- 6.8 No portion of the trust assets shall form part of the personal estates of the Trustees nor shall it be paid or transferred directly or indirectly to the Trustees or any member of their families, and all trust assets shall be registered in the name of the trust.
- 6.9 Any of the Trustees may, with the unanimous written consent of all the Trustees, be paid a reasonable remuneration which is not excessive, having regard to what is generally considered reasonable in terms of trustee's remuneration, and is commensurate with and in return for any actual services rendered to the trust.
- 6.10 The Trustees shall be entitled to the reimbursement of actual costs, expenses and commitments reasonably incurred in good faith on behalf of the trust and with its authority.

7. APPLICATION OF TRUST FUNDS

- 7.1 The costs of administration of the trust shall be a first charge on the gross trust income which costs shall include, but not be limited to, all trust expenses, and any levy, duty or tax whatsoever levied on the Trustees in their respective capacities and all costs, charges and disbursements whatsoever incurred by the Trustees in or arising out of the performance of their actual duties under this deed.
- 7.2 The Trustees shall:

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- 7.2.1 apply so much of the available funds of the trust, whether capital or income, as they deem necessary solely for the attainment of the trust's objects as set out above;
- 7.2.2 not distribute any of its net income or gains to any person other than in terms of this trust deed.
- 7.3 Subject to 7.2 above, the Trustees shall have the power, in their sole discretion:-
 - 7.3.1 to determine the manner in which the trust capital and the net income shall be applied or dealt with from time to time;
 - 7.3.2 to determine the terms and conditions, if any, to be attached to the payment, application or expenditure of the net income or trust capital or any portion thereof;
 - 7.3.3 to determine when the trust capital or net income or any portion thereof shall be applied, expended, paid or used in any manner whatsoever towards the furtherance of the purposes and object of the trust;
 - 7.3.4 to accumulate, at any time and from time to time, any portion of the trust capital or net income for any capital project or projects or for any other purpose or reason whatsoever which they, in their discretion, deem to be in the interests of the trust and the beneficiaries in the furtherance of the purposes and object of the trust in terms hereof, provided that, in the event that the trust has been tax exempt, the prior consent of the Commissioner is first obtained;
 - 7.3.5 to invest responsibly any portion of the trust capital or net income:-
 - 7.3.5.1 with a financial institution as defined in Section 1 of the Financial Institutions (Investment of Funds) Act No. 39 of 1984;
 - 7.3.5.2 in securities listed on a licensed stock exchange as defined in Section 1 of the Stock Exchanges Control Act No. 1 of 1985;



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7.3.5.3 in such other prudent investments in financial instruments and assets as the Commissioner may determine after consultation with the Executive Officer of the Financial Services Board and the Director of Non-Profit Organisations, provided that the provisions of this sub-clause shall not prohibit the Trust from retaining any investment in the form that it was acquired by way of donation, bequest or inheritance.

7.4 Subject to clause 6.9 and 6.10 , the trust is to be administered in such a manner as to preclude any donor, trustee and/or their families from deriving any monetary advantage from moneys paid to, by or for the benefit of the trust.

8. SECURITY DISPENSED WITH

No trustee, whether appointed or co-opted in terms of this trust deed, or appointed as a successor to a trustee, shall be required by the Master of the High Court, or any other competent authority, to furnish any security of any nature, nor shall any security be required for the due performance of any duty under the Trust Property Control Act No. 57 of 1988, as amended, or under any other statutory provision which may now be or may hereafter become of force or effect, the intent and purpose being that no trustee shall be required to give any security in respect of or in connection with or arising out of such appointment.

9. DECISIONS OF THE TRUSTEES AND PERFORMANCE OF THEIR DUTIES

9.1 The business of the trust shall be managed by the Trustees. Subject to the Trustees giving effect to the terms and conditions of this deed, they shall, in administering the trust and its affairs, generally adopt such procedures and take such administrative steps as they may from time to time deem necessary and advisable. They shall meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit, provided that the Trustees shall meet at least once a year, within 90 days of the end of the financial year.

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- To the left, the initials "HK".
- To the right, the initials "HM".
- Below "HM", the initials "MS".
- To the right of "MS", the initials "JTE".

- 9.2 The director of the WLC shall be entitled to be present at all meetings of the trustees, save where a conflict of interest may arise.
- 9.3 Any trustee shall at any time be entitled to summon a meeting of the Trustees provided that any trustee calling a meeting shall endeavour to give at least 15 (fifteen) days written notice to the Trustees thereof, save in respect of urgent matters requiring a meeting at less than 15 (fifteen) days notice.
- 9.4 The majority of the Trustees in office shall be required to form a quorum of Trustees for the purposes of meetings of the Trustees.
- 9.5 The Trustees shall appoint a chairperson and such other officers of the trust as they may decide.
- 9.6 Decisions and questions arising at any quorate meeting of Trustees shall be decided by a simple majority, save where otherwise provided herein.
- 9.7 A resolution in writing signed in favour thereof by a majority of Trustees shall be as valid and effectual as if it had been passed at a meeting of the Trustees duly called and constituted. Any trustee may indicate his or her agreement, in the context of this clause, by way of a signed letter or facsimile transmission or by electronic mail transmission. A resolution as contemplated in this clause may consist of several documents each signed by one or more of the Trustees (provided that in all, the requisite number of Trustees have signed) and shall be deemed to have been passed on the date on which it was signed by the last trustee who signed it (unless provided to the contrary in such resolution).
- 9.8 Subject to any provision to the contrary contained herein, all contracts, deeds, cheques or documents required to be signed on behalf of the Trust shall be signed in such manner as the Trustees from time to time determine.
- 9.9 All resolutions taken by the Trustees will be recorded and copies thereof kept by the Director.
- 9.10 A trustee may, if unable to attend any meeting of the Trustees, appoint another trustee in writing to act and vote on his behalf at any specified meeting of Trustees.
- 9.11 The Trustees may appoint any committee from among the Trustees, and may grant or delegate any of their powers to such committees. Any such

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delegation or grant of powers shall not preclude the Trustees from themselves exercising such powers. The Trustees may withdraw any such delegation or grant of powers at any time. The Trustees may authorise such committees to seek the advice of further persons, who are not Trustees.

9.12 The Trustees may co-opt people, whether Trustees or not, to attend meetings of the Trustees or their committees and to undertake any of the duties that the Trustees may from time to time delegate to them. Such persons who are not Trustees shall act in an advisory capacity only and shall not have a vote at any meeting of the Trustees.

10. POWERS OF TRUSTEES

10.1 Subject to the express limitations on Trustees' powers set out in this trust deed, the Trustees shall have all such powers and capacity in relation to the trust and the trust assets as:-

10.1.1 are legally required and/or permitted;

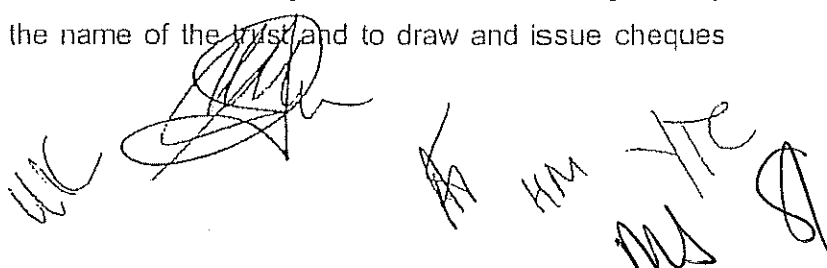
10.1.2 any natural person with full legal capacity may have in relation to his own affairs,

and the discretionary powers vested in the Trustees in terms of this trust deed shall be complete and absolute, and any decision made by them pursuant to any such discretionary powers shall be unchallengeable by any person affected thereby.

10.2 The Trustees shall, subject to the provisions of clause 10.4, deal with the trust assets in order to achieve the objects of the trust and shall, subject to the provisions of this trust deed, possess and enjoy all ancillary and/or incidental rights and powers necessary for and incidental to such objects.

10.3 Without limitation of the general powers and discretion conferred on the Trustees, but subject to the limitations contained in clause 7 above they shall have, inter alia, the following rights and powers which they may exercise for the purposes of the trust in their discretion:-

10.3.1 to open and operate any banking account and/or building society account in the name of the trust and to draw and issue cheques



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and to receive cheques, promissory notes and/or bills of exchange, and to endorse any of the same for collection by the bank and/or building society at which the said account was opened. Withdrawals shall be made on the signature of at least two persons, one of whom must be a Trustee. The other signatories may be such persons as the Trustees may determine from time to time by written resolution, provided that withdrawals of a stipulated amount or less shall be made on the signature of such two persons as the Trustees may determine from time to time by written resolution;

- 10.3.2 to enter into any contracts and execute any documents by or on behalf of the trust, for the purpose of giving effect to the objectives of the trust;
- 10.3.3 to buy or sell (by public auction, private treaty or otherwise) movable, immovable or incorporeal property of whatever nature, and to sign and execute any agreement or deed of sale in relation thereto, and to sign and execute all requisite documents and do all such things necessary for the purpose of effecting and registering, if needs be, transfers according to law of any such property, whether movable, immovable or incorporeal, bought or sold by the Trustees, provided the powers in this sub-clause are exercised for the sole benefit of the beneficiaries;
- 10.3.4 to receive, accept or acquire, or donate, cede, assign or otherwise dispose of, any other right to or over immovable property not constituting full ownership, whether registerable or not;
- 10.3.5 to buy, sell and/or exchange shares, interest, debenture, stocks, units, promissory notes, bills of exchange and any other negotiable instruments and documents of any kind, and to do all things requisite and sign all documents requisite to acquire or, as the case may be, to give transfer and title thereto;
- 10.3.6 make loans for the benefit of beneficiaries (but not to a trustee, donor and/or any of their relatives or to any private company) on such terms and conditions and at such interest rate, if any, as the

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Trustees may determine, and to sign and execute all requisite documents and to do all things necessary for the effecting and registration of any such security;

- 10.3.7 to vary any investment made in terms hereof by realising the same and/or by substituting therefor any other investment which the Trustees are empowered in terms hereof to make;
- 10.3.8 to borrow money on such terms and conditions and at such interest and from such persons as the Trustees may determine, and either without security or upon such security over movable or immovable property as the Trustees may determine, and to sign and execute all requisite documents and to do all things necessary for the effecting and registration of any requisite instrument of debt and of any such security;
- 10.3.9 to mortgage, pledge and/or hypothecate any movable, immovable or incorporeal property forming part of the assets of the trust, and enter into suretyships and, for the purpose of any such mortgage, pledge, hypothecation or suretyship, to sign and execute all requisite documents and do all things necessary for effecting and registering the same, provided that such power shall only be exercised for the benefit of the beneficiaries;
- 10.3.10 subject to clauses 6.4.1 and 10.4.5, to let, either by written agreement of lease or otherwise, improve, alter or maintain any immovable property belonging to the trust or any improvements thereon;
- 10.3.11 any asset acquired by way of donation, inheritance or bequest, may be retained or continued, in the form so acquired;
- 10.3.12 to sue for, recover and receive all debts or sums of money, goods, effects and things whatever, which may become due, owing, payable or belonging to the trust, and to take action in a court of law on behalf of the trust and/or defend any proceedings which may be instituted against the trust;

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- 10.3.13 to defend, oppose, adjust, settle, compromise and/or submit to arbitration all accounts, debts, claims, demands, disputes, legal proceedings and matters which may subsist or arise between the trust and any person, company, corporation or body whatever, and for the purposes aforesaid, to do and execute all necessary acts and documents;
- 10.3.14 to attend all meetings of creditors of any person, company, corporation or body whatever indebted to the trust, whether in insolvency, liquidation, judicial management or otherwise, and to vote for the election of a trustee or Trustees and/or liquidator/s and/or judicial manager/s and also to vote on all questions submitted to any such meeting of creditors and generally to exercise all rights accruing to a creditor;
- 10.3.15 subject to clause 10.4.5 to exercise and take up or to sell and realise any rights of conversion or subscription attaching, accruing or appertaining to any share, debentures or units forming part of the assets of the trust;
- 10.3.16 to cause, in the case of any company or unit trust scheme which is precluded by its articles of association or trust deed or which refuses to transfer any shares, debentures or units forming part of the assets of the trust into the name of the Trustees as such, the transfer of the said shares, debentures or units into their own names or into the name of a bank, trust company or other suitable nominee;
- 10.3.17 to give receipts, releases or other effectual discharges for any sum of money or things recovered;
- 10.3.18 to pay out of the funds of the trust all debts incurred on behalf of the trust by the Trustees in the exercise of their powers in terms hereof;
- 10.3.19 subject to clause 10.4.2, to accept on behalf of the trust all or any donations of whatsoever nature, whether in the form of funds or movable or immovable property or any right therein, or otherwise, from the donor or from any other person whatever;

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- 10.3.20 to determine whether any surplus on the sale of any assets of whatever description of the trust, and whether movable or immovable property, and the receipt of any bonus, shares or units by the trust be regarded as income or capital of the trust and to revise any such decision taken by them;
- 10.3.21 to employ professional practitioners, agents and employees, including a Director, to administer the trust assets, to carry out the objectives of the trust and to pay their fees, commissions, remuneration and any other charges out of the funds of the trust, and to confer, if necessary, upon such agents or employees so appointed the right to exercise any discretion which may be vested in the Trustees;
- 10.3.22 to terminate the employment of any such professional practitioners, agents or employees;
- 10.3.23 to improve and develop immovable property acquired by the trust and to expend the capital and/or net income of the trust upon the preservation, maintenance and upkeep of any such property.

10.4 Notwithstanding anything to the contrary herein contained:-

- 10.4.1 no benefits may be allocated by the trust during its existence for any purpose other than those envisaged in clause 7 above;
- 10.4.2 all donations made by or to the trust must be irrevocable and unconditional and must be subject to the terms and conditions of the trust deed;
- 10.4.3 no trustee shall have a direct or indirect interest in or benefit from any contract which the Trustees may conclude with any company (unless previously disclosed and agreed to unanimously by all the remaining Trustees);
- 10.4.4 paid officials of the trust, other than Trustees, may only serve on the management committee or board of Trustees in an advisory capacity, and will have no voting rights;

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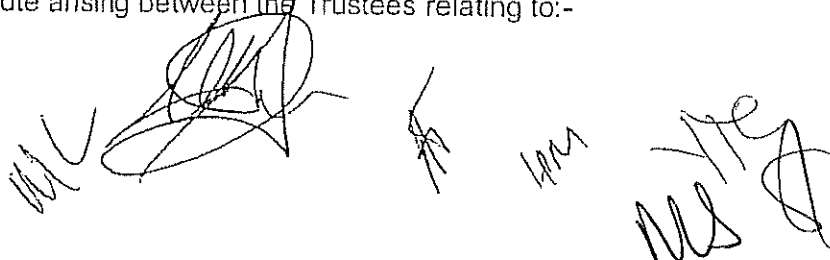
- 10.4.5 the Trustees may not cause the trust to acquire immovable property solely for letting purposes nor may the Trustees engage in any trading operations or speculative transactions, including inter alia, ordinary trading operations in the commercial sense, speculative transactions, dividend stripping activities as well as letting property on a systematic or regular basis. Notwithstanding the foregoing it is expressly provided that if immovable property is donated or bequeathed to the trust and such property is rent producing then the Trustees shall be permitted to continue letting the property without jeopardising the tax status of the trust, in the event that the trust has obtained a tax exemption;
- 10.4.6 the Trustees may not allow immovable property owned by the trust to be occupied free of charge by any person except beneficiaries, or officers or employees of the trust,
- 10.4.7 no competition, contest, game, scheme, arrangement or system in connection with which any prize may be won shall be conducted or caused to be conducted by the trust unless an authority in terms of the relevant Act has been obtained beforehand;
- 10.4.8 should the services of a fund raiser be made use of for collection contributions, the expenses (remuneration and/or commission included) may not exceed 40% (forty percent) of the total turnover of such collection.

11. PATRONS

The trustees shall be further empowered to institute and award an honorific title of "Patrons", which may be accorded at their discretion from time to time to such one or more persons as they may deem appropriate, with a view to giving recognition to special relationships of value and significance to the Trust. Patrons shall have neither legal rights nor responsibilities, but may be consulted by the trustees and shall be entitled to give advice as they may consider relevant and appropriate.

12. DISPUTE RESOLUTION

12.1 In the event of a dispute arising between the Trustees relating to:-

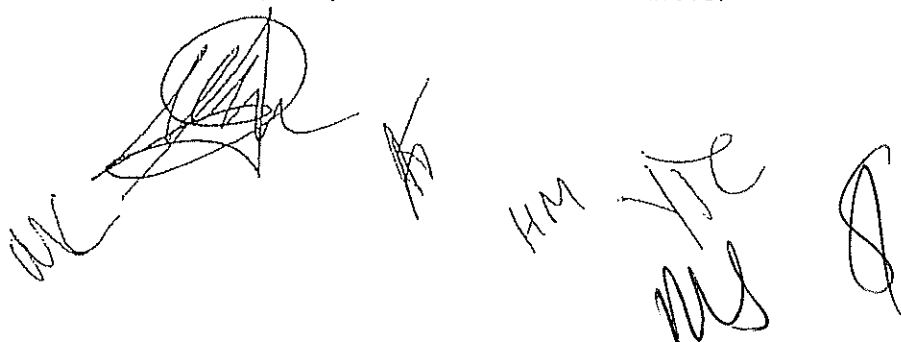
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- 12.1.1 the interpretation or application of this agreement;
- 12.1.2 the proper attainment of the purpose and objects of the trust;
- 12.1.3 any other matter whatsoever pertaining to the carrying out of their duties as Trustees,

and the Trustees being unable to reach resolution of the dispute amongst themselves, the Trustees commit themselves to mediation, or, failing that, arbitration on the terms set out more fully below.

- 12.2 Within 15 (fifteen) days of the dispute arising, the dispute shall be referred to a mediator agreed upon between the Trustees.
- 12.3 In the event that the Trustees are unable to agree on a mediator within the said 15-day period, the mediator will be appointed by the Alternative Dispute Resolution Association of South Africa, or in the event that they are no longer in existence at the time, by the Arbitration Foundation of South Africa, which shall nominate a person or persons with expertise appropriate to the nature of the matter in dispute.
- 12.4 In the event of the mediator failing to resolve the dispute within a further period of 15 (fifteen) days from his or her appointment, the dispute shall be referred to an arbitrator agreed upon between the Trustees whose decision in regard to the dispute shall be final and binding. In the event that the Trustees are unable to agree upon an arbitrator, he or she or they shall be appointed by the Arbitration Foundation of South Africa, and either party may approach the said Foundation for such appointment.
- 12.5 The procedure for such arbitration shall be governed by the rules of the Arbitration Foundation of South Africa, provided that the arbitrator shall have due regard to the need for the dispute to be resolved expeditiously and shall endeavour to ensure that his or her decision thereon is made available to the Trustees within 21 (twenty-one) days of his or her appointment as arbitrator.
- 12.6 The mediator and the arbitrator in making their decisions shall have due regard to and shall be guided by the principles set out in clause 5 above.

13. BOOKS OF ACCOUNT



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13.1 The Trustees shall keep true and correct records and books of account of their administration of the trust, in such manner and form as is necessary to reflect fairly the position of the trust at all times. There shall be recorded in such books and records, *inter alia*, any change of the trust assets from time to time, the income and all outgoings applicable to the administration of the trust.

13.2 The Trustees shall cause the trust's books of account to be audited by the auditors and an annual income statement and balance sheet drawn within 6 (six) months after the year end reflecting the affairs of the trust for the year end and its assets and liabilities at the last day of the month of December of each year. The income statements and balance sheets shall be certified by the Trustees and the auditors and a copy thereof sent to the official designated for this purpose in terms of the Non-Profit Organisations Act, No 71 of 1997 in the event of the trust being a registered non-profit-organisation in terms of the said Act, and to the Commissioner, in the event that the trust has been granted tax exempt status.

13.3 The audit of the trust's books of account shall be carried out by auditors to be appointed from time to time by the Trustees, who shall have the right to terminate any such appointment and to appoint any other auditors. The Trustees shall take all necessary steps to procure the appointment of auditors of the trust as soon as is reasonably possible after the date of execution hereof and there shall at all times thereafter be auditors of the trust.

13.4 The Trustees shall not be bound to file any liquidation, distribution or administration accounts with any officer, official or person except insofar as they may be obliged to do so in terms hereof or under the provisions of any law.

14. LOSSES

None of the Trustees shall be answerable for or liable to make good any loss occasioned to or sustained by the trust from any cause whatever, save for any loss as shall arise from a wilful act of dishonesty of the trustee involved. No trustee shall be liable for any act of dishonesty committed by any trustee unless he or she was a party thereto. The Trustees shall at all times be deemed to have been indemnified out of the assets of the trust against all claims and demands of whatever nature arising out of the exercise or purported exercise by them of any powers conferred under this trust deed.

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15. LEGAL PROCEEDINGS

All legal proceedings by or against the trust, including proceedings in the interest of the public, shall be instituted in the name of the trust. However, when the trust acts on behalf of a client, it shall institute legal proceedings in the name of such client.

16. TERMINATION OF TRUST

16.1 The trust may be terminated by a resolution passed by at least a 75% (seventy five percent) majority of all Trustees in office at a special meeting convened for a purpose of considering such matter. Not less than 21 (twenty one) days notice shall be given of such meeting and the notice convening the meeting shall clearly state that the dissolution of the trust and disposal of its assets will be considered.

16.2 Any resolution to terminate the trust shall provide for the payment of all costs involved in the dissolution of the trust and the application of the trust assets.

16.3 On dissolution of the trust, the remaining trust assets, if any, will be transferred to a similar public benefit organisation which has been approved in terms of section 30 of the Act.

17. NOTICES AND GENERAL

17.1 Any notice required to be given in terms of this trust shall be given in writing and may be given by telex, cablegram, telegraph, email or facsimile, provided that, in the case of a telex, facsimile or email it is acknowledged as having been received.

17.2 Each trustee for the time being shall, upon assuming office, nominate in writing a street address and a facsimile number, if any, at which any notice required to be given in terms hereof may be given to him or her and may, from time to time by notice in writing, vary the address to another such address.

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17.3 Any notice to a trustee at the address for the time being nominated by him or her in terms of 17.2 or at any other address at which the trustee shall have acknowledged receipt shall be regarded as sufficient notice to that trustee.

18. AMENDMENT OF TRUST DEED

The provisions of this trust deed may from time to time be amended, altered, varied, added to and/or deleted at a meeting of the Trustees, by resolution signed in favour thereof by 75% (seventy five percent) of the Trustees then in office, and provided that 21 (twenty one) days notice of such meeting is given in writing to the Trustees, which notice contains substantially the terms of the amendments so contemplated. In the event of such an amendment, variation, alteration, addition and/or deletion being effected, a copy of all such amendments, alterations, variations, additions and/or deletions shall be submitted to the Commissioner if the trust has been approved by the Commissioner as tax exempt before the date of such resolution, and to the official designated for this purpose in terms of the Non-Profit Organisation Act in the event the trust is registered as a Nonprofit Organisation in terms of the Non-Profit Organisation Act 71 of 1997. The provisions of this trust deed have been formulated on the basis that the commissioner will grant the trust tax exempt status, and the Trustees' powers have accordingly been limited. The Trustees may amend the trust at any time to comply with any requirements of the commissioner or other relevant authority.


19. ACCEPTANCE

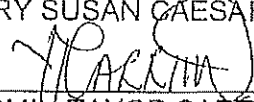
The first Trustees, by their signature hereto, undertake to discharge their duties in terms of this trust deed and to carry out the terms and conditions herein contained.

SIGNED BY THE PARTIES ON THE DATE AND AT THE PLACE AS INDICATED ALONGSIDE THEIR RESPECTIVE SIGNATURES, THE SIGNATORY WARRANTING HIS/HER AUTHORITY TO DO SO.

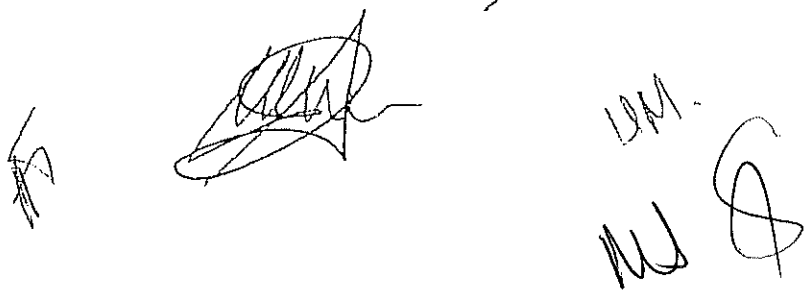
Date 1 MARCH 2003 Place CAPE TOWN

Signature



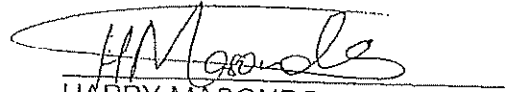
MARY SUSAN CAESAR


YASMIN TAYOB CARRIM





LEBOGANG TEMPERANCE
MALEPE



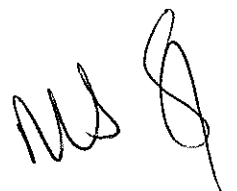
HAPPY MASONDO



ALISON RACHELLE TILLEY

MC

#E



Sexual Assault and Sexual Harassment Policy and Procedures

POLICY NO: C12.4

DATE : 1 March 1993

Revised and approved by Council 18 May 2004

Revised and approved by Council 25 October 2018 (Resolution C7/18 4.3)

AMENDMENTS: 18 October 1995 (SMG)

3 September 1998 Revision (SMG)

11 October 1999 (Manager: Equity and Diversity)(Director: Human Resources)

18 August 2006 (Director: Human Resources)

16 June 2014 (Director: Human Resources)

REFERENCE AUTHORITY: Pro Vice Chancellor: Student Engagement and Equity

CROSS REFERENCES:

1. University of South Australia Code of Good Practice: Relationships between Staff and Students
2. University of South Australia Code of Ethical Conduct
3. University of South Australia Code of Good Practice: Research degrees management and supervision
4. University of South Australia Staff Appeals
5. University of South Australia Code of Conduct for Students
6. University of South Australia Equal Opportunity Policy
7. University of South Australia Anti-Racism Policy
8. University of South Australia Inclusive Language Policy
9. University of South Australia Health Safety and Injury Management Policy
10. University of South Australia Acceptable Use of Information Technology Facilities Policy
11. University of South Australia Enterprise Agreement 2014
12. University of South Australia Guidelines for best practices in UniSA work placements within Australia
13. University of South Australia Guidelines for students on use of IT facilities, including email and the internet
14. University of South Australia Guidelines on Electronic Communications with Students
15. University of South Australia Assessment Policies and Procedures Manual
16. University of South Australia Privacy Policy

The following legislation applies as amended from time to time:

- Commonwealth Racial Discrimination Act 1975
- Commonwealth Sex Discrimination Act 1984
- Commonwealth Human Rights and Equal Opportunity Commission Act 1986
- Commonwealth Disability Discrimination Act 1992
- Commonwealth Workplace Gender Equality Act 2012
- Commonwealth Age Discrimination Act 2004

- South Australian Criminal Law Consolidation Act 1935
- South Australian Equal Opportunity Act 1984
- South Australian Work Health and Safety Act 2012
- South Australian Whistle-blowers Protection Act 1993
- South Australian Work Health and Safety Regulations 2012
- South Australian Racial Vilification Act 1996
- University of South Australia Act 1990
- University of South Australia Statute 7 – Student Misconduct
- Children and Young People (Safety) Act 2017
- Commonwealth Fair Work Act 2009
- The National Code of Practice for Providers of Education and Training to Overseas Students 2018 (National Code 2018) South Australian Return to Work Act 2014

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7. Where a matter is reported to Police
8. Where a complaint relates to a third-party provider
9. Where a witness or observer reports a complaint
10. Right to withdraw a complaint

Appendices:

1. Reporting an incident of sexual assault and sexual harassment
 - A. Process for Reporting (Students)
 - B. Process for Reporting (Staff)

Purpose

The purpose of this policy and associated procedures is to:

1. promote a respectful, safe and inclusive university environment that is free of sexual assault and sexual harassment;
2. define the process for receiving disclosures and reporting incidents of sexual assault and sexual harassment;
3. establish a decision-making process that ensures the safety and rights of complainants, meets the requirements of procedural fairness and holds accountable those who have committed sexual assault or sexual harassment within the university community against another member of the university community.

This policy supports the University of South Australia's (UniSA) commitment to stop and prevent any form of sexual assault and sexual harassment and describes the expectation that all members of the UniSA community treat each other with respect, courtesy and consideration. UniSA will take all reasonable steps to ensure that all members of the university community are aware of this policy and their responsibilities to act in accordance with its requirements.

Scope

This policy applies to all members of the university community.

This policy extends to all UniSA community premises and includes but is not limited to UniSA's:

1. campuses;
2. sporting and recreational clubs and facilities to the extent that they fall within the university community;
3. managed digital environments;
4. activities and situations related to UniSA business that are not conducted on UniSA's premises, including but not limited to work and study related activities such as:
 - internships, placements and field trips
 - conferences
 - student camps
 - student accommodations
 - inter-university events
 - parties and other social functions.

This policy provides a framework for the management of disclosures of sexual assault or sexual harassment and the pathway for reports of sexual assault or sexual harassment. It is inclusive of the university's response to reported complaints of sexual assault or sexual harassment made against UniSA staff members or students. The range of possible outcomes are determined according to relevant UniSA policies regarding UniSA staff and students.

UniSA understands that a member of the university community may, while carrying out their business as a staff member or a student, be subjected to sexual assault or sexual harassment by an individual

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outside of the university community. In such circumstances, UniSA will provide appropriate support including reporting options.

If a report is referred to police for sexual assault matters or the Equal Opportunity Commission (EOC) or to the Australian Human Rights Commission (AHRC) for sexual harassment matters, then the university will not take any action that will compromise the police investigation or EOC/AHRC complaint resolution process. While responsibility for prosecuting criminal acts of sexual assault rests with local police where the offence occurred, the university can take action where there is a breach of its rules, by-laws, policies and procedures by members of the university community for activities and situations related to UniSA business.

Definitions

It is to be noted that all terms in this section have been defined for the purposes of this Policy and Procedures only.

Complaints Assessment Team (CAT) is convened by the Executive Director: People, Talent and Culture to oversee the management of complaints of sexual assault or sexual harassment made by staff or against university staff, contractors or third party providers. The composition of the CAT will be determined by the Executive Director: People, Talent and Culture and will have regard to the specific report made.

Complaint is a verbal or written communication from a member of the university community who believes they have experienced sexual assault or sexual harassment, either by a staff member or student of UniSA, or a third party provider. A complaint may take the form of either disclosure of an incident of sexual assault or sexual harassment, or a report of an incident of sexual assault or sexual harassment.

Complainant is a member of the university community who has made a complaint. A complainant may choose to disclose or report an incident of sexual assault or sexual harassment.

Confidentiality is the principle upheld to ensure that information provided under this policy is only disclosed to those legitimately involved in resolving the complaint, providing support to a complainant, or as required by law. Confidentiality must be maintained to:

- respect the privacy of individuals;
- prevent victimisation or defamation of the parties involved; and/or
- facilitate prompt resolution of the complaint.

Consent is the free and voluntary agreement to engage in sexual activity of any kind. Consent is the act of willingly agreeing to engage in sexual activity and requires that a person is able to freely choose between two options: yes, and no.

Some examples of where consent is **not** considered to have been given are:

- consent has been expressed or compelled by the words or conduct of a person other than the complainant;
- the complainant was incapable of consenting to the sexual activity if they were asleep, unconscious or intoxicated by alcohol or any other substance or combination of substances to the point of being incapable of giving free and voluntary consent to sexual activity;
- physical force, threats of harm, an express or implied threat to degrade, humiliate, disgrace

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or harass the person or some other person; or unlawful detention were used by the respondent to engage the complainant in sexual activity;

- the respondent induced the complainant to engage in the activity by abusing a position of trust, power or authority;
- the complainant expressed, by words or conduct, a lack of consent to engage in the sexual activity;
- the complainant, having previously consented to engage in sexual activity, expresses by words or conduct, a lack of consent to continue to engage in the sexual activity;
- the complainant agreed to engage in sexual activity with a person under a mistaken belief as to the identity of that person;
- the complainant is mistaken about the nature of the sexual activity (for example the person may be told that activity of a sexual nature is part of the provision of health care);
- the respondent was recklessly indifferent as to whether the complainant consented to sexual activity, or withdrew consent to sexual activity

Disclosure is a form of complaint occurring when a complainant or another person tells someone about an incident, or a suspected incident, of sexual assault or sexual harassment directed towards them, or a member of the university community. Disclosing is not the same as reporting but will enable referral of the complainant to appropriate support and information about their choices and options with regard to medical, legal and counselling support.

First responder is a member of the university community who, as part of their substantive duties, may provide appropriate support and information to anyone who has been subjected to sexual assault or sexual harassment. A list of first responders is available on the website. UniSA recognises that students or staff may disclose or report to a member of the university community who is not a designated first responder. In such instances any member of the university community should support the complainant in accessing and talking with a trained first responder.

Investigator is an individual tasked with investigating a complaint. The person appointed as an investigator will be skilled in investigation and any conflict of interest will be avoided.

Managers are relevant Pro Vice-Chancellors, Heads of School, Deans, Directors of Research Institutes, Division Managers (or their equivalent) or Directors of central units.

Natural justice (also called 'procedural fairness') is a process that is subject to the following principles:

- all parties must be given an opportunity to present their case;
- the respondent must be provided with notice and information about allegations made against them and information about their rights to advocacy;
- the respondent must be given a reasonable timeframe within which to respond;
- the decision maker must:
 - act fairly and without bias
 - declare any conflict of interest
 - consider all relevant evidence
 - base any decision on evidence that supports it;
- all parties must be informed of the decision relating to the complaint, and the reasons for that decision.

Report is a form of complaint and occurs when a member of the university community expresses the desire to formally report an incident of sexual assault or sexual harassment, for the purpose of initiating an investigation.

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Respondent is a member of the university community who has been accused of sexual assault or sexual harassment.

Students at Risk Committee (SARC) supports identification and case management of students presenting with risk of harm to self or others. The SARC includes the Deputy Director: Student Services, Campus Facilities Manager and Manager: Student Wellbeing, who engage Heads of School, Directors and other Managers or their representatives as required.

Sexual assault is an inclusive term used to describe any type of unwanted sexual act inflicted upon a person that they have not freely and voluntarily consented to, have withdrawn consent to, or occurs in circumstances where they are incapable of giving free and voluntary consent. It is inclusive of a variety of unwanted sexual behaviours a person may be subjected to, ranging from activities such as unwanted sexualised touching through to sexual intercourse without consent. Sexual assault can include sexual behaviours that involve the use of force, threats, coercion or control towards a person. Sexual assault typically involves an exploitation of vulnerability, betrayal of trust and the misuse of positional power.

Sexual harassment is an unwelcome sexual advance or request for sexual favours or conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated where a reasonable person would anticipate that reaction in the circumstances.

Sexual harassment includes, but is not limited to:

- any deliberate and unsolicited sexual comment, the use of overt sexual language, suggestive or physical contact that creates an uncomfortable learning/working environment for the recipient and is made by a person who knows, or ought reasonably to know, that such action is unwelcome;
- a sexual advance or solicitation made by one person to another, where the person making the advance or solicitation knows, or ought reasonably to know, that such action is unwelcome;
- a reprisal, or threat of reprisal, for the rejection of a sexual solicitation or advance particularly where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person;
- practical jokes of a sexual nature which cause awkwardness or embarrassment;
- displaying and/or distributing pornographic pictures or other offensive material of a sexual nature, including audio or visual images of an individual through technological devices, equipment and service;
- unwanted physical contact such as kissing, touching, patting or pinching;
- unwelcome sexual remarks, sexual jokes, intrusive sexual questions, sexual innuendoes or taunting about a person's body, attire, sex, personal or social life;
- sexually explicit emails or text messages;
- requests for sexual favours.

Staff member is an individual employed by UniSA under the university's Enterprise Agreements, adjuncts, visiting academics and guest lecturers, whether they are paid or unpaid.

Student is an individual enrolled in an undergraduate, post-graduate, or non-award program with the university including those on leave or accessing study online.

Student Ombud is the final port of call for students when all other avenues to resolve a matter have failed. Their role is to act independently and impartially to examine whether all avenues available to investigate and/or resolve a matter have been explored.

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Supervisors are members of the university community who have oversight and/or direction of the work of staff or students.

Third Party Providers are persons or organisations contracted to the university to provide teaching and learning to UniSA students.

Trauma-informed response is a response that demonstrates understanding and recognition of the impact of trauma, and emphasises physical, psychological and emotional safety, and the importance of empowerment and choice for those who have experienced sexual assault or sexual harassment. Trauma-informed responses are inclusive of transparency of processes and policies to build a climate of trust to enable disclosures. Trauma-informed responses give recognition to the historical and cultural factors which contribute to the occurrence of sexual assault and sexual harassment, and identify opportunities for contributing to the prevention of further sexual assault and sexual harassment by changing the cultural conditions and environment under which it occurred.

UniSA Equity Contact is a designated role within the university community to assist anyone who has been subjected to discrimination and/or harassment. Equity contacts provide advice on how the complaint procedures work, familiarise students and staff with options available to deal with a given situation, provide support and, if needed, direct the complainant to the relevant point of contact to initiate the investigation process. Equity Contacts are coordinated through the People, Talent and Culture Unit.

University community refers to all students and staff in relation to UniSA related conduct.

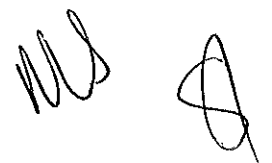
Unproven complaint refers to a complaint where findings are unsubstantiated.

Victimisation occurs if a person commits, or threatens to commit, an act against a complainant or respondent, or another person acting in support of a complainant or respondent as a result of that complaint.

Section I – Policy

1. General Principles

- 1.1. Sexual assault and sexual harassment are unacceptable forms of behaviour that cause distress and are detrimental to UniSA's community. Sexual assault and sexual harassment erode the rights of the individual, undermine morale and interfere with the safety and effectiveness of the work and learning environment.
- 1.2. Fostering a culture that is intolerant of sexual assault and sexual harassment will encourage respect, safety and inclusion. Effective primary prevention through education and training to address sexual assault and sexual harassment, along with swift and decisive action when such behaviour is reported to have occurred, are all vital preventative measures.
- 1.3. UniSA recognises that sexual assault and sexual harassment may be experienced by any person regardless of their sexuality or gender identity. UniSA acknowledges that people from vulnerable population groups may be subjected to sexual assault or sexual harassment at higher rates than others. The support provided by the university will be tailored to complainants' respective needs.



- 1.4. All members of the university community have a right to expect professional behaviour from others, and a corresponding responsibility to behave professionally towards others. All members of the university community have a personal responsibility to comply with, and demonstrate active commitment to, this policy and related procedures.
- 1.5. The Executive Director: People, Talent and Culture (ED: PTC) and the Pro Vice Chancellor: Student Engagement and Equity (PVC: SEE) have direct responsibility for overseeing the implementation and monitoring of compliance with this policy and its procedures. All complaints of sexual assault and sexual harassment are provided to ED: PTC and/or PVC: SEE depending on if it relates to a student, a staff member, or a visitor on campus. Information regarding a complaint or investigation will only be shared with persons who need to know and are required to advise the ED: PTC and/or PVC: SEE.
- 1.6. The Executive Director: People, Talent and Culture and Pro Vice Chancellor: Student Engagement and Equity are responsible for monitoring and reporting all complaints of sexual assault and sexual harassment. The reporting will be undertaken in accordance with Work, Health and Safety requirements and other legislative frameworks.
- 1.7. All members of the university community have a duty to take all reasonable steps to eliminate sexual assault and sexual harassment undertaken by or directed towards staff, students or other members of the university community.
- 1.8. Complaint processes to support disclosure and reporting of sexual assault and sexual harassment are intended to be simple, accessible and available through multiple avenues.
- 1.9. In all instances where a complaint has been received, UniSA has a responsibility to take appropriate action to ensure the safety of the complainant, the university community and any identified third party. Consequently, early reporting of complaints is encouraged as it enables access to more effective support and investigation.
- 1.10. Complaint resolution procedures aim to be trauma-informed, and will be conducted in accordance with the principles of natural justice. All information concerning sexual assault and sexual harassment will be treated in confidence as far as possible and unnecessary disclosure may give rise to disciplinary action. Information will only be shared on a need to know basis in order for the appropriate supports to be put in place to address the complaint or to comply with legal obligations.
- 1.11. Confidentiality and information privacy will be upheld, in accordance with legislative requirements and UniSA's policies and procedures.
- 1.12. Action may be taken against anyone who victimises or retaliates against a complainant or a respondent, or a support person of either a complainant or a respondent.
- 1.13. Nothing in this policy detracts from the provisions contained in relevant UniSA statutes, industrial instruments and by-laws, and any action arising from a complaint will be implemented in accordance with these statutes, industrial instruments and by-laws where applicable.
- 1.14. A person has the right to lodge a complaint with an external body at any point. Where this occurs, UniSA may take further action in response to the complaint following (or, provided



that it does not compromise the external body's investigation, in parallel with) the external body's determination.

- 1.15. Under the Children and Young People (Safety) Act 2017 the university is required to make a mandatory report to the Child Abuse Report Line in relation to complaints of sexual assault which have occurred within South Australia where the complainant is aged under 18.

2. UniSA's response to complaints of sexual assault and sexual harassment

2.1 UniSA's response to complaints about sexual assault and sexual harassment will be based on the following principles:

- a) All members of the university community are entitled to make a complaint.
- b) Complaints can be made to the first responders, through the web portal or by contacting the Counsellor and Training Coordinator (Sexual Assault and Sexual Harassment). Anonymous complaints can be submitted through the web portal.
- c) A complaint may take the form of a disclosure of sexual assault or sexual harassment, or may lead to a report of sexual assault or sexual harassment. The university will support a complainant by ensuring that they understand the options available to them when pursuing their complaint.
- d) Safety is of paramount importance and will be the focus of any immediate actions.
- e) Actions will vary depending on the circumstances of the complaint, and whether the complainant wishes to disclose or to report the incident. In the case of anonymous complaints, it may not be possible for an investigation to be initiated for reasons of procedural fairness and natural justice.
- f) Individuals who make, or who are the subject of a complaint, will be treated fairly and in a supportive manner.
- g) Complaints submitted through the web portal will be acknowledged within a reasonable timeframe.
- h) When a complainant reports an incident of sexual assault or sexual harassment, an investigation will be initiated within a reasonable timeframe.
- i) Investigation procedures will adhere to the principles of natural justice and will be undertaken by a person with relevant expertise.

3. Outcomes of complaints of sexual assault and sexual harassment

3.1 There are five potential outcomes arising from a complaint about an incident of sexual assault or sexual harassment. One or more of the following outcomes may apply:

- a) referral to a specialised counselling and medical service (such as Yarrow Place Rape and Sexual Assault Service) or UniSA support person such as the Counsellor and Training Coordinator (Sexual Harassment and Sexual Assault) or other member of the Student Engagement Unit Counselling Team; and/or
- b) potential disciplinary action for the respondent such as suspension, expulsion or program leave (if they are a student), or counselling and/or disciplinary action (if they are a staff member); and/or
- c) identification of any changes in university policies, procedures, training or contractual arrangements; and/or
- d) police investigation and possible prosecution via the relevant criminal justice system



in the state, territory or country where the sexual assault took place for sexual assault offences. Complaints of sexual harassment may result in further investigation or conciliation, as determined by the EOC or AHRC.

- e) Where there is an unproven complaint, no action.

4. Review Mechanisms

- 4.1 Where the complainant is a student and is dissatisfied with the management of the complaint they can contact the UniSA Student Ombud, or in the event of dissatisfaction with the outcome, they can refer to the State Ombudsman.
- 4.2 Where the complainant is a staff member and is dissatisfied with a decision or act of the university they should refer to the provisions listed in Staff Appeals Policy (HR-6.4).

Section II – Responsibilities

5. Responsibilities and/or authorities

- 5.1 All members of the university community are responsible for contributing to and maintaining a harassment-free environment.
- 5.2 Under the Children and Young People (Safety) Act 2017, all employees of the university are required to make a mandatory report where a member of the university community within South Australia under the age of 18, is at risk of harm or abuse.
- 5.3 Any member of the university community who is approached by someone wishing to discuss a possible instance of sexual assault or sexual harassment should support that person in accessing and talking with a trained first responder.
- 5.4 All members of the university community must respect the rights of both the complainant and respondent in line with natural justice.
- 5.5 Staff who provide or access information relating to any complaint are responsible for ensuring that appropriate confidentiality is maintained.
- 5.6 **Responsibilities of Managers and Supervisors**
- 5.6.1 Managers and Supervisors are responsible for understanding relevant legislative requirements and for making every effort to ensure that the workplace and study environment is respectful, safe and free from sexual assault and sexual harassment. Managers and Supervisors are accountable for the effective functioning of their workplace and this includes taking reasonable steps to eliminate instances of sexual assault and sexual harassment.
- 5.6.2 Managers and Supervisors are expected to familiarise themselves with this policy and the processes it supports, and are required to:
- ensure that staff members in their area, and anyone they may engage to provide a service for UniSA, are aware of this policy;
 - reinforce that sexual assault and sexual harassment will not be tolerated;

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- c) arrange and/or support staff development initiatives to raise awareness of respectful behaviour and the procedures for dealing with sexual assault or sexual harassment;
- d) provide a model of behaviour and conduct in line with the principles of this policy;
- e) participate in an investigation when required; and
- f) take prompt and responsible action in response to any complaint of victimisation.

5.6.3 In instances where a Manager/Supervisor considers that they may have observed behaviour that could constitute sexual assault or sexual harassment, they are required to take reasonable steps to stop it or to prevent it from happening again. This may include advising the person(s) involved that the behaviour could give offence and that the behaviour should cease immediately. Subsequent behaviour will be monitored and further action may be taken in accordance with this policy should the behaviour continue.

5.6.4 If a Manager/Supervisor is made aware by a third party that they consider that sexual assault or sexual harassment may be occurring in their area of responsibility they should observe and monitor the area and/or seek further advice from a first responder as detailed in 5.7 below.

5.7 First responders

The following UniSA staff roles have a responsibility as a first responder to report an incident of sexual assault or sexual harassment:

- a) Specifically trained counselling staff can provide psychological and emotional support, assist with safety planning and make referrals to other services, including medical services.
- b) Student Counsellors, the Counsellor and Training Coordinator (Sexual Harassment and Sexual Assault), Access and Inclusion Advisors, Security staff, and UniSA Equity Contacts are equipped to receive complaints from students about incidents of sexual assault or sexual harassment.
- c) Manager Business Partnerships (People, Talent and Culture), Security staff and UniSA Equity Contacts can receive complaints by staff members in relation to incidents of sexual assault and sexual harassment.
- d) Executive Director: People, Talent and Culture, Pro Vice Chancellor : Student Engagement and Equity and the Chair of the Students at Risk Committee are equipped to ensure that an investigation is warranted based on a referral from a first responder and that due process is followed when investigating complaints under the Sexual Assault and Sexual Harassment Policy. They will also communicate outcomes of investigations, and outline review or grievance mechanisms.

Section III – Procedures

6. Disclosing, reporting and investigating sexual assault and sexual harassment

6.1 Making a disclosure

Disclosure is one type of complaint that can be made about an incident of sexual assault or

sexual harassment. It is important to note that making a disclosure will not start an investigation. A complainant must choose to report an incident of sexual assault or sexual harassment before an investigation can begin.

A complainant can disclose an incident of sexual assault or sexual harassment without the details being shared with any other person, including the member of the university community who has inflicted the alleged sexual assault or sexual harassment. However, in all instances, UniSA has a responsibility to do the following:

- take any action to ensure the safety of the complainant, the university community and any identified third party; and
- make a mandatory report of suspicion of sexual assault or sexual harassment occurring to any member of the university community under the age of 18 under the Children and Young People (Safety) Act 2017.

Those who have been subjected to sexual assault or sexual harassment are encouraged to seek support as soon as they are able to do so. While they are encouraged to ultimately report the incident in order to allow it to be investigated, disclosure as a first (or only) step, will enable support to be provided.

6.2 Process for disclosing

6.2.1 The complainant may choose to confide in any other member of the university community in relation to an incident of sexual assault or sexual harassment.

6.2.2 If the latter is not a first responder, as specified in this policy, the person should support the complainant in accessing and talking with a trained first responder.

6.2.3 Once the complainant has disclosed to a first responder, the first responder will:

- a) provide referral to the appropriate support services including contact information;
- b) provide assistance with making a report to the university if the complainant chooses to do so; or
- c) document disclosures they receive by using the web portal on the university's website.

6.3 Making a report

A complainant may decide to report an incident of sexual assault or sexual harassment. A complainant may disclose an incident of sexual assault and sexual harassment to a member of the university community, then decide to make a report. Alternatively, a complainant may choose to report an incident, without separately making a disclosure. Reporting an incident of sexual assault or sexual harassment will initiate an investigation within UniSA.

Where a member of the university community receives a disclosure of sexual assault or sexual harassment they must relay this information to a first responder as soon as possible. The member of the university community must respect and maintain confidentiality of the parties involved.

6.4 Process for reporting (flowcharts attached in Appendix 1)

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6.4.1 A member of the university community may report an incident of sexual assault or sexual harassment by raising it with a first responder. The complainant could also report the incident directly by using the web portal on the university's website. The report via this portal will be provided directly to the Executive Director: People, Talent and Culture or Pro Vice Chancellor: Student Engagement and Equity.

If the complainant makes a report to a first responder they will:

- a) provide referral to the appropriate support services including contact information;
- b) refer the matter to the Executive Director: People, Talent and Culture or Pro Vice Chancellor: Student Engagement and Equity, as appropriate, to receive the report and enable an investigation to be initiated; and
- c) support the complainant in reporting the incident to the police if the complainant chooses to do so.

6.4.2 An investigation will be undertaken, following the principles of natural justice, in a manner that is respectful to both the complainant and the respondent. The importance of confidentiality will be reinforced to the complainant, the respondent and any support people for both parties.

- d) If the respondent is a student, the report will be referred to the Pro Vice Chancellor: Student Engagement & Equity to initiate an investigation.
- e) If the respondent is a staff member or is engaged by UniSA under any other contractual arrangement, the report will be referred to the Executive Director: People, Talent and Culture to initiate an investigation or appropriate response.

6.4.3 Respondents will be provided with details of the complaint made against them, and will be given 10 working days, or such other time specified by the Executive Director: People, Talent or Culture or Pro Vice Chancellor: Student Engagement and Equity, to consider and provide a response to the complaint.

6.4.4 Where facts differ between the details provided by the complainant and the response provided by the respondent, witnesses may also be interviewed as a part of the investigation. Information will not be unnecessarily disclosed to witnesses, and the importance of confidentiality will be reinforced.

6.4.5 Information gathered during the investigation will be documented by the investigator and a report will be prepared. The decision about any action required arising from the outcome of the investigation will be made by:

- a) the Pro Vice Chancellor: Student Engagement & Equity if the respondent is a student; or
- b) the Executive Director: People, Talent and Culture if the respondent is a staff member; or
- c) the Managers or Supervisors of the relevant area(s), for any other contractual arrangements.

6.4.6 Where it is determined that a complaint is substantiated, UniSA will decide upon the appropriate disciplinary actions aligned with:

- a) appropriate bylaws and statutes, if the respondent is a student;

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- b) the relevant enterprise agreement if the respondent is a staff member, or the relevant contract if the respondent has been engaged by the university under any other contractual arrangement.

7. Where the matter is reported to police

If the matter has been reported to police, the university will not take any action that may compromise the police investigation or subsequent proceedings. UniSA will continue to make support resources available during this period. UniSA may take other interim measures to safeguard the complainant, respondent and other members of the university community following consultation with police.

On completion of the police investigation, the university may undertake appropriate actions in alignment with its policies, code of conduct and bylaws.

8. Where a complaint relates to a third-party provider

If the respondent is affiliated with a third-party provider, UniSA will continue to support the complainant by providing access to university resources. The university will also ensure that the complainant is familiar with the reporting options and avenues available to them both within and outside the university.

9. Where a witness or observer reports a complaint

If a member of the university community or any other person becomes aware or has observed an incident of sexual assault or sexual harassment they may make a complaint to UniSA or the police, however, they will need the consent of the person who has experienced the incident prior to making a report. It is important to ensure as much as possible that the person who has experienced the incident feels in control of the complaints process, as they may be required to actively participate in the process.

The university has a duty of care to ensure the safety of the broader university community and may need to take action in order to achieve this, including situations where a complainant may not wish to actively participate in a formal complaints process.

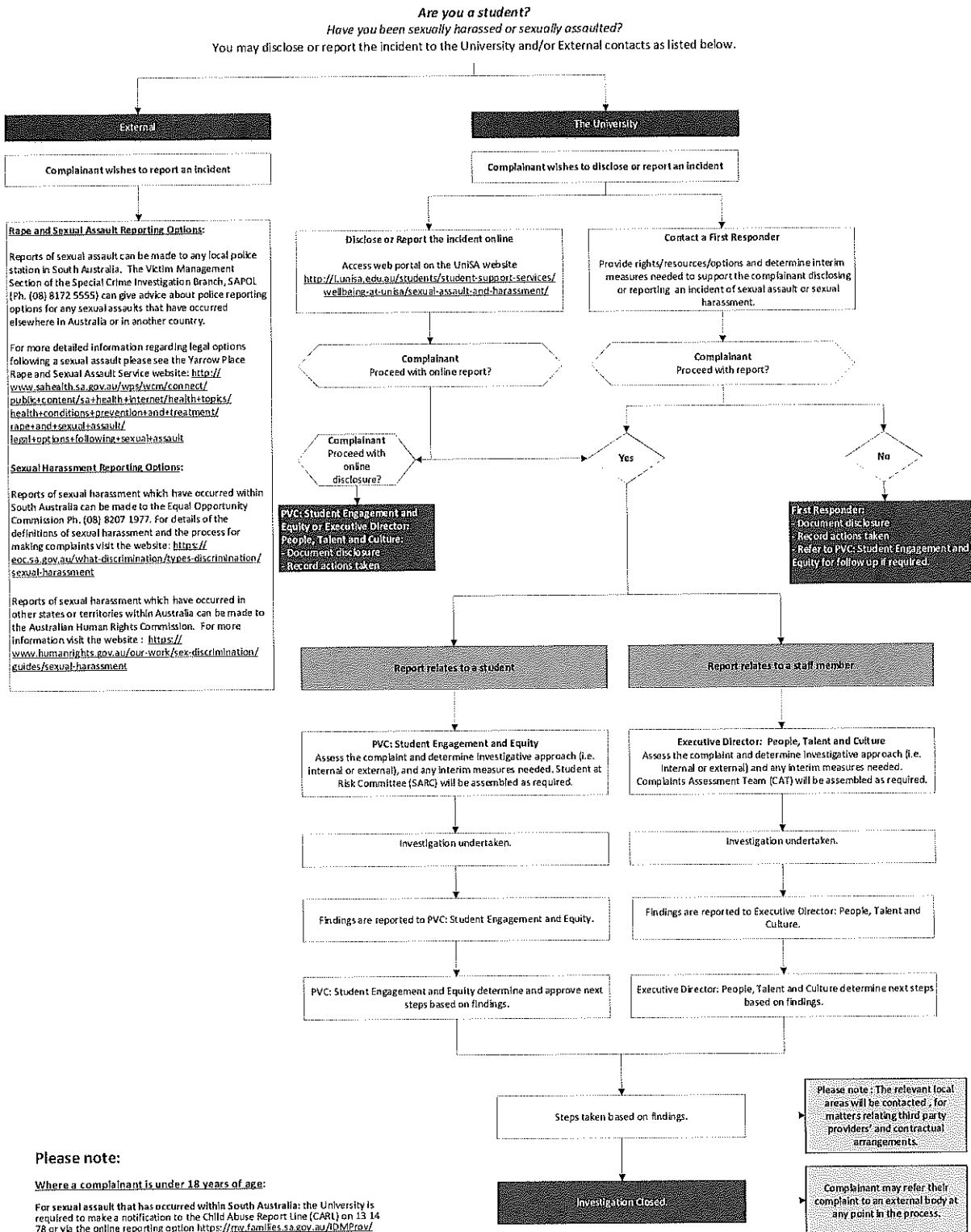
10. Right to withdraw a complaint

A complainant has the right to withdraw a complaint at any stage of the process. However, UniSA may continue to act on the complaint to ensure the safety of the complainant and members of the university community.

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Appendix 1 – Disclosing or Reporting an incident of sexual assault and sexual harassment

A. Process for disclosing and reporting (Students)



Please note:

Where a complainant is under 18 years of age:

For sexual assault that has occurred within South Australia: the University is required to make a notification to the Child Abuse Report Line (CARL) on 13 14 78 or via the online reporting option <https://my.families.sa.gov.au/IDM/Prev/landing.html>

Where a complainant relates to third party providers:

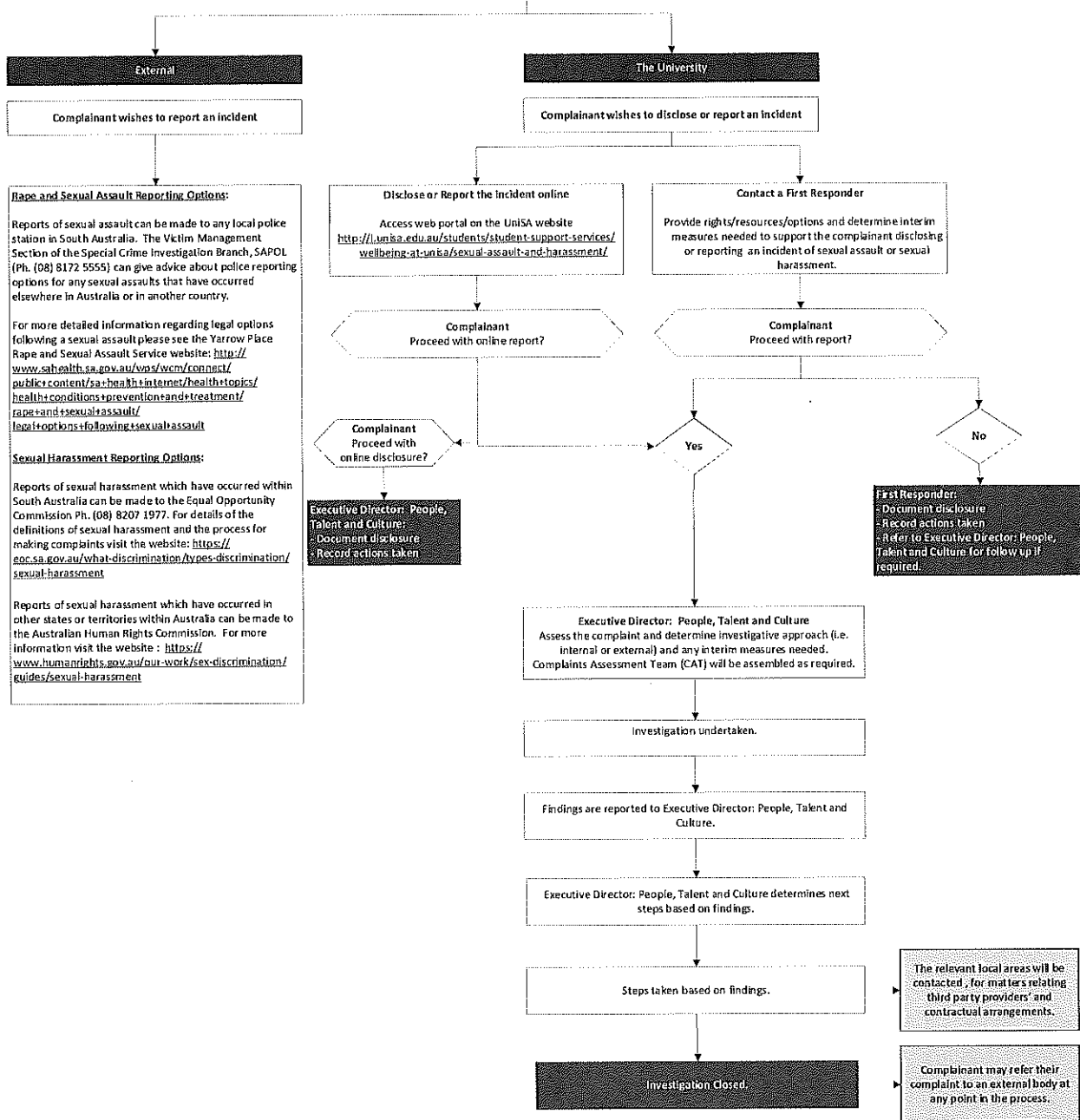
All complaints relating to 'third party providers' will be investigated in accordance with University contract management procedures. Any breach of contract may result in penalties, cancellation or other sanctions to the third party, including referral to the police.

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Appendix 1 – Disclosing or Reporting an incident of sexual assault and sexual harassment

B. Process for disclosing and reporting (Staff)

Are you a member of staff?
Have you been sexually harassed or sexually assaulted?
You may report the incident to the University and/or External contacts as listed below.



Please note:

Where a complainant is under 18 years of age:

For sexual assault that has occurred within South Australia: the University is required to make a notification to the Child Abuse Report Line (CARL) on 13 14 78 or via the online reporting option <https://my.families.sa.gov.au/IDMPProv/landing.html>

Where a complainant relates to third party providers:

All complaints relating to 'third party providers' will be investigated in accordance with University contract management procedures. Any breach of contract may result in penalties, cancellation or other sanctions to the third party, including referral to the police.

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**UNIVERSITY OF MASSACHUSETTS AMHERST
SEXUAL HARASSMENT POLICY AND PROCEDURES
(Doc. T92-037)**

POLICY

The University of Massachusetts is committed to providing faculty, staff and students with an environment where they may pursue their careers or studies without being sexually harassed. Sexual harassment of or by any member of the University community is unacceptable and will not be tolerated. It is illegal and constitutes a violation of Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and Massachusetts G.L.c.151B and 151C.

For the purposes of this policy, it is defined as follows:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when: 1) submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic work; or 2) submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting such individual; or 3) such conduct has the purpose or effect of unreasonably interfering with an individual's performance or creating an intimidating, hostile or sexually offensive working or academic environment.

Examples of sexual harassment include, but are not limited to the following:

- repeated unwanted sexual flirtations, advances or propositions;
- continued or repeated verbal abuse or innuendo of a sexual nature;
- uninvited physical contact such as touching, hugging, patting, brushing, or pinching;
- verbal comments of a sexual nature about an individual's body or sexual terms used to describe and individual;
- display of pictures, posters or cartoons that a reasonable person would find offensive or sexually suggestive;
- continued or repeated jokes, language, epithets or remarks of a sexual nature;
- prolonged staring or leering
- making obscene gestures or suggestive or insulting sounds;
- demand for sexual favors accompanied by an implied or overt threat concerning an individual's employment or academic status or promises of preferential treatment;
- incident exposure.

In determining whether an alleged incident constitutes sexual harassment, those entrusted with administering this policy will look at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The final decision regarding a suitable penalty will be made from the finding of fact on a case-by-case basis and from any record of previous sexual harassment by the Respondent.

The Equal Opportunity and Diversity Office, 305 Whitmore Building (413-545-3464) will be responsible for administering this policy and its procedures. The Associate Chancellor of Equal Opportunity and Diversity or his/her designee will serve as Chair of the Sexual Harassment Board (see Section VIII,A for a description of this Board and its responsibilities). The Equal Opportunity and Diversity Office, in concert with the Chancellor, the Deputy Chancellor, and Vice Chancellors will see that all supervisors on the Amherst campus receive information and training concerning sexual harassment and the responsibilities of supervisors when complaints are received.

MS *A*

I. PURPOSE AND SCOPE

This grievance procedure is intended to provide a fair, prompt and reliable determination about whether the University's sexual harassment policy has been violated. Anyone who, at the time of the alleged harassment, was either employed by or enrolled at the University of Massachusetts Amherst may file a complaint alleging violation of this policy. Specific procedures for compliant processing will be determined consistent with the exceptions noted in the last paragraph of this section. No University employee or student is exempt from the jurisdiction of this policy.

In most instances, complaints will be initiated by the target of the alleged harassment. However, the University reserves the right to initiate a formal grievance (or to continue processing a complaint even after a request to withdraw has been submitted by the Complainant in accordance with Section IV) when, in the opinion of the Chair of the Sexual Harassment Board, it is appropriate to do so. In such instances the Chair of the Sexual Harassment Board, in consultation with the Chancellor, will designate who will present the University's case.

As in any grievance procedure justice requires that the legal rights, as well as the right to academic freedom, of the Complainant and the Respondent be fully assured. The University will make every effort to protect these rights and will knowingly undertake no action that threatens or compromises them. Notwithstanding, nothing in these procedures is intended to prevent the University administration from taking appropriate interim measures to protect one or more of the parties until such time final adjudication regarding the complaint has been reached.

This procedure is not intended to impair or limit the right of anyone to seek a remedy available under state or federal law. A complainant may file a complaint with an external agency to meet state and federal agency deadlines without jeopardizing his or her right to a University hearing (see Section XI). Upon official notification that an individual has filed with an external agency, the University will inquire if the Complainant wishes to continue with the internal grievance process. Should the Complainant seek to discontinue the internal process, the University will nonetheless continue to fact find and take appropriate measures.

If the Respondent is a member of the Chancellor's staff, the Deputy Chancellor will serve the role described for the Respondent's Vice Chancellor in this procedure. If the Respondent is the Deputy Chancellor, the Chancellor will serve the role described for the Respondent's Vice Chancellor. If the Respondent is the Chancellor, the matter shall be referred to the President's Office. [Note: In all instances throughout this document where the term Vice Chancellor is used, it will be understood that the term also refers to the Deputy Chancellor or Chancellor, whichever is appropriate.]

When the Respondent in a formal grievance is an undergraduate student, the complainant should contact the Dean of Students Office, 227 Whitmore Building (413-545-2684); all such complaints will be handled in accordance with procedures as described in the *Code of Student Conduct*. When the Respondent is a graduate student, the Complainant will be referred to the Dean of the Graduate School (or his or her designee), 514 Goodell Building (413-545-5271) who has analogous procedures. (In instances in which a Respondent is both a student and an employee, the Chair of the Sexual Harassment Board shall review the circumstances of the case and determine which grievance procedure is appropriate).

II. CONFIDENTIALITY

All parties involved in any aspect of this process will act at all times to preserve the confidentiality of these proceedings. Information will be shared with those individuals who have a legitimate and operational need to be informed, and to the extent that it is necessary to maintain the effectiveness of this process. Individuals found to have violated the confidentiality of this process may be subject to disciplinary proceedings consistent with the provisions of their collective bargaining agreement or other applicable administrative rules and regulations.

III. DEADLINES

A Complainant will have twelve months following an incident to initiate a complaint under this policy and procedures unless he or she can show good reason for having that deadline waived. Requests for exceptions to the filing deadline must be made in writing to the Chair of the Sexual Harassment Board who will render a decision in writing following his or her review of the request. Legal Counsel may be consulted in making this determination.

In some instances, particularly when a pattern of behavior is the subject of the complaint, supporting evidence may include reports of behavior that occurred outside of the twelve month filing deadline. Such evidence is not subject to the exception requirement.

Failure to meet any of the deadlines stipulated in this procedure will not result in a decision by default or prevent the process from continuing.

IV. REQUIREMENTS FOR PARTICIPATION AND WITHDRAWALS

If a Respondent fails to answer a charge or to participate in this process, the Chair of the Sexual Harassment Board will notify his or her Vice Chancellor of that fact. Failure to respond to a claim or to appear at a hearing will be considered a breach of responsibility and could result in disciplinary action. Furthermore, a Respondent will not prevent this process from proceeding by his or her silence or absence; failure to appear may result in the hearing proceeding solely on the basis of the Complainant's testimony and evidence.

A complainant may request to withdraw a formal grievance after it has been filed by submitting written reasons for the withdrawal to the Chair of the Sexual Harassment Board. The Respondent must provide written agreement to the withdrawal before the charges are dropped. A Respondent who does not agree to the withdrawal request must provide written reasons to the Chair of the Sexual Harassment Board who, after consultation with appropriate administrators including, where necessary, legal counsel, will issue a written determination to the parties regarding the status of the claim. A complainant may not interrupt the process simply by failing to appear at the hearing or other required meetings. Failure to appear may result in the hearing proceeding solely on the basis of the Respondent's testimony and evidence.

None of the above actions should be construed to impinge upon the right of the University to initiate or continue a claim in spite of a request to withdraw when, in the opinion of the Chair of the Sexual Harassment Board, the allegations are sufficiently egregious to merit further action on the part of the University. The alleged victim will be relied upon to serve as a witness under these circumstances.

V. RETALIATION

No individual shall be retaliated or discriminated against for participating in these procedures. Any act of retaliation directed against person(s) participating in these procedures is illegal. Complaints of retaliation should be addressed to the Associate Vice Chancellor for Equal Opportunity and Diversity who will determine the appropriate action.

VI. PENALTIES

The penalties for those found to have violated this policy may include, but will not be limited to, any one or combination of the following: verbal admonition, written warning placed in the personnel file, probation, suspension without pay, demotion, removal from administrative duties, or dismissal. Any disciplinary measures imposed will be consistent with applicable union contractual provisions.

VII. FILING SEXUAL HARASSMENT COMPLAINTS

The University recognizes that it has a responsibility to provide a procedure for rapid and equitable resolution of all sexual harassment complaints. In many instances, resolution can be reached without the need for formal measures. The goal in all instances is to ensure that inappropriate and offensive behavior is stopped. To assist Complainants in resolving sexual harassment complaints, the University has established both informal and formal procedures, and has identified a well trained cadre of individuals, "Complaint Handlers", (see Appendix A) who can advise parties of appropriate options and procedures. In addition, the University's Equal Opportunity and Diversity Office (EO&D) can provide the names of volunteers from the University community who are willing to serve as "Support and Referral Contacts" (see Appendix B); Support and Referral contacts, who can serve the needs of either Complainants or Respondents, are available to accompany participants to meetings or formal hearings and provide support throughout the process.

VII.A. INITIATING A COMPLAINT

Complainants may initially consult with a Support and Referral Contact (see Appendix B) who can provide information about the complaint handling system and options available for resolution. Individuals may alternatively initiate discussions regarding a potential complaint directly with their departmental supervisor; department head or chair; or similarly situated administrator with line authority (these individuals may collectively be referred to as "Complaint Handlers"; see Appendix A of this document); or Complainants may directly contact the Equal Opportunity and Diversity Office (EO&D). [Note: The Appendices referred to in this paragraph will be updated annually and widely published.] All of the above-named individuals can provide advice regarding available options and procedures, and assist in determining how to proceed with the complaint (i.e. informally or formally).

The Complaint Handler (initial intake person as identified in the preceding paragraph) will assess the matter; determine what immediate action must be taken; and advise the Complainant about how to proceed – informally, using one of the methods described in Section VII.B.1-3 or formally, using the methods described in Section VII.C and VIII.

The Complaint Handler may also consult with the Chair of the Sexual Harassment Board to determine the appropriateness of proceeding under these procedures. The Chair of the Sexual Harassment Board has the authority to discontinue processing a complaint. This decision is final and not subject to appeal.

The Complaint Handler, in consultation with the Chair of the Sexual Harassment Board, will identify the appropriate fact finding mechanism. Fact-finding will be done either internally (by a University staff member) or externally (by a person whose services will be retained specifically for this purpose). When fact-finding results in a written report, this will be forwarded to the Chair of the Sexual Harassment Board and may later be introduced into the record during a formal hearing process.

Complaint Handlers must file a written report of all complaints, regardless of their disposition, with the Equal Opportunity and Diversity Office who will maintain a record of all informal complaints and formal grievances. Such record will include Complainants' and Respondents' names and the outcome of proceeding, including sanctions imposed if any. At the end of every academic year the EO&D Office will prepare an annual report of statistics and relevant commentary for the Chancellor. The annual report will be available to faculty, staff and students upon written request to the Equal Opportunity and Diversity Office. The annual report will not contain names, but may contain other relevant statistical data including, but not limited to, status of the parties (e.g. undergraduate or graduate student; classified or professional staff; or faculty); department or other campus affiliation; nature of the complaint; and outcome.

VII.B. INFORMAL RESOLUTION

In some circumstances informal resolution of a complaint prior to or instead of initiating the formal process may be more satisfactory than directly proceeding to a formal grievance. Informal resolution options include, but are not limited to, self-help; consultation and action at the department level; or mediation through the Ombuds Office.

Further information regarding the informal resolution process may be obtained from Support and Referral Contacts (see Appendix B); Complaint Handlers (see Appendix A); or by contacting the Equal Opportunity and Diversity Office (EO&D).

VII.B.1. SELF HELP

The goal in any compliant process is to stop the harassing behavior. If a Complainant believes they are experiencing inappropriate conduct and feels they can comfortably confront the individual responsible for the inappropriate conduct, they may do the following:

- confront the person(s) promptly;
- inform the person(s) that the conduct offends, intimidates, or embarrasses them;
- describe how this behavior is affecting them;
- request the behavior stop immediately.

It is helpful to have such a conversation with a witness present who can corroborate the exchange. If this is not possible or practical, the Complainant may write a letter incorporating the above points and give it to the person in front of a witness. The Complainant should retain a copy of this letter.

In all instances, the Complainant should document the event(s), including dates, times, places and witnesses.

If this action fails to provide the Complainant with the appropriate relief, or as an alternative to using this approach, the measures described below may be considered.

VII.B.2. CONSULTATION AND ACTION AT THE DEPARTMENT LEVEL

When the Complainant cannot comfortably and directly confront the person who is being offensive, or the behavior has continued in spite of direct confrontation, it is advisable to report the behavior

to someone in a position of authority who can intervene. Such persons include an immediate supervisor, department head or chair, or similarly situated supervisory personnel (see Section VII.A).

VII.B.3. MEDIATION

It is sometimes the case that the issue under contention can be resolved through mediation. The Ombuds Office, located in Room 809, Campus Center, is available to provide mediation services. The Ombuds Office is also prepared to provide referrals for more formal measures when circumstances warrant it.

VII.C. FORMAL RESOLUTION (FILING A FORMAL GRIEVANCE)

Complainants who are dissatisfied with or do not wish to utilize informal resolution should consult directly with the EO&D Office to determine the appropriateness of filing a formal grievance. Although informal resolution attempts are not required prior to filing a formal grievance, they are nonetheless encouraged.

Any individual who chooses to file a formal sexual harassment grievance may do so immediately following the incident giving rise to the complaint, or following efforts to reach an informal settlement. In no event will it be filed greater than twelve months following the incident which gave rise to the complaint unless the provision of Section III have been met. Staff from the EO&D Office will initially meet with the Complainant to assess the complaint, including the appropriateness of the complaint being filed under this Policy and Procedures; University Legal Counsel may be consulted on this subject (see Section VII.A). The EO&D Office will then advise the Complainant of appropriate next steps and will identify a fact-finder if one has not already been appointed.

VIII. FORMAL GRIEVANCE PROCEDURE

Following appropriate initial consultation with the EO&D Office, the grievance must be submitted in writing on an official grievance form (obtainable from the EO&D Office); it must state clearly and concisely the Complainant's description of the incident; it may also indicate any remedy sought. The complaint must be signed and dated by the Complainant. The EO&D Office will provide the Respondent with a copy of the complaint in a timely manner. A copy of the complaint will also be sent to the Respondent's Vice Chancellor.

Prior to their participation in a hearing, the Chair of the Sexual Harassment Board will meet with each Hearing Panel to review sexual harassment issues and the hearing procedures.

Before the hearing is convened, the parties will receive written notification of the Panel's appointment from the Chair of the Sexual Harassment Board. Each party to the proceeding will have the right to object to the appointment of any panel member on the grounds that that member's participation would jeopardize the party's right to a fair and reliable hearing. All objections must be submitted in writing to the Chair of the Sexual Harassment Board. The Chair of the Sexual Harassment Board will determine whether objections have merit; will judge whether a panel member will be seated; and will notify the objecting party in writing. This decision will be final.

The Hearing Panel will hear testimony and consider evidence related to the complaint, including the written findings of fact as prepared by the fact-finder. (These findings will be provided to the Panel along with copies of the complaint and the response prior to the hearing). The Panel will, on the basis of all information and testimony before them, make a determination about whether the University Policy on Sexual Harassment has been violated and, if so, will submit a recommendation for appropriate penalty and relief to the Chair of the Sexual Harassment Board. The Chair will

review the Panel's recommendation and forward it, along with appropriate commentary, to the Respondent's Vice Chancellor.

Duties and Powers of the Presiding Officer and the Hearing Panel

The Presiding Officer will:

1. ensure an orderly presentation of all evidence;
2. ensure that the proceedings are accurately recorded; and
3. see that a fair and impartial decision based on the issues and evidence presented at the hearing is issued by the Hearing Panel.

The Hearing Panel will:

1. define issues of contention;
2. conduct a fair and impartial hearing which ensures the rights of all parties involved;
3. receive and consider all relevant evidence which reasonable people customarily rely upon in the conduct of serious business;
4. ensure that the Complainant and Respondent have full opportunity to present their positions and to present witnesses and evidence which support their positions; further, the Hearing Panel, based upon their review of the case prior to the hearing, may also name individuals to appear as witnesses;
5. ask relevant questions of the Complainant, Respondent, and witnesses to elicit information which may assist the Hearing Panel in making a decision; members of the University community have a responsibility to fully cooperate with this process;
6. continue the hearing to a subsequent date if necessary to permit either party or the Panel to produce additional evidence, witnesses, or other relevant materials;
7. change the date, time or place of the hearing on its own motion or for good reason shown by either party, and with due notice to all parties;
8. permit both parties to submit written arguments within ten working days from the conclusion of the hearing;
9. rule by majority vote on all questions of fact, interpretations of rules, regulations and policies, recommendations for penalties and relief, and any requests that are made during the hearing.

The Hearing Panel may consult with University Legal Counsel or have his or her assistance at the hearing.



VIII.C. THE HEARING

The Hearing is intended to provide a forum within which a panel of peers determines whether University policy has been violated. Both parties will be given a full and fair hearing. The proceedings, although formal, is not a court proceeding and the Hearing Panel will not be bound by the procedures and rules of evidence of a court of law. In most instances, Complainants and Respondents will be expected to speak for themselves. The Hearing Panel will hear and admit evidence which it believes is pertinent to the case.

The Hearing Panel will conduct its hearings by the following procedures:

1. The Chair of the Sexual Harassment Board will initially provide the Hearing Panel with copies of the complaint, the response, and the fact-finder's report; the Chair will also work with the Hearing Panel and the parties to coordinate the scheduling of the hearing. A closed hearing will be held as soon as possible following the appointment and acceptance of the Hearing Panel by the parties. The Complainant and the Respondent must submit all documents they intend to introduce at the hearing, as well as the names and affiliations of their witnesses and advocates (see Section VIII.C.5) in reasonable advance of the hearing date. Actual deadlines for submissions of these materials will be established once a hearing date has been set. The Chair of the Sexual Harassment Board will provide copies of all submitted materials to the Hearing Panel and to each of the parties. Documents not submitted in advance of the hearing may be introduced into the record on the day of the hearing provided all parties and the Panel are accorded sufficient time to review the documents and respond accordingly. In this case, the party submitting the documents must provide sufficient copies for all relevant parties.
2. The Hearing Panel will convene prior to the hearing date to review the complaint, the response, the fact-finder's report and all materials submitted by the parties. The Panel may, upon review of materials and witness lists submitted by the parties to date, identify additional witnesses they wish to call on the day of the hearing or request that the parties provide additional materials. The Presiding Officer will provide the parties with the names of additional witnesses being requested to appear by the Panel. The Presiding Officer will ensure that each party receives copies of any additional documents solicited at this stage of the proceedings. Names of additional witnesses as well as copies of all additional material will be provided to the parties in a timely manner in advance of the hearing.
3. The Presiding Officer will meet with the parties prior to the hearing to review hearing procedures and to respond to any procedural matters that have arisen.
4. The Complainant and Respondent will have the opportunity to hear and respond to all testimony, to examine all evidence, and to present evidence and witnesses which advance arguments relevant to the issues in contention.
5. Each party will have the right to be accompanied and advised by two people at any stage of the proceedings. Advisors will normally be members of the University community but are not restricted to those names appearing on Appendix B of this document. Neither one of the advisors may be an attorney, except that the Respondent may be accompanied and advised by legal counsel when criminal charges involving the same issues as the sexual harassment charges are pending against the individual. In this circumstance, the Complainant may likewise be accompanied and advised by legal counsel. Legal counsel may not speak on behalf of either party. Advisors will not address the Hearing Panel directly except with the permission of the Panel. The Chair of the Sexual Harassment Board must be advised as soon

as possible, but in no event less than five working days in advance of the hearing date if either party will be accompanied by an attorney.

6. Each of the parties is responsible for informing their respective advocates and witnesses of the date, time and place of the hearing.
7. If either party is a member of a collective bargaining unit, the advisors mentioned above may, upon the request of the party, be representatives of his or her union. However, neither party will be required to be advised by a union representative. When there is no request for union representation, the Chair of the Sexual Harassment Board will notify the appropriate union that a hearing has been scheduled; the union will be allowed to send an observer.
8. The hearing will be recorded on tape by the Hearing Panel and the tapes will become the property of the University. Following the completion of the hearing, either party may have supervised access to the tapes by submitting a written request to the Chair of the Sexual Harassment Board.

The proceedings before the Hearing Panel will be as follows:

Following opening remarks, the Presiding Officer will summarize the charge(s) and ask the Respondent to either admit or challenge the allegation(s).

The Complainant will present a brief opening statement, followed by the same from the Respondent. Each party will then present their evidence and witnesses, followed by witnesses called by the Hearing Panel. Questions may be posed at any stage of the proceedings. Each party may make a brief concluding statement to the Hearing Panel.


Either party may submit a written argument following the hearing, provided he or she notifies the Presiding Officer within two working days after the hearing. The written argument may not introduce new information, but rather must be a summary of the information already introduced and presented. The written argument will be submitted to the Presiding Officer within ten working days after the hearing's conclusion. Copies of written arguments will be sent to each party by the Presiding Officer.

A Hearing Panel, by a majority vote of its members, may make other rules concerning the procedure of a hearing which it deems appropriate and consistent with this Sexual Harassment Policy.

VIII.D. DECISION OF THE HEARING PANEL

Following the hearing and submission of written arguments, if any, the Hearing Panel will convene for private deliberations to determine whether the University's Policy on Sexual Harassment has been violated. The Panel will prepare a detailed report noting its conclusion; this report will clearly state the facts of the case and the supporting evidence; the conclusion must be fully supported by the evidence elicited at the hearing. The decision of the Hearing Panel will be submitted to the Chair of the Sexual Harassment Board immediately following the completion of the Panel's deliberations.

When the Panel finds no violation, the Chair of the Sexual Harassment Board will forward the Hearing Panel's report along with appropriate commentary to the Respondent's Vice Chancellor. The Vice Chancellor will review the materials and submit his or her final decision in a timely manner to the Complainant, the Respondent, and the Chair of the Sexual Harassment Board. The fact that there has been no violation will be registered in all University records pertaining to the case.



When the Panel finds a violation of the Sexual Harassment Policy has occurred, the Hearing Panel will recommend a penalty for the Respondent and relief for the Complainant. The Chair of the Sexual Harassment Board will review the Panel's decision and provide appropriate commentary to the Vice Chancellor. This commentary may include an adjustment to the recommended penalty if, upon review of University records, it is determined that there have been past violations of this Policy by the Respondent; specific written reasons for the adjusted penalty must be provided. The Chair will subsequently forward the Hearing Panel's report, the complete record of the hearing, and appropriate commentary to the Respondent's Vice Chancellor.

The Vice Chancellor will render his or her decision in writing directly to the Complainant, the Respondent, and the Chair of the Sexual Harassment Board immediately following his or her review of all of the materials noted above. When a violation has been found, the Vice Chancellor will be responsible for determining and implementing both the penalty and relief. The Vice Chancellor's determination of penalty and relief (including the dates by which each will be implemented) will be included in the written decision submitted to the Complainant, the Respondent, and the Chair of the Sexual Harassment Board. The Chair will notify the Hearing Panel of the final decision.

Following receipt of the Vice Chancellor's decision, the parties may request copies of any written record. Requests must be submitted in writing to the Chair of the Sexual Harassment Board.

VIII.E. REVIEW


Within thirty days after receiving a written copy of the Vice Chancellor's decision, the Respondent, the Complainant, or the Chair of the Sexual Harassment Board may request a review by submitting a written petition to the Chancellor (who may appoint a designee to handle the review). The petition for review will set forth in detail the specific grounds upon which review is sought. The Chancellor will ensure that the Respondent's Vice Chancellor, Chair of the Sexual Harassment Board, the Hearing Panel, and both parties receive a copy of the petition. The Chancellor will review the record of the case, which includes the taped record of the hearing; documents considered by the Panel; the Panel's findings and recommendations; and any record of previous offenses. Based upon this review, the Chancellor may modify or vacate a Vice Chancellor's decision. The Chancellor may, for example, decide that the Panel's findings are unsupported by a preponderance of evidence, or that some aspect of the process violated an individual's legal rights, academic freedom, or these procedures.

The Chancellor or designee may: a) affirm or revise the decision of the Vice Chancellor; b) request specific findings from the Panel; or c) remand the case to the Chair of the Sexual Harassment Board for a new hearing before a new Hearing Panel. In the course of review, the Chancellor may consult with University Legal Counsel who will have access to the complete record of the case.

The Chancellor or designee will render a written decision in as timely a manner as possible following receipt of the petition for review and all materials relating to the grievance. The Chancellor's decision will be sent to the Respondent's Vice Chancellor, the Complainant, the Respondent, the Hearing Panel, and the Chair of the Sexual Harassment Board. The Chancellor's decision will constitute final University disposition of the matter.

IX. RECORDS

Records of all proceedings under this Policy will be kept by the Equal Opportunity and Diversity Office and may be accessible to authorized staff as necessary. For example, records may be accessed when determining an appropriate penalty for a subsequent sexual harassment complaint; when a complaint of retaliation is made; when a decision is reviewed; or when a Respondent is a candidate for a supervisory position.



The records will also be available to University Legal Counsel for any proceeding related to these policies or procedures, whether internal to University or in any judicial or administrative proceeding in which the University, its trustees, officers, employees or agents are a party.

X. STANDARD OF PROOF

A violation of this Sexual Harassment Policy will be found only where there is a preponderance of evidence that a violation has occurred. The Hearing Panel, the Vice Chancellors, the Deputy Chancellor and the Chancellor will be found to make their determinations based on this standard of proof.

XI. STATE AND FEDERAL REMEDIES

In addition, complaints of sexual harassment may be filed with one or more of the government agencies set forth below.

1. Equal Employment Opportunity Commission (EEOC)

One Congress Street, 10th Floor, Room 1001
Boston, MA 02114
(617) 565-3200

2. Massachusetts Commission Against Discrimination (MCAD)

Boston Office

One Ashburton Place, Room 601
Boston, MA 02108
(617) 727-3990

Springfield Office

436 Dwight Street, Room 220
Springfield, MA 01103
(413) 739-2145

3. Office for Civil Rights, Region I (OCR)

United States Department of Education
Room 222
Post Office Square
Boston, MA 02109
(617) 223-9667



Appendix A

Complaint Handlers

Complaint Handlers are those individuals who have been specially trained to receive complaints of sexual harassment and to advise Complainants about, and assist them in choosing, the appropriate option(s) for handling their complaint. Complaint Handlers are empowered to fact find or delegate fact-finding, and resolve complaints. Complaint Handlers will also provide information to all parties (i.e. Complainant(s) and Respondent(s)) regarding the availability of *Support and Referral Contacts* and will encourage their use.

Complaint Handlers include the following individuals: Department Heads and Chairs, Managers, Directors, Deans, Vice Chancellors and all other administrators with line authority.

Complaint Handlers will:

1. receive complaints;
2. advise Complainants about available options;
3. assist Complainants in implementing options;
4. consult with and report complaints to the EO&D Office;
5. identify and ensure the appropriate fact finding strategy;
6. make recommendations about or impose discipline as appropriate in informal cases;
7. provide recommendations to the parties about support and available resources, including the availability of Support and Referral Contacts;
8. do appropriate follow-up to ensure non-retaliation.

A handwritten signature in black ink, appearing to be 'MS' followed by a stylized flourish.

Appendix B

Support & Referral Contacts

Support & Referral Contacts are members of the University community who have either been nominated or volunteered to perform this function. They have been specially trained to be initial points of contact for individuals who have complaints of sexual harassment; to facilitate Complainants and Respondents in competently engaging the complaint handling system; and to provide information and advice about available resources when other areas of an individual's life have been affected by the existence of a complaint. **Support and Referral Contacts are NOT finders of fact or case managers.** The names of these individuals will be published regularly in a variety of places throughout the campus.

Support and Referral Contacts will:

1. serve as the first point of contact;
2. make appropriate referrals;
3. do appropriate follow-up;
4. serve as a resource;
5. be available throughout the entire process

These individuals are available to provide support and information to either Complainants and Respondents, although each party will have their own Support and Referral Contact. Support and Referral Contacts are available as the first point of contact whenever a complaint of sexual harassment arises and, as such, will be responsible for referring Complainants to the appropriate Complaint Handler. (Conversely, Complaint Handlers will be responsible for ensuring that the parties are aware of the support and referral services available through this group). It is intended that Support & Referral Contacts are available to the parties throughout the entire complaint resolution process, including when a formal grievance is initiated.



SS5

Nasreen

From: Aretha
Sent: 16 April 2019 11:32 AM
To: mosima@lrc.org.za; jacqueline@stegmanns.co.za; reception@maserumule.co.za
Cc: Charlene; Nasreen; Chriscy
Subject: KM v UNIVERSITY OF SOUTH AFRICA & FIVE OTHERS (CASE NO: 42164/18) /
CONSENT TO BE ADMITTED AS AMICUS CURIAE
Attachments: 20190416112926563.pdf
Importance: High

Dear All

Enclosed please find our correspondence of even date for your perusal, attention and consideration.

We look forward to receiving your written consent by no later than Thursday, 18 April 2019.

Kind regards



WOMEN'S LEGAL CENTRE

Aretha Louw
7th Floor Constitution House
124 Adderley Street
Cape Town
8001

Tel: 021 424 5660
Fax: 021 424 5206
Website: www.wlce.co.za

facebook

twitter

MS

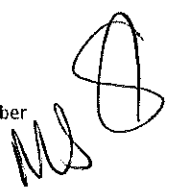
16 April 2019

TO: **Ms Mosima Kekana**
Legal Resources Centre
Applicant's Attorney
c/o Stegmanns Inc Attorneys
379 Lynnwood Road
Menlo Park
Pretoria
By email: mosima@lrc.org.za
jacqueline@stegmanns.co.za

AND TO: **Maserumule Attorneys**
Attorneys for the First to Sixth Respondents
c/o Ledwaba Mazwai Attorneys
141 Boshoff Street
Nieuw Muckleneuk
Pretoria
By email: reception@maserumule.co.za
Ref: Mr P Maserumule/Mrs T Makamu/U133

RE: **KM v UNIVERSITY OF SOUTH AFRICA & FIVE OTHERS (Case No.: 42164/18)**

1. We refer to the above matter, and the notice in terms of Rule 16A filed on 07 March 2019.
2. We act on behalf of the Women's Legal Centre Trust ("**the Trust**"), which is a non-profit Law Centre that conducts public interest gender litigation and advocacy on matters concerning the promotion and protection of gender equality in South Africa. One of the core objectives of the Trust, as set out in its Trust Deed, is to advance and protect the human rights of all women and girls in South Africa, particularly women who suffer many intersecting forms of disadvantage.
3. The Trust wishes to intervene in the above matter as *amicus curiae*. In doing so, the Trust will not repeat any issue already addressed in the arguments of the other parties. Rather, the Trust will raise new arguments that may be useful to the Court in the determination of the matter. The Trust has been involved in a number of matters relating to sexual harassment, and through its work is well placed to be of assistance to the Court in this matter.
4. The Trust will make submissions that are limited to the need for a victim-centred approach in the handling of all sexual harassment matters within the remedy sought by the Applicants. The submissions will address the following issues:





WOMEN'S LEGAL CENTRE

CAPE TOWN: 7th Floor, Constitution House, 124 Adderley Street, Cape Town, 8001
JOHANNESBURG: 9th Floor, OPH, 112 Main Street, Johannesburg, 2000

WWW.WLCE.CO.ZA

- 4.1. The infringement of the constitutional rights of women who experience sexual harassment, namely the rights to dignity, equality, privacy, and freedom and security of the person;
 - 4.2. Outline the meaning of a victim-centred approach, and its practical implementation in sexual harassment matters;
 - 4.3. That in its current sexual harassment and complaints policy framework, the University of South Africa must adopt a victim-centred approach in the handling of sexual harassment matters at the university;
 - 4.4. That, if granted, the sexual harassment policy to be formulated by the University of South Africa must be inherently victim-centred, and the features of such a policy;
 - 4.5. The applicable international and regional instruments guarding against the occurrence of sexual harassment, and the impact thereof on a victim-centred approach in the handling of sexual harassment matters.
5. We hereby request that your client furnish us with written consent to intervene as *amicus curiae* in the matter so that we may put our submissions before the Court. The terms and conditions that we propose are as follows:
- 5.1. That the Trust be given consent to enter as *amicus curiae* in the matter;
 - 5.2. That the *amicus curiae* be given consent to lodge written submissions in this matter; and
 - 5.3. That the *amicus curiae* be given consent to present oral submissions at the hearing of this matter.
6. In the interests of avoiding any delays in the matter, we request that written consent be provided by close of business on **Thursday, 18 April 2019**.

We look forward to your response. Should you have any queries, kindly contact Charlene May or Nasreen Solomons at 021 424 5660.

Yours faithfully,

WOMEN'S LEGAL CENTRE


Per: C MAY / N SOLOMONS

SS6


Nasreen

From: Mosima Kekana <mosima@lrc.org.za>
Sent: 17 April 2019 11:38 AM
To: Charlene; Nasreen
Cc: whitney@lrc.org.za
Subject: FW: Message from "RNP002673C6C5FD"
Attachments: 20190417123117694.pdf

Good Day All

Please find herewith our letter of consent.

Kind Regards
Mosim



Constitutional Litigation Unit

16th Floor Bram Fischer Towers • 20 Albert Street • Marshalltown • Johannesburg 2001 • South Africa
PO Box 9495 • Johannesburg 2000 • South Africa
Tel: (011) 838 6601 • Fax: (011) 834 4273 • Website www.lrc.org.za
PBO No. 930003292
NPO No. 023-004

LRC

Legal Resources Centre

Your Ref:

Our Ref: Mosima Kekana /1125316J

17 April 2019

WOMEN'S LEGAL CENTRE

7th Floor, Constitution House
124 Adderley Street
Cape Town
8001

Per Email: charlene@wlce.co.za
nasreen@wlce.co.za

Dear Charlene / Nasreen

**Re: KM v University of South Africa & Five Others (Case Nr.: 42164/18):
Request for Consent to Intervene as an *Amicus Curiae***

1. Your letter dated 16 April 2019 refers.
2. We act for the Applicant in the above matter.
3. Our client hereby consents to your request to be admitted as *amicus curiae* in the above matter on the basis set out in your letter.

Yours faithfully




LEGAL RESOURCES CENTRE

Per: MOSIMA KEKANA

mosima@lrc.org.za

National Office:
Cape Town:
Durban:
Makhanda:
Johannesburg:
Constitutional Litigation Unit:

N Govender (National Director), T Wegerif (Deputy National Director)
S Dass (Director), A Andrews, S Kahanovitz, C Mathiso, M Mudarikwa, EL Roos, A Turpin
S Samuel (Director), T Maistry, TC Mbhense
C McConnachie (Director), S Mguga, S Sephton, C van Schalkwyk
LJ Lirmacher (Acting Director), SS Naidoo
SG Magardle (Director), MJ Bishop, G Bizos SC, C du Toit, NM Kekana, P Mdakane, YS Ntoko, ER Webber



SS7

Nasreen

Subject: RE: KM & 5 OTHERS / UNISA

-----Original Message-----

From: Selina Zambana <selina@maserumule.co.za>

Sent: 18 April 2019 12:42 PM

To: Aretha <aretha@wlce.co.za>

Cc: 'Mosima Kekana' <mosima@lrc.org.za>; 'Tshepo' <tshepo@maserumule.co.za>

Subject: KM & 5 OTHERS / UNISA

Importance: High

Good Afternoon Aretha,

The above matter refers.

Please see attached hereto a letter for your attention.

Kindly acknowledge receipt.

Kind regards,

Selina

MSA



Puke Maserumule
ATTORNEYS INC.

MASERUMULE OFFICE BLOCK
Unit 10, Bond Street Office Park
374 Kent Avenue, Corner Bond Street
Ferndale, Randburg, 2194

POSTNET SUITE 301
Private Bag X 10039, Randburg, 2195
Tel: 011 300 2820 Fax: 086 295 5787
Email: reception@maserumule.co.za

www.maserumule.co.za

ALSO AT CAPE TOWN

OUR REF : Mrs T Makamu/SZ/U133
reception@maserumule.co.za
selina@maserumule.co.za

YOUR REF : Charlene May/ Nasreen Solomons

DATE : 18 April 2019

WOMEN'S LEGAL CENTRE

7th Floor, Constitution House
124 Adderley Street
Cape Town
Tel: 021 424 5660
Fax: 021 424 5206

"BY E-MAIL" Aretha@wlce.co.za

CC: LEGAL RESOURCE CENTRE
15th Floor Bram Fischer Towers
20 Albert Street, Marshalltown
Johannesburg
Tel: (011) 836 9831
Fax: (011) 831 8680
Ref: Ms Mosima Kekana

"BY E-EMAIL" Mosima@lrc.org.za

DIRECTOR: Puke Maserumule BA LLB (UCT) P G Dip in Labour Law (UJ)
SENIOR ASSOCIATE: TH Makamu LLB (Limpopo) ASSOCIATES: N Mbuyisa LLB (Wits), S Zambana LLB (Wits), Nikiwe Majozi LLB (Wits)
CANDIDATE ATTORNEY: L Bogatsu LLB (Wits)

Puke Maserumule Attorneys Inc. Registration No 2015/395427/21



Puke Maserumule
ATTORNEYS INC.

Dear Sirs / Madam,

UNIVERSITY OF SOUTH AFRICA & FIVE OTHERS // KM
CASE NO: 42164/18

1. We refer to the above matter and your letter dated 16 April 2019, the contents of which are noted.
2. Our failure to address all aspects of your letter should not to be construed as any form of concession or admission; our client's rights remain reserved.
3. We advise that we have consulted and taken instructions from our client regarding your request for consent to be admitted as *amicus curiae*. Our instructions are to refuse such a request.
4. Therefore, your request is hereby refused.

Yours faithfully,


MASERUMULE ATTORNEYS
PER: MRS T MAKAMU / MISS SELINA ZAMBANA

DIRECTOR: Puke Maserumule BA LLB (UCT) P G Dip in Labour Law (UJ)
SENIOR ASSOCIATE: TH Makamu LLB (Limpopo) ASSOCIATES: N Mbuyisa LLB (Wits), S Zambana LLB (Wits), Nikiwe Majozi LLB (Wits)
CANDIDATE ATTORNEY: L Bogatsu LLB (Wits)

Puke Maserumule Attorneys Inc. Registration No 2015/395427/21

