

NELSON MANDELA

UNIVERSITY INSTITUTIONAL REGULATORY CODE (IRC) (Policies, Procedures, Rules etc.)

To be completed by initiator of policy/policy owner:

1. POLICY TITLE:	POLICY ON SEXUAL HARASSMENT AND SEXUAL OFFENCES
2. FIELD OF APPLICATION: (All persons to whom policy applies)	All employees, students and broader Nelson Mandela University community accessing the University
3. COMPLIANCE OFFICER(S): (Persons responsible for ensuring policy implementation)	MANCO
4. STAKEHOLDER CONSULTATION (State the stakeholder group/s consulted during policy formulation/revision)	Employment Equity Forum; Sexual Harassment and Offences Committee; Transformation Committee; Institutional Forum; Unions; Student Services Council; MANCO; HRREM and GEC committees of Council; Council
5. DESIGNATION OF POLICY OWNER: (Person responsible for maintaining policy)	Director Transformation within the Engagement and Transformation MANCO portfolio

POLICY HISTORY (*To be completed by policy owner*)

Decision Date (Compulsory)	Status (New/Revised/No Changes)	Implementation Date (Compulsory if "new" or "revised")	Approving Authority (If "new" or "revised". N/A if no changes)	Resolution Number e.g. 07/11-10.2 (Minute number. N/A if no changes)	Policy Document Number (e.g. D/.../07 N/A if no changes)	Pending date for next revision (Compulsory)
19Jun09	New	Immediate	Council	C09.23.1.2. 1.6	D/350/09	Biennial
9Apr2010	Revised	Immediately	Council	C10.12.1.1. 1.1	D/350/09	Biennial
13Dec2017	Revised	Immediately	Council	C17.96.4.1	D/1123/17 (11-12-2017_07h59)	Biennial
3 Dec 2020	Revised	Immediately	Council	C20.95.4.1	D_928_20_(2020-10-27 09h58)	Biennial

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SUBJECT (Broad policy field):

Organisational Transformation & Equity

SUBJECT NUMBER:	700
CATEGORY (Policy sub-field):	Transformation and Equity
CATEGORY NUMBER:	701
IRC NUMBER:	701.08

NELSON MANDELA UNIVERSITY

POLICY ON SEXUAL HARASSMENT AND SEXUAL OFFENCES

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1. PREAMBLE

Nelson Mandela University (hereafter referred to as the University) is committed to uphold the principles enshrined in Chapter 2 of the Constitution of the Republic of South Africa (1996), which promotes the rights of all people of South Africa and affirms the democratic values of human dignity, equality and freedom. The University strives to create an environment where all employees and students can safely pursue their studies, work, business transactions and social interactions, free from sexual harassment and sexual offences. Sexual harassment and sexual offences constitute very serious offences, which will result in disciplinary action, and will not be tolerated within the University.

2. DEFINITIONS

For purposes of this policy the words listed in the definition section will have the meaning ascribed below, unless the context indicates otherwise:

- 2.1 **Alleged perpetrator** (also known as the respondent) means a person alleged to have committed an act or acts in contravention of this policy
- 2.2 **Alternative dispute resolution procedures** refer to procedures for settling disputes by means other than formal processes, such as mediation;
- 2.3 **Child pornography** means any image, however created, or any description or presentation of a person, real or simulated, who is, or who is depicted or described or presented as being, under the age of 18 years, of an explicit or sexual nature, whether such image or description or presentation is intended to stimulate erotic or aesthetic feelings or not, including any such image or description of such person-
- 2.3.1 engaged in an act that constitutes a sexual offence;
 - 2.3.2 engaged in an act of sexual penetration;
 - 2.3.3 engaged in an act of sexual violation;
 - 2.3.4 engaged in an act of self-masturbation;
 - 2.3.5 displaying the genital organs of such person in a state of arousal or stimulation;
 - 2.3.6 unduly displaying the genital organs or anus of such person;
 - 2.3.7 displaying any form of stimulation of a sexual nature of such person's breasts;
 - 2.3.8 engaged in sexually suggestive or lewd acts;
 - 2.3.9 engaged in or as the subject of sadistic or masochistic acts of a sexual nature;
 - 2.3.10 engaged in any conduct or activity characteristically associated with sexual intercourse; showing or describing such person-
 - (i) participating in, or assisting or facilitating another person to participate in; or
 - (ii) being in the presence of another person who commits or in any other manner being involved in, any act contemplated in paragraphs (a) to (j); or
 - 2.3.11 showing or describing the body, or parts of the body, of such person in a manner or in circumstances which, within the context, violate or offend the sexual integrity or dignity of that person or any category of persons under 18 or is capable of being used for the purposes of violating or offending the sexual integrity or dignity of that person, any person or group or categories of persons;
- 2.4 **Complainant** (also known as applicant), means a person who lodges a complaint, against whom an act or acts in contravention of this policy, have allegedly been perpetrated.
- 2.5 **Complaint** means a disclosure brought in terms of this policy concerning acts in contravention of this policy;
- 2.6 **Compelled rape** occurs when a person unlawfully and intentionally compels a third person, without the consent of the third person, to commit an act of sexual penetration with a complainant, without the consent of the complainant.
- 2.7 **Compelled sexual assault** occurs when a person unlawfully and intentionally compels a third person, without the consent of the third person, to commit an act of sexual violation with a complainant, without the consent of the complainant.
- 2.8 **Compelled self-sexual assault** occurs when a person unlawfully and intentionally compels a complainant, without the consent of the complainant, to –
- 2.8.1 engage in –
 - (i) masturbation;
 - (ii) any form of arousal or stimulation of a sexual nature of the female breasts; or
 - (iii) sexually suggestive or lewd acts, with themselves;
 - 2.7.1 engage in any act which has or may have the effect of sexually arousing or sexually degrading the complainant; or
 - 2.7.2 cause the complainant to penetrate in any manner whatsoever their own genital organs or anus.
- 2.8 **Confidentiality** means ensuring that information is accessible only to those authorised to have access to it;

- 2.9 **Consent** means free, informed, voluntary or uncoerced agreement between the parties to participate in a sexual act. In deciding whether such agreement was present at the time of the alleged violation of this policy, the University will be guided by considerations, which may include but are not limited to, the following:
- 2.9.1 Parties must be able to communicate and agree on the type of sexual activities that will be shared. Either party has the right to change her/his mind, at any time, and is responsible for communicating that change;
 - 2.9.2 It is the responsibility of the person who initiates any type of sexual activity to obtain the other person's consent;
 - 2.9.3 Consent to one type of sexual act does not necessarily imply consent to other forms of sexual activities;
 - 2.9.4 Silence does not imply consent;
 - 2.9.5 A previous or present sexual or other relationship between the parties does not imply consent;
 - 2.9.6 Consent is not implicit in a person's manner of dress;
 - 2.9.7 Accepting a social invitation is not consent, nor does it imply consent;
 - 2.9.8 Consent will not be effective when it is obtained, or perceived to be obtained, from a person whose capacity to consent is diminished (including, but not limited to, reduced capacity due to alcohol use, medicines or any other substance).
- 2.10 **Consensual Relationships** refers specifically to romantic and/or sexual relationships between line managers and subordinates or between university employees and students.
- 2.11 **Creation of a hostile environment** occurs where the purpose or effect is to interfere with another's performance at work or in study.
- 2.12 **Discrimination** means any act or omission, including a policy, law, rule, practice, condition or situation which directly or indirectly imposes burdens, obligations or disadvantage on; or withholds benefits, opportunities or advantages from any person on one or more of the prohibited grounds.
- 2.13 **Domestic relationship** means a relationship between a complainant and a respondent in any of the following ways:
- 2.13.1 they are or were married to each other, including marriage according to any law, custom or religion;
 - 2.13.2 they (whether they are of the same or of the opposite sex) live or lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other, or are not able to be married to each other;
 - 2.13.3 they are the parents of a child or are person who have or had parental responsibility for that child (whether or not at the same time);
 - 2.13.4 they are family members related by consanguinity, affinity or adoption;
 - 2.13.5 they are or were in an engagement, dating or customary relationship including an actual or perceived romantic, intimate or sexual relationship for any duration of time; or
 - 2.13.6 they share or recently shared the same residence/accommodation.
- 2.14 **Domestic Violence** includes physical abuse; sexual abuse; emotional, verbal and psychological abuse; economic abuse; intimidation; harassment; stalking; damage to property; entry into the complainant's residence/accommodation without their consent where the parties do not share the same residence/accommodation; or any other controlling or abusive behaviour towards the complainant, where such conduct harms, or may cause imminent harm to the safety, health or wellbeing of the complainant.
- 2.15 **Employee** means an employee of the University or a person who has agreed to be bound by the rules and policies of the University relating to persons employed by the University.
- 2.16 **ERO** means Employee Relations Office
- 2.17 **Equality** includes the full and equal enjoyment of rights and freedoms as contemplated in the Constitution and includes *de jure* and *de facto* equality and also equality in terms of outcomes.

- 2.18 **Gender** refers to a social and cultural construct that distinguishes differences in the attributes of females and males and refers to their socially constructed roles and responsibilities.
- 2.19 **Gender-based constraints** refer to the challenges females, males and transgender people experience as a result of their gender.
- 2.20 **Gender-based violence** or GBV, also referred to as **gender harm**, occurs where people do not conform to certain forms of gender expectations, violence, abuse and discrimination may be employed to force conformity, to punish, or to affirm dominance and control. These forms may include the physical, sexual, emotional and psychological, as well as the social and the economic.
- 2.21 **GBV Peer Supporters** refer to employees and students who have received specific training to advise and support complainants who have lodged a GBV complaint.
- 2.22 **Gender expression** refers to how one expresses oneself in terms of dress and/or behaviours, including 'masculine', 'feminine' or 'androgynous'.
- 2.23 **Genital organs** include the whole or part of the male and female genital organs, and further includes surgically constructed or reconstructed genital organs.
- 2.24 **Grooming** involves an action or series of actions, which can initially appear to be conducted within the context of the academic project, but are taken with the overall aim of befriending and establishing a psychological and/or material connection with a person in order to facilitate subsequent sexual harassment or sexual offences and/or to hinder the reporting of various acts of harassment or assault. This includes 'online grooming,' which refers to grooming by means of modern-day technology, such as mobile phones and the internet.
- 2.25 **Harassment**, for the purposes of this policy, means unwanted conduct which is persistent or serious and demeans, humiliates or creates a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences and which is related to sex, gender or sexual orientation.
- 2.26 **Harm** means any emotional, psychological, physical, social or economic harm, including patterns of degrading or humiliating conduct towards the complainant, such as:
- 2.26.1 repeated insults, ridicule or name calling;
 - 2.26.2 repeated threats designed to cause emotional pain; or
 - 2.26.3 the repeated exhibition of obsessive possessiveness or jealousy, which is such as to constitute a serious invasion of the complainant's privacy, freedom, integrity or security.
- 2.27 **Intimate Femicide** refer to the killing of a woman by her intimate partner.
- 2.28 **Intimate Partner Violence** refer to harm (physical, sexual, psychological) by a current or former intimate partner or spouse.
- 2.29 **Intimidation** means uttering or conveying a threat, or causing a complainant to receive a threat, which induces fear.
- 2.30 **LSO** means the Legal Service Office of the University.
- 2.31 **Non-workplace sexual harassment** means sexual harassment occurring during work-related functions outside of the normal work environment and/or normal working hours, e.g. Conferences, training sessions, social functions, etc.
- 2.32 **Online gender-based violence** refer to any act of GBV that is committed, assisted or aggravated in part or fully by the used of information and communication technology (ICT), such as mobile phones, smartphones, the internet, social media platforms, or email, against a person because of their gender.
- 2.33 **Pornography** means any image, however created, or any description of a person, real or simulated, who is 18 years or older, of an explicit or sexual nature that is intended to stimulate erotic feelings, including any such image or description of such person –
- 2.33.1 engaged in an act that constitutes a sexual offence;
 - 2.33.2 engaged in an act of sexual penetration;
 - 2.33.3 engaged in an act of sexual violation;

- 2.33.4 engaged in an act of self-masturbation;
- 2.33.5 displaying the genital organs of such person in a state of arousal or stimulation;
- 2.33.6 unduly displaying the genital organs or anus of such person;
- 2.33.7 displaying any form of stimulation of a sexual nature of the female breasts;
- 2.33.8 engaged in sexually suggestive or lewd acts;
- 2.33.9 engaged in or as the subject of sadistic or masochistic acts of a sexual nature;
- 2.33.10 engaged in any conduct or activity characteristically associated with sexual intercourse; or
- 2.33.11 showing or describing the body, or parts of the body, of that person in a manner or in circumstances which, within the context, violate or offend the sexual integrity or dignity of that person or any other person or is capable of being used for the purposes of violating or offending the sexual integrity or dignity of that person or any other person;
- 2.34 **Quid pro quo harassment** involves the alleged perpetrator influencing or attempting to influence a person's employment circumstances (training, organizational or funding opportunities, grading or evaluation), or admission of a student to the University or University residences, or access to funding opportunities, by coercing or attempting to coerce that person to engage in sexual activities.
- 2.35 **Rape** means an unlawful and intentional act of sexual penetration with another person without that person's consent, specifically including:
 - 2.35.1 acquaintance, spousal and date rape;
 - 2.35.2 where the complainant submits or is subjected to an act of sexual penetration as a result of:
 - (i) the use of force or intimidation by the alleged perpetrator against the complainant, another person or the property of these persons;
 - (ii) a threat of harm, real or perceived, by the alleged perpetrator against the complainant, another person or the property of these persons;
 - (iii) an abuse of power or authority such that the complainant is inhibited from expressing her/his resistance or unwillingness to participate in the act;
 - (iv) false pretences or by fraudulent means;
 - (v) the inability of the complainant to appreciate the nature of the act of sexual penetration, including where the complainant is at the time thereof:
 - [1] asleep or unconscious;
 - [2] in an altered state of consciousness, including, but not limited to, under the influence of any medicine, drug, alcohol or other substance, to the extent that her/his ability to consent is adversely affected;
 - [3] mentally disabled;
 - [4] a child below the age of 12 years.
- 2.36 **Reporter** is the person reporting the GBV incident. The reporter may be the complainant or may be any other person in close relationship to the complainant who had witnessed the GBV incident or been informed about the GBV incident by the complainant.
- 2.37 **Respondent** (also known as the alleged perpetrator) means a person alleged to have committed an act or acts of sexual harassment and/or sexual offence/s.
- 2.38 **Same-sex harassment** means harassment where the alleged perpetrator and the victim are of the same gender and/or same sex.
- 2.39 **Sexual act** means an act of sexual penetration or an act of sexual violation.
- 2.40 **Sexual assault** means an unlawful and intentional act of sexual contact with another person without that person's consent.
- 2.41 **Sexual harassment advisors (SHA)** means specific trained persons within the University to whom employees and students may report incidents of alleged sexual harassment and/or sexual .
- 2.42 **Sexual harassment means** the unwelcome or unwanted conduct of an implicit or explicit sexual nature by an individual or group. It is conduct that the complainant reasonably experiences as offensive and distressing and which leads to the emotional, physical and social discomfort of the

- complainant, or interferes with the complainant's work or academic performance, or creates an intimidating, hostile or defensive working, educational or social environment. It may take the form of **special victimization, quid pro quo harassment** and the creation of a hostile environment.
- 2.43 **Sexual offence** includes any offence outlined within the Criminal Law (Sexual Offences and Related Matters) Amendment Act No 32 (2007), including but not limited to, rape, compelled rape, sexual assault, compelled sexual assault, compelled self-sexual assault.
- 2.44 **Sexual penetration (or sexually penetrate)** includes any act which causes penetration to any extent whatsoever by -
- 2.44.1 the genital organs of one person into or beyond the genital organs, anus, or mouth of another person;
- 2.44.2 any other part of the body of one person or, any object, including any part of the body of an animal, into or beyond the genital organs or anus of another person; or
- 2.44.3 the genital organs of an animal, into or beyond the mouth of another person
- 2.45 **Sexual violation** includes any act which causes-
- 2.45.1 direct or indirect contact between the –
- (i) genital organs or anus of one person or, in the case of a female, her breasts, and any part of the body of another person or an animal, or any object, including any object resembling or representing the genital organs or anus of a person or an animal;
- (ii) mouth of one person and –
- [1] the genital organs or anus of another person or, in the case of a female, her breasts;
- [2] the mouth of another person;
- [3] any other part of the body of another person, other than the genital organs or anus of that person or, in the case of a female, her breasts, which could –
- a. be used in an act of sexual penetration;
- b. cause sexual arousal or stimulation; or
- c. be sexually aroused or stimulated thereby; or
- (iii) any object resembling the genital organs or anus of a person, and in the case of a female, her breasts, or an animal; or
- (iv) mouth of the complainant and the genital organs or anus of an animal;
- [1] the masturbation of one person by another person; or
- [2] the insertion of any object resembling or representing the genital organs of a person or animal, into or beyond the mouth of another person, but does not include an act of sexual penetration.
- 2.46 **Special victimization** involves any form of victimization, discrimination or intimidation of a person for failing to submit to sexual advances.
- 2.47 **Stalking** means repeatedly following, pursuing, or accosting the complainant as well as any other form of direct or indirect communication, harassment, or threats made towards the complainant using various mediums, including but not limited to the use of cell phones and computerised technology. Direct online harassment includes threats, bullying, or intimidating messages sent directly to the victim via e-mail or other internet communications media. Indirect online harassment includes spreading rumours about the complainant in various internet platforms and or forums.
- 2.48 **Student** means a registered student of the University or a person who has agreed to be bound by the rules and policies of the University.
- 2.49 **Third parties** mean any persons who are neither employees nor students who access the University, including but not limited to, visitors, clients and/or business contactors.
- 2.50 **Unwelcome sexual conduct** includes includes physical, verbal and non-verbal conduct, whether direct or indirect (including technological devices, images and weapons), that is perceived by the complainant as demeaning, compromising, embarrassing, threatening and/or offensive subject to the following:

- 2.50.1 The assessment of what is unwelcome should be informed by context, culture, custom and language;
- 2.50.2 Previous consensual participation in sexual conduct does not automatically mean that the conduct continues to be welcome;
- 2.50.3 When a victim has difficulty indicating to the alleged perpetrator that the conduct is unwelcome, the victim may seek the assistance and intervention of another person in order to make it clear that the conduct is unwelcome;
- 2.50.4 Some forms of sexual harassment are such that the alleged perpetrator should have known that the behavior would be unwelcome.
- 2.51 **Unwelcome physical conduct** may range from grabbing, groping, kissing, fondling, inappropriately long hugs, suggestive touching, leering touching to sexual assault and rape.
- 2.52 **Unwelcome verbal conduct** includes innuendos, suggestions or hints of a sexual nature, sexual advances, sexual threats, comments with sexual connotations, sex-related jokes or insults, graphic comments about a person's body, inappropriate enquiries about a person's sex life, whistling of a sexual nature and the sending by electronic means or otherwise of sexually explicit content;
- 2.53 **Unwelcome non-verbal conduct** includes gestures, indecent exposure and the display or sending of sexually explicit pictures or objects via electronic or other means.
- 2.54 **University Community** refers to all employees, students, job applicants and third parties having dealings with the University.

For all other terms and definitions related to the subject matter of this policy reference can be made to other specific social justice policies, the PEPUDA as well as legal precedents arising from the decision of any Equality Court, the Labour Court and the Commission for Conciliation, Mediation and Arbitration. Regard should also be had to the Employment Equity Act, No. 55 of 1998, the Criminal Law (Sexual Offences and Related Matters) Amendment Act, No. 32 of 2007, the Protection from Harassment Act, No. 17 of 2011 and associated Regulations, the Domestic Violence Act, No. 116 of 1998 and associated Regulations, and other relevant legislation and binding international agreements, such as the Convention on the Elimination of all forms of Discrimination against Women (1979).

3. REGULATORY FRAMEWORK

- 3.1 Constitution of the Republic of South Africa 1996, chapter 2: Bill of Rights;
- 3.2 Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000;
- 3.3 Labour Relations Act, No. 66 of 1995 and associated Codes of Good Practice;
- 3.4 Basic Conditions of Employment Act (BCEA), 75 of 1997;
- 3.5 Employment Equity Act, No. 55 of 1998 and associated Codes of Good Practice;
- 3.6 Sexual Offences and Related Matters Amendment Act No. 32 of 2007;
- 3.7 Protection from Harassment Act, No. 17 of 2011 and associated Regulations;
- 3.8 Domestic Violence Act, No. 116 of 1998 and associated Regulations;
- 3.9 Protected Disclosures Act, No. 26 of 2000;
- 3.10 Policy Framework for the Realisation of Social Inclusion in the Post-School Education and Training System, DHET 2016;
- 3.11 Policy Framework to Address Gender-Based Violence in the Post-School Education and Training Sector, DHET 2020
- 3.12 National Strategic Plan on Gender-Based Violence and Femicide, DWYPD 2020; and
- 3.13 Emergency Response Action Plan On Gender-Based Violence & Femicide, DWYPD, 2020.

This policy must be read in conjunction with the following institutional policies:

- Employees disciplinary procedure and code (4/1/13)

- Policy on the Student Disciplinary Code (22/6/12)
- Code of Ethical Conduct (12/12/13)
- Integrated Policy for the Promotion of Equality and the Prevention of and Protection Against Unfair Discrimination (3/12/20)

4. SCOPE OF THE POLICY

- 4.1 The provisions of this policy apply to the employees, students and third parties, including but not limited to visitors, clients and/or business contactors, accessing the University. This policy guides the procedures and protocols that the University will implement in response to any form of sexual harassment and/or sexual offences, including rape and sexual assault, committed by an employee or student on or off the campus of the University.
- 4.2 While the University has no jurisdiction over third parties, that is those persons who are neither employees nor students of the University, the University intends that this and related policies will be upheld and respected by all who work at or visit the University. Visitors who are neither registered at the University as students nor employed by the University may be invited to agree to abide by the rules and conditions for students and employees. Any individual agreeing to abide by student and employee rules and conditions will be deemed to have consented to be subject to the University's disciplinary jurisdiction.

5. OBJECTIVES OF THIS POLICY

- 5.1 Provide guidance about what is meant by sexual harassment and sexual offences.
- 5.2 Promote a working and learning environment, and work-related social spaces, free from sexual harassment and sexual offences.
- 5.3 Provide appropriate procedures for dealing with sexual harassment and sexual offences complaints, submitted by employees and students, in a fair and sensitive manner, ensuring that confidentiality is maintained.
- 5.4 Provide appropriate procedures for dealing with sexual harassment and sexual offences complaints, submitted by employees and students, perpetrated by third parties of the University, as set out in Annexure 1.
- 5.5 Sensitise the University community to a zero-tolerance status pertaining to sexual harassment and sexual offences.

6. ROLE OF MANAGERS

Every manager shall take all reasonable steps to create and maintain an environment which is free from sexual harassment and sexual offences. This would require managers to:

- 6.1 Set a good example by treating all working within their unit with courtesy and respect.
- 6.2 Understand the terms of this policy and be responsible for the implementation thereof.
- 6.3 Attend training and educational sessions relating to this policy.
- 6.4 Communicate the contents of this policy to all employees in their respective areas of responsibility.
- 6.5 Refer complaints to the Transformation Office as soon as reasonably possible.
- 6.6 Report any incidents of sexual harassment and/or sexual offences occurring to any employees and/or students that you may be aware of, to the Transformation Office.
- 6.7 Promote a harassment-free environment.

7. ROLE OF EMPLOYEES AND STUDENTS

All employees and students should contribute to creating and maintaining an environment free of sexual harassment and sexual offences by:

- 7.1 Showing respect for the dignity of others.

- 7.2 Being familiar with the contents of this policy.
- 7.3 Reporting any incidents of sexual harassment and/or sexual offences occurring to any employees and/or students, to the Transformation Office.
- 7.4 Promote a harassment-free environment.

8. ROLE OF THIRD PARTIES

- 8.1 The University recognizes that it has no jurisdiction over third parties. However, all third parties providing services to the University and/or access the University campuses, will uphold and respect all who work at, study at or visit the University, or participate in any of the institution's activities at any location other than the University.
- 8.2 While such third parties are not subject to the rules or procedures for employees or students, or the provisions of the respective Codes of Conduct, the Legal Services Office (LSO) will keep a record of complaints and reported violations of this and related policies and will report these to the appropriate offices, including the procurement office, so that the information can be taken into account in considering whether to extend contracts for services procured from companies of such employees.
- 8.3 The initiator of the service being procured, in consultation with the Transformation Office and the LSO, will also forward such complaints to the relevant employer for action. The University retains its right to bar the third parties from its premises and/or reconsider any further commercial transactions with service providers of employees implicated in such transgressions.

9. STRUCTURES APPOINTED FOR POLICY IMPLEMENTATION

9.1 Sexual Harassment and Offences Committee (SHOC)

The SHOC, a sub-committee of the Transformation Committee, is constituted of the following representatives or their appointed secondus:

- 9.1.1 One representative from Emthonjeni Student Wellness (PE and George campuses)
- 9.1.2 One representative from the Student Governance and Development Services campus (PE and George campuses)
- 9.1.3 One representative from Campus Health Services (PE and George campuses)
- 9.1.4 **Senior** Residence Manager
- 9.1.5 Line manager of all Human Resources Consultants
- 9.1.6 Manager: HR Employment Equity Office
- 9.1.7 Director Transformation (Chairperson)
- 9.1.8 Director: Employee Relations
- 9.1.9 Dean of Student Life and Development
- 9.1.10 Director: Student Housing
- 9.1.11 A nominee from the Faculty of Law
- 9.1.12 Head of Protection Services
- 9.1.13 Representative of Communication and Stakeholder Liaison
- 9.1.14 One representative from each of the recognised unions.
- 9.1.15 One representative from Student Representative Council (PE and George Campuses)
- 9.1.16 Any other person required to perform the functions of the SHOC subcommittee

9.2 Functions of SHOC

The SHOC will perform the following functions:

- 9.2.1 Actively promote the provisions of the policy through the development and distribution of multimedia education and training materials.

- 9.2.2 Ensure the provision of appropriate psychosocial support, via Emthonjeni Student Wellness and Health Services, to complainants and alleged perpetrators of sexual harassment and sexual offences.
- 9.2.3 Provide the TC with a quarterly report on any incidents of sexual harassment reported to the SHOC.
- 9.2.4 Make recommendations to the TC regarding improvements in the reporting mechanisms of incidents and the provision of appropriate support to complainants and alleged perpetrators.

9.3 Sexual Harassment Advisors (SHAs)

The persons identified as Sexual Harassment Advisors (SHAs) include the following:

- 9.3.1 Professional nurses from Campus Health Services (PE and George campuses)
- 9.3.2 Head of Human Capital Management
- 9.3.3 Human Resources Consultants
- 9.3.4 Dean of Students
- 9.3.5 Director: Student Housing
- 9.3.6 Residence Managers (all on and off-campus)
- 9.3.7 Residence Student Assistants (on and off-campus)
- 9.3.8 Director Transformation
- 9.3.9 Employment Equity Manager
- 9.3.10 Nelson Mandela University sport personnel nominated by the Director of Sport Bureau
- 9.3.11 Faculty/division-specific personnel nominated by the Executive Deans/Executive Directors
- 9.3.12 Madibaz Radio personnel nominated by the Dean of Student Life and Development
- 9.3.13 Protection Services personnel nominated by the Head of Protection Services
- 9.3.14 Communication personnel nominated by the Senior Director: Communication and Stakeholder Liaison
- 9.3.15 Student Representative Council (SRC); and
- 9.3.16 Any other student leadership associated with the student formations.

It is further noted that:

- 9.3.17 Should a SHA be the alleged perpetrator / complainant of sexual harassment and/or sexual offences, he/she would be exempted from the role of SHA until the matter is resolved.
- 9.3.18 Where a specific post has been designated as a SHA, the job description of that post will include a key performance area that specifically outlines the role of a SHA as outlined in this policy.
- 9.3.19 The list and location of all SHAs will be available on <http://tme.nmmu.ac.za/sexual-harassment>, and will also be communicated to all employees and students using different formats.
- 9.3.20 A quarterly electronic report by SHAs on cases reported will be ensure effective monitoring of cases.

9.4 Functions of Sexual Harassment Advisors

The functions of the Sexual Harassment Advisors (SHAs) include, but are not be limited to:

- 9.4.1 Serve as the first line of contact to whom employees and students may report incidents of alleged sexual harassment and/or offences.
- 9.4.2 SHAs should provide immediate trauma containment support.
- 9.4.3 Advising the complainant on the appropriate course of action available, i.e. the formal and restorative processes.
- 9.4.4 Notify the Transformation Office of the complaint as soon as practically possible, providing the name and relevant contact details (employee/student number, cellphone number) of the complainant.

- 9.4.5 Advising complainants of appropriate psychosocial support that is available, including counselling for students with Emthonjeni Student Wellness and for employees via the University's Employee Wellness Programme.

9.5 GBV Peer Supporters

- 9.5.1 Peer helpers who are interested in being trained as GBV peer supporters will undergo screening (to identify possible GBV offenders) and receive dedicated training related to this policy, student disciplinary procedures as well as the relevant court proceedings.
- 9.5.2 The GBV peer supporters will serve to provide support to complainants in the form of very basic lay counselling, debriefing, and provision of basic guidance regarding policy-related processes (other available support; mediation; formal disciplinary hearings) and external court proceedings (should the complainant have opened a criminal case related to contravention of this policy).
- 9.5.3 This form of support will supplement the psychosocial support (provided by a dedicated GBV counsellor) which is available to the student.
- 9.5.4 Should an employee be involved in a workplace-related GBV incident, immediate trauma counselling, containment and debriefing will be provided by the GBV Counsellor. Thereafter, after consent is obtained from the affected employee, the Occupational Health Unit will be informed to initiate and coordinate further psychosocial support for the employee via the Employee Wellness Programme.

10. CONSENSUAL RELATIONSHIPS

- 10.1 Consensual relationships, specifically to romantic and/or sexual relationships between line managers and subordinates or between university employees and students, are strongly discouraged because it undermines the trust environment at the core of the employment relationship as well as the integrity which is central to the academic process. They can create future conflicts and opportunities for potential exploitation in the workplace and/or educational environment.
- 10.2 Should such a relationship develop, the employees involved have the obligation to disclose its existence to his/her head of department/ senior line manager immediately.
- 10.3 In the case of consensual relationships between an academic and a student, the academic has the obligation to disclose the relationship to the HOD and cooperate with the HOD in making alternative arrangements for the lecturing, supervision and assessment of the student. The HOD shall keep a confidential written record of the disclosure, including the alternative arrangements, and inform their Dean accordingly. Where the HOD has a consensual relationship with a student, she/he shall disclose the relationship to their Dean, who shall keep a confidential record of this disclosure. A Dean in such a position will make the disclosure to the Deputy Vice-Chancellor Learning and Teaching.
- 10.4 Failure to report such a consensual relationship will constitute a breach of conduct in relation to this policy and will be liable to disciplinary action.
- 10.5 To withhold a right and/or grant special privilege to a student and/or employee on the basis of a consensual relationship, disclosed or undisclosed, is in contravention of this policy and will be liable to disciplinary action.
- 10.6 No academic employee may supervise the research of a student with whom he or she is in a consensual relationship.
- 10.7 Initial consent to such a relationship, even when the consensual relationship persists for a long period of time, does not remove grounds for the charge of sexual harassment based upon subsequent unwelcome or unwanted conduct of an implicit or explicit sexual nature.

11. COMPLAINTS MECHANISM

- 11.1 Complaints relating to contravention of this policy will be dealt with in terms of the procedure outlined in the Integrated Policy for the Promotion of Equality and the Prevention of and Protection Against Unfair Discrimination (see Annexure 1).

12. SUPPORTIVE AND PROTECTIVE MEASURES

- 12.1 The Transformation Office together with all relevant units will coordinate a comprehensive support response to complaints of sexual harassment and sexual offences, respectively.
- 12.2 This will include the provision of supportive and protective measures to the complainant, regardless of whether disciplinary proceedings are instituted.
- 12.3 Supportive measures may include, but are not limited to:
- 12.3.1 Ongoing psychosocial support from the GBV Counsellor; Emthonjeni Student Wellness (for students via Emthonjeni Student Wellness and/or Campus Health Services) and the Employee Wellness Programme (for employees); and
- 12.3.2 Access to medical services for advice and treatment through Campus Health Services (for students) and the respective medical schemes (for employees).
- 12.4 Protective measures may include, but are not limited to:
- 12.4.1 No-contact orders, where appropriate;
- 12.4.2 Change of University student residence, where appropriate and practically possible;
- 12.4.3 Change of academic classes and academic concessions, where appropriate;
- 12.4.4 Special leave (employees) or leave of absence (students), where appropriate.

13. PROHIBITION ON RETALIATORY ACTS

- 13.1 No retaliatory acts may be engaged in against any person who reports an incident of alleged sexual harassment and/or sexual offences, or any person who testifies, assists or participates in any proceeding, investigation or hearing relating to such allegation of sexual harassment and/or sexual offences.
- 13.2 Any retaliatory acts, intimidating behaviour and/or secondary harassment by the alleged perpetrator or orchestrated by the alleged perpetrator towards the complainant will be a disciplinary offence.

14. ANONYMOUS COMPLAINTS

- 14.1 A complaint may be anonymously reported by a person (also known as a reporter) who had witnessed and/or been informed about an incident or incidents.
- 14.2 Once an anonymous complaint is lodged, a formal investigation process as outlined in Annexure 3 will be initiated.
- 14.3 Should a prima facie case be established, the matter will serve before the relevant disciplinary panel.
- 14.4 Where the complainant is unwilling to participate in the process, the complainant may be called before the disciplinary panel to provide reasons why s/he is unwilling to participate in the formal disciplinary hearing against the alleged perpetrator.
- 14.5 The disciplinary panel will need to deliberate on the evidence available to determine whether the matter can continue without the active participation of the complainant.
- 14.6 Where the formal disciplinary process can continue, the head of LSO and/or ERO should apply to the Registrar and ED HR, respectively for a deviation from the normal disciplinary process.
- 14.7 Should the panel determine that the formal disciplinary process cannot continue, such a decision will need to be reflected in the chairperson's report for record purposes.

15. HANDLING FALSE COMPLAINTS

- 15.1 The University recognises that any allegations of unfair discrimination must be carefully investigated, with the due regard to the interests of both the complainant and the respondent.
- 15.2 A false allegation or false report should be distinguished from a mere mistake or faulty memory. Innocent mistakes or inaccuracies form part of any human activity.
- 15.3 An employee or student who does not act in good faith or lodges a complaint in terms of this Policy without having reasonable grounds for believing it to be substantially true, or makes it for purposes of personal gain, or makes it maliciously or vexatiously, may be subject to disciplinary proceedings.
- 15.4 The intentional false allegation of a complainant is and should be treated differently to a decision to withdraw a complaint.
- 15.5 Many factors may influence a victim's decision to withdraw a complaint, including the following:
 - 15.5.1 A complainant may not have initially realized the toll that an investigation and/or disciplinary process would take on them mentally, emotionally, physically and financially, and later decide to end their involvement with the process;
 - 15.5.2 A complainant may face tremendous pressure from family, friends and the community not to report or participate in prosecuting an alleged offender;
 - 15.5.3 A complainant may withdraw their participation in the process because they have grown tired of lengthy investigative delays, when they feel uninformed about, and uninvolved in, the decision-making process;
- 15.6 A complainant-centred response necessitates that, in the event of a withdrawal of a complaint, it should be ascertained whether the withdrawal is a result of a system failure, witness tampering or other factors that are outside the control of the University.

16. RIGHT TO PURSUE EXTERNAL PROCESSES

- 16.1 Nothing in this policy removes the right of a student or an employee to pursue any claim he/she may have or refer a dispute to any competent authority in terms of the prevailing legislation outlined above.
- 16.2 The above notwithstanding and in keeping with the spirit of this policy which seeks to actively promote safety, equality and a transformative institutional culture at the University, employees and students are urged to exhaust all available internal mechanisms provided for in this policy before pursuing their rights by initiating an external process.
- 16.3 A complainant of sexual assault and rape has the right to institute separate criminal and/or civil charges against an alleged perpetrator. The legal rights of the complainant are in no way limited by this policy.

17. CONFIDENTIALITY

- 17.1 Confidentiality must be preserved, as far as possible, by limiting communication to persons who are affected by and/or implicated in the concern, complaint or grievance; or persons to whom disclosure is necessary in terms of their official position and responsibility; or persons with the specific responsibility to assist in the resolution of the concern, complaint or grievance concerned.
- 17.1 It is acknowledged that ensuring the physical and emotional safety of complainants during the processes provided for in this Policy is critical.
- 17.2 Subject to the provisions outlined above relating to false complaints, any employee or student who lodges a complaint and/or makes a disclosure in terms of this policy or the legislation outlined above, will not suffer any form of detriment.
- 17.3 The SHAs and those responsible for the implementation of this policy will treat all related complaints in the strictest confidence.

- 17.4 A complainant who wishes to have the matter addressed through the University's formal grievance procedures cannot lodge anonymous complaints.

18. EDUCATION AND TRAINING

- 18.1 A Training Task Team of the SHOC will be responsible for the development of an integrated Annual GBV Awareness and Advocacy Plan which will inform the coordinated content of all GBV-related interventions and training offered within the University.
- 18.2 The Training Task Team will consist of representatives from the following:
- 18.2.1 Transformation Office
 - 18.2.2 Campus Health Services
 - 18.2.3 Emthonjeni Student Wellness
 - 18.2.4 Student Life Officer (from on and office campus residences)
 - 18.2.5 Protection Services
 - 18.2.6 Human Resources Services
 - 18.2.7 Legal Services office
 - 18.2.8 Centre for Women and Gender Studies
 - 18.2.9 Centre to the Advancement of Non-Racialism and Democracy
 - 18.2.10 Arts, Culture and Heritage Unit
 - 18.2.11 SRC, and
 - 18.2.12 Any other co-opted member.
- 18.3 All units involved in training of students and employees must ensure that their annual training schedule includes training related to this policy. This includes the induction training of all new student leaders as well as newly appointed employees, respectively.

19. MONITORING MECHANISMS

- 19.1 The online CiiMs reporting system will enable the meticulous monitoring of cases after being logged and facilitate accurate reporting to the Transformation Committee and other stakeholders.
- 19.2 Periodic publication of the outcomes of cases will occur via the official communication mechanisms.
- 19.3 The minutes of the SHOC will serve at the Transformation Committee for noting and action.
- 19.4 The SHOC must periodically review the effectiveness of the implementation of the implementation of this policy, based on the quarterly CiiMs reports submitted to the SHOC meeting.
- 19.5 The Director Transformation will request quarterly reports from all the relevant stakeholders, linked to implementation of the integrated Annual GBV Awareness and Advocacy Plan.
- 19.6 These quarterly reports will be incorporated into a comprehensive annual report for submission to MANCO, via the Transformation Committee.
- 19.7 This policy will be reviewed periodically by the SHOC.

Further information contact:

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ANNEXURE 1 REPORTING PROCEDURES OF SEXUAL HARASSMENT AND/OR SEXUAL OFFENCES COMPLAINTS

FOR NOTING: Below is an excerpt from Integrated Policy for the Promotion of Equality and Prevention of and Protection Against Unfair Discrimination that outlines the unfair discrimination complaint procedure. For the purposes of this policy, all references to unfair discrimination have been substituted with sexual harassment/offences.

SECTION 8: COMPLAINT

- 8.1. If an employee or student believes that they have been the victim of sexual harassment/offences, they must follow the recourse that is available and lodge a complaint with the Transformation Office via the online reporting system (available on both the staff and student portals, respectively). It is acknowledged that certain complaints may be lodged anonymously.
- 8.2. The Transformation Office shall, in turn, appoint an independent person with adequate and relevant expertise to investigate the complaint (“the investigating officer”).
- 8.3. In the event that a complaint concerns the alleged misconduct of any employee who would ordinarily be required to play a role in the processes provided for in Section 9 below:
 - 8.3.1. the relevant MANCO member will be notified of the conflict as soon as possible;
 - 8.3.2. the implicated employee will recuse themselves from all processes provided for in Section 9 below; and
 - 8.3.3. the MANCO member will, to the extent necessary, and as soon as possible, appoint an alternative impartial employee to fulfil the role of the implicated employee.

SECTION 9: RESPONSE TO THE COMPLAINT

- 9.1. Acknowledgment of Receipt
 - 9.1.1. The Transformation Office shall be required to acknowledge the receipt of any complaint within 3 (three) working days of receipt thereof.
 - 9.1.2. In the event of an anonymous complaint being lodged, such complaint shall nevertheless be investigated to the extent possible in terms hereof.
- 9.2. Investigating Officer and Mediator

Any investigating officer or mediator appointed by the Transformation Office in terms of Section 9 shall be required to meet the following minimum criteria:

- 9.2.1. They must be conversant with the provisions of this Policy and PEPUDA;
- 9.2.2. They must have a working knowledge of employment laws in general;

- 9.2.3. They must not have a personal or familial relationship with the complainant, respondent or any potential witness;
- 9.2.4. They must not have any prior knowledge of the facts relevant to the complaint;
- 9.2.5. They must not have a personal interest or stake in the outcome of the matter;
- 9.2.6. They must have the ability to investigate or mediate (as the case may be) the complaint objectively without bias;
- 9.2.7. They must have strong interpersonal skills to build a rapport with the parties involved and to be seen as neutral and fair;
- 9.2.8. They must possess sufficient expertise in dealing with sexual harassment/offences disputes and conducting:
 - 9.2.8.1. investigations, in the case of the investigating officer; or
 - 9.2.8.2. mediations in general, in the case of the mediator.

9.3. Preliminary Assessment

- 9.3.1. The investigating officer appointed in terms of Section 8.2 above shall, within 3 (three) calendar days of their appointment, conduct a preliminary assessment of the complaint with a view to recommend and advise the Inquiry Panel as to:
 - 9.3.1.1. whether it would be appropriate to offer the complainant the opportunity to have his/her complaint dealt with by way of the mediation process provided for in Section 9.4 below; or
 - 9.3.1.2. whether, on the face of it, the complaint is too serious to be dealt with by way of the mediation process and there is sufficient substance to warrant the conduct of a detailed investigation with a view to possibly initiating disciplinary proceedings against the respondent/s.
- 9.3.2. In conducting a preliminary assessment of the complaint in terms hereof, the investigating officer may, if they deem it necessary in the circumstances, interview the complainant with a view to determining:
 - 9.3.2.1. the scale of the issue;
 - 9.3.2.2. the materiality of the complaint;
 - 9.3.2.3. the availability or otherwise of witnesses and/or corroborating information;
 - 9.3.2.4. the quality, specificity and seriousness of the allegations; and
 - 9.3.2.5. the nature of the outcome sought by the complainant.

9.3.3. The investigating officer shall deliver a brief written report to the Transformation Office with their recommendation in terms of Section 9.3.1 above which shall, in turn be delivered to the Inquiry Panel.

9.3.4. Where the alleged sexual harassment/offences is of such a serious nature that it may constitute a criminal offence or the conduct complained of is, in the opinion of the Inquiry Panel, too serious to be dealt with by way of the mediation process provided for herein, a formal investigation as envisaged in Section 9.5 below will be conducted with a view to possibly referring the matter to:

9.3.4.1. the ERO, where the respondent is an employee, in order that disciplinary proceedings may be instituted against the respondent in terms of the Employee Disciplinary Procedure and Code; or

9.3.4.2. the LSO, where the respondent is a student, in order that disciplinary proceedings may be instituted against the respondent in terms of the Student Disciplinary Code.

9.4. Mediation

9.4.1. If, after the conduct of the preliminary assessment in terms of Section 9.3 above, the Inquiry Panel determines that the complaint is capable of being resolved by mediation and this would be appropriate in the circumstances, it shall notify the Transformation Office of its determination or recommendation and the Transformation Office will notify the complainant accordingly.

9.4.2. Within 2 (two) calendar days of receipt of the aforesaid notification, the complainant may, by means of written notice to that effect to the Transformation Office, confirm their election to have the matter dealt with, either:

9.4.2.1. by way of mediation; or

9.4.2.2. by way of the investigation process provided for in terms of Section 9.5 below.

9.4.3. In the event of the complainant electing to have the matter dealt with:

9.4.3.1. by way of mediation, the Transformation Office shall appoint a suitably qualified mediator to attempt to resolve the matter;

9.4.3.2. by way of the investigation process provided for in terms of Section 9.5 below, a formal investigation of the complaint will be conducted accordingly.

9.4.4. No person engaged in the mediation process shall be entitled to legal representation excepting that:

9.4.4.1. where the complainant or respondent is an employee, they may be accompanied and supported by a union representative or fellow employee, who will serve in an advisory capacity; or

9.4.4.2. where the complainant or respondent is a student, they may be accompanied and supported by a member of the Student Representative Council or a fellow student, who will serve in an advisory capacity.

- 9.4.5. The principal role of the mediator is to facilitate communication between the complainant and the respondent with a view to helping them reach a voluntary resolution of the matter that is both timely and fair in the circumstances.
- 9.4.6. The mediator shall be required to, *inter alia*:
- 9.4.6.1. advise the complainant at the outset of the mediation process, whether the relief sought by the complainant is reasonable and achievable in the circumstances;
 - 9.4.6.2. facilitate the process by detailing the general nature of the relief that may be reasonable and achievable in the circumstances; and
 - 9.4.6.3. conclude the mediation process within 14 (fourteen) calendar days of their appointment, which period may, on good grounds and/or under exceptional circumstances, be extended by the Transformation Office.
- 9.4.7. If the mediation process is not concluded within 14 (fourteen) calendar days of the mediator's appointment or within such extended period as may be authorised by the Transformation Office, the mediator shall declare the mediation process terminated and inform the Transformation Office accordingly. In such event, an investigation shall be conducted in terms of Section 9.5 below.
- 9.4.8. The mediator will be required to manage any meeting and conduct the mediation process as they deem appropriate in the circumstances, with due regard being had for the fact that the mediator should not impose solutions or decisions and has no power to force a resolution of the matter.
- 9.4.9. A resolution of the dispute can only be reached by agreement between the complainant and the respondent.
- 9.4.10. The mediator has no right or duty to provide legal advice to the complainant and/or the respondent but may raise issues and help the parties explore options.
- 9.4.11. Until the termination of the mediation process, whether by resolution or otherwise, both the complainant and respondent are obliged to attend all meetings called by the mediator and truthfully attempt to resolve the matter.
- 9.4.12. The mediator may treat the failure of either party to attend a meeting or failure in any other way to co-operate with the mediator, as sufficient grounds to hold that it will be impossible to reach a fair and appropriate resolution of the matter within a reasonable period of time.
- 9.4.13. Nothing stated by the complainant, the respondent or the mediator during and for the purposes of the mediation process is admissible in disciplinary proceedings of the University and in any subsequent court of law.
- 9.4.14. Prior to or at any stage during the mediation process, the mediator may, for the following reasons, declare the process terminated and report the reasons for their decision in writing to the Director: Transformation:
- 9.4.14.1. if either the complainant or the respondent withdraws consent to the mediation process;

- 9.4.14.2. if the mediator decides that the complaint is not one for which mediation is appropriate; or
- 9.4.14.3. if the mediator decides that it will not be possible to reach a fair and appropriate resolution within a reasonable period.
- 9.4.15. If, after the mediation process, the complainant and the respondent agree to resolve the complaint, and the mediator is satisfied that the nature and terms of the proposed resolution are appropriate and fair, the mediator shall draft the terms of the resolution agreement. If the complainant and the respondent agree to the mediated resolution agreement, they shall sign the resolution to ratify their agreement to it. The mediator shall then submit their report to the Transformation Office and present the resolution agreement for endorsement. It is only by such an endorsement that a resolution agreement becomes binding.
- 9.4.16. If the Transformation Office declines to endorse the resolution agreement, the reasons therefore will be stated in writing and delivered to the mediator, the complainant and the respondent. If, notwithstanding the reasons provided, the complainant and respondent remain satisfied with the resolution agreement, the resolution agreement shall be binding on the parties.
- 9.4.17. Any breach of the binding resolution agreement shall constitute misconduct under the Employee and Student Disciplinary Codes, respectively.
- 9.4.18. A binding resolution agreement precludes the institution of disciplinary proceedings in respect of the complaint it settles. Every mediated resolution agreement should therefore stipulate such consequence.
- 9.4.19. After the mediated resolution agreement has been endorsed, a copy thereof shall be given to both the complainant and the respondent and placed on the personal employee/student files of all involved in the mediation process. An electronic copy of the resolution agreement will be kept on the online reporting system by the Transformation Office, for a period of 12 (twelve) months.
- 9.4.20. Every resolution agreement, whether binding or not, is confidential to the parties involved, the mediator and the University. Any breach by an employee or student of any obligation to confidentiality imposed by this Section constitutes misconduct under the respective Disciplinary Codes.
- 9.4.21. The complainant may, within 20 (twenty) days of signature of the agreement, make written application to the Transformation Office for review of the terms of resolution agreement or for the resolution agreement to be set aside.
- 9.4.22. An application for review must be supported by a concise and clear statement of facts, alleging irregularities in law in respect of the agreement and which irregularity was present at the time when the agreement was concluded.
- 9.4.23. The Transformation Office will refer the application for review of the resolution agreement to the Inquiry Panel for a determination, which decision shall be binding.
- 9.4.24. Annexure 2 hereto provides an overview of the process flow of a mediation conducted in terms of this Section 9.

9.5. Investigation:

9.5.1. The investigating officer appointed in terms of Section 8.2 above shall conduct a formal investigation of the complaint if:

9.5.1.1. the mediation process is terminated by the mediator in terms of Sections 9.4.7 and/or 9.4.14 above;

9.5.1.2. the complainant, in response to the notification received by them in terms of Section 9.4.1 above, opts out of the matter being dealt with by way of the mediation process provided for in Section 9.4 above;

9.5.1.3. the outcome of the preliminary assessment conducted in terms of Section 9.3 above is such that the complaint is considered by the Inquiry Panel to be serious, such that it would be inappropriate to have the matter dealt with by way of the mediation process provided for in Section 9.3 above, and warrants the need to conduct a detailed investigation with a view to the University possibly initiating disciplinary proceedings against:

9.5.1.3.1. the respondent employee in terms of the Employee Disciplinary Procedure and Code; or

9.5.1.3.2. the respondent student in terms of the Student Disciplinary Code.

9.5.2. The investigation of the complaint must be dealt with discreetly and as soon as possible and address all relevant issues. In this regard the investigating officer should, *inter alia*:

9.5.2.1. interview both the complainant and the respondent outlining the nature of the process;

9.5.2.2. afford the respondent the opportunity of responding to each of the specific allegations raised by the complainant;

9.5.2.3. interview any relevant witnesses identified by either the complainant or the respondent, and gather any relevant evidence such as documents, screenshots, voice recordings, pictures, emails, social media posts;

9.5.2.4. make recordings and/or take detailed notes of all interviews;

9.5.2.5. ensure that a thorough, fair and impartial investigation is conducted;

9.5.2.6. determine whether a *prima facie* case of misconduct on the part of the respondent has been established which warrants the conduct of a disciplinary hearing in terms of either the Employee Disciplinary Procedure and Code or the Student Disciplinary Code, as the case may be;

9.5.2.7. take all reasonable steps as may be open to them to conclude the investigation within 14 (fourteen) calendar days of their appointment which period may, on good grounds and/or under exceptional circumstances, be extended by the Transformation Office;

9.5.2.8. prepare a written report outlining the complaint, the steps taken during the investigation, and a summary of the evidence gathered; and

- 9.5.2.9. make such recommendations as the investigating officer deems appropriate in the circumstances.
- 9.5.3. In respect of any interviews conducted with a complainant or respondent:
- 9.5.3.1. where the complainant or respondent is an employee, they may be accompanied and supported by a union representative or fellow employee, who will serve in an advisory capacity; or
- 9.5.3.2. where the complainant or respondent is a student, they may be accompanied and supported by a member of the Student Representative Council or a fellow student, who will serve in an advisory capacity.
- 9.5.4. In respect of any interview with the complainant, the investigating officer should attempt to create a safe and confidential environment for the complainant where they are encouraged to participate and provide as much information as possible during the process. In order to do this, investigating officer should attempt to establish rapport by:
- 9.5.4.1. allowing adequate time for the interview;
- 9.5.4.2. conducting the interview at a venue where the complainant feels safe and able to speak freely;
- 9.5.4.3. ensuring that the respondent is not present or in the vicinity;
- 9.5.4.4. adopting a "seeking to understand" perspective in questioning the complainant;
- 9.5.4.5. reviewing the complainant's rights and explaining the complainant's role in the process, including, where disciplinary proceedings are contemplated, the leading of evidence-in-chief, cross examination, re-examination and argument;
- 9.5.4.6. inquiring about any threats the respondent or any other person may have made towards the complainant and respecting and supporting their efforts to maintain their safety.
- 9.5.5. Upon the conclusion of the investigation, the investigating officer shall furnish their report and recommendations to the Transformation Office.
- 9.5.6. The Transformation Office shall, within 3 (three) calendar days of receipt of the investigating officer's report, submit same to the University's Inquiry Panel together with comments (if any).
- 9.5.7. Annexure 3 hereto provides an overview of the process flow of an investigation conducted in terms of this Section 9.

SECTION 10: INQUIRY PANEL

10.1. Composition

The University's Inquiry Panel shall be comprised of:

- 10.1.1. a Chairperson, who must be a legal professional or legal academic with expertise in human rights law and/or gender equality;

- 10.1.2. a member of the transformation committee;
- 10.1.3. an appropriate expert working in the area related to the matter at hand;
- 10.1.4. in student-related complaints, a representative of the Student Representative Council;
- 10.1.5. in employee-related complaints, a nominee proposed by either the DVC Learning and Teaching, in consultation with the relevant Executive Dean of a faculty where the respondent is an academic or faculty-associated staff member, or a nominee proposed by the relevant MANCO portfolio when the respondent is a professional, administrative, support services employee;
- 10.1.6. a member of the Ethics Office; and
- 10.1.7. a representative from the LSO, in student-related complaints, or a representative from the ERO, in staff-related complaints.

10.2. General

- 10.2.1. The Inquiry Panel may, by majority resolution, second any other person to serve on the Inquiry Panel who the Inquiry Panel believes may contribute meaningfully to the conduct of any process contemplated in this Policy.
- 10.2.2. Any member of the Inquiry Panel that may be directly involved in any aspect of the complaint, whether as the complainant, the respondent, a related party or as a witness shall be required to recuse themselves from the Inquiry Panel in so far as the Inquiry Panel is required to deal with the complaint and, in such instance, the remaining members of the panel shall act alone.

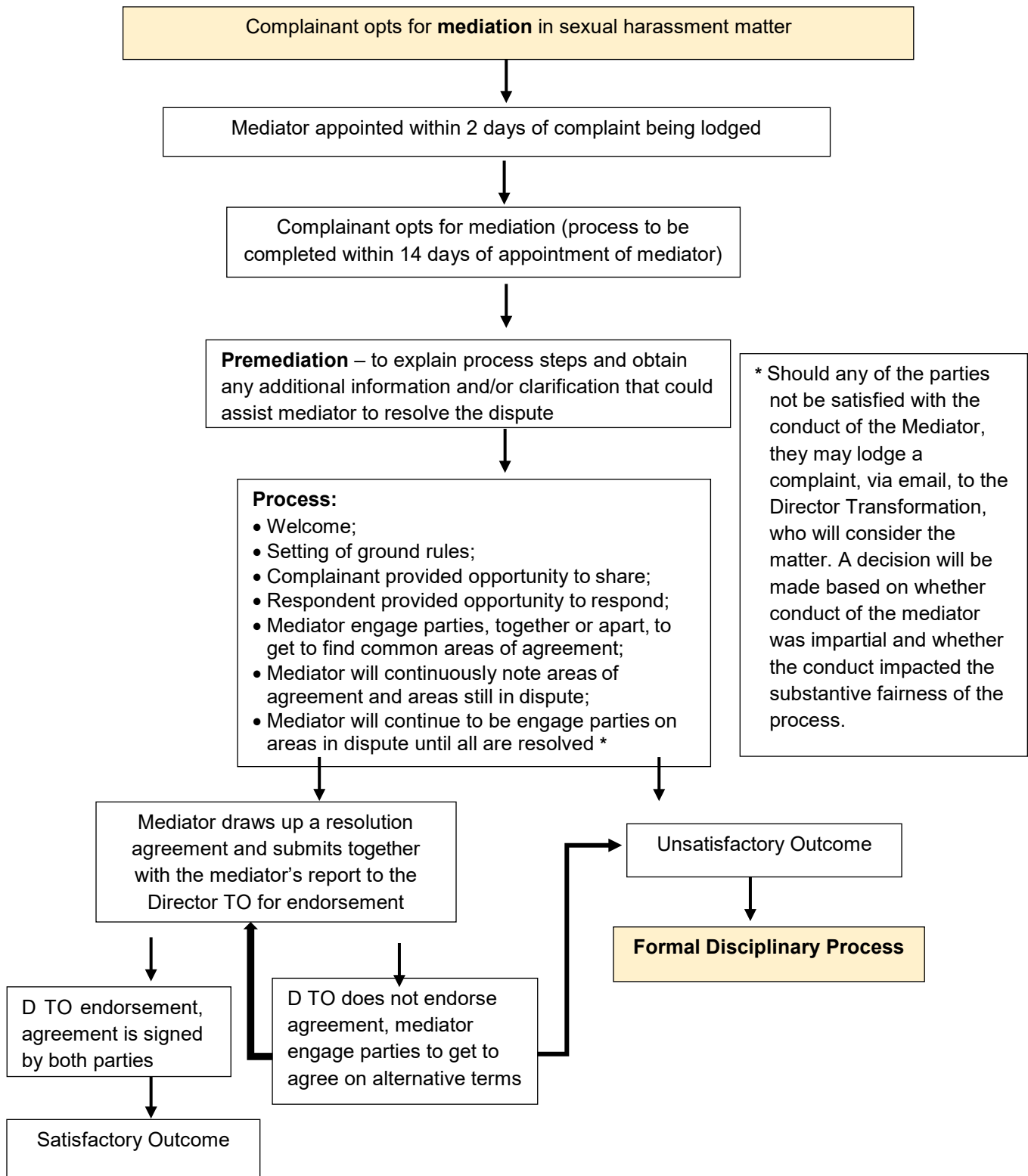
10.3. Review of Report and Recommendations

- 10.3.1. Within 10 (ten) working days of receipt of the investigating officer's report and recommendations, the Inquiry Panel will meet in order to carefully review the said report and recommendations.
- 10.3.2. Should the Inquiry Panel require further information, the investigating officer may be called upon to obtain such information within a period of three (3) working days and submit it electronically to the Inquiry Panel as a supplement to the above report and recommendations.
- 10.3.3. The Inquiry Panel may, as part of its deliberations, request to engage directly with the complainant and/or respondent, provided that they shall not be interviewed together. Such a session will be set up by the Transformation Office, where practicable. Any engagement shall necessitate:
 - 10.3.3.1. the Inquiry Panel adopting the same principles as set out in Section 9.5.4 above; and
 - 10.3.3.2. the complainant and/or respondent being entitled to representation on the same basis as set out in Section 9.5.3 above;
 - 10.3.3.3. the complainant and respondent (where the Inquiry Panel deems it necessary to engage with both of them) waiting in separate rooms and participating in the process by way of direct audiovisual access.

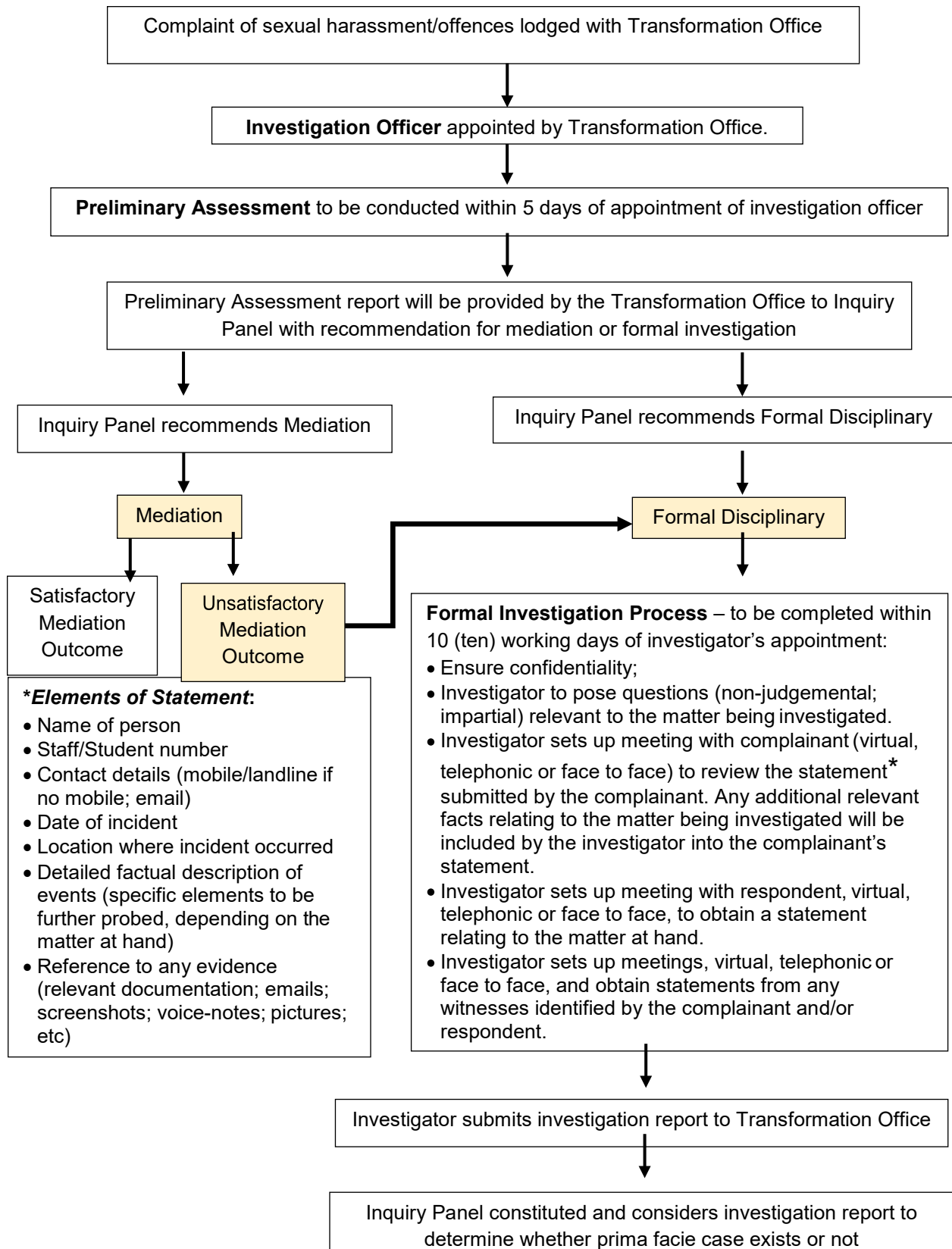
- 10.3.4. The Inquiry Panel shall adopt an inquisitorial approach with a view to determining the facts of the case and making an informed decision as to the appropriate process to be followed.
- 10.3.5. All administrative and logistical functions are to be coordinated by the Transformation Office including the booking of venues.
- 10.3.6. All proceedings must be recorded and should be submitted to Employee Relations or the LSO, as the case may be, as part of the Inquiry Panel's report.
- 10.3.7. In the event that the Inquiry Panel concludes, by majority resolution, that a *prima facie* case of misconduct on the part of the respondent has been established which warrants the a formal disciplinary process to be conducted, the matter will, within 2 (two) working days of the aforesaid resolution, be referred to:
- 10.3.7.1. Employee Relations, where the respondent is an employee, in order that disciplinary proceedings may be instituted against the employee in terms of the Employee Disciplinary Procedure and Code; or
- 10.3.7.2. The LSO, where the respondent is a student, in order that disciplinary proceedings may be instituted against the student in terms of the Student Disciplinary Code.
- 10.3.8. The referral of the matter to either Employee Relations or the LSO, as the case may be, shall be accompanied by the report and recommendations of the investigating officer, the report of the Inquiry Panel and all relevant documentation forming part of the investigation and the deliberations of the Inquiry Panel.
- 10.3.9. In the event that the Inquiry Panel concludes, by majority resolution, that a *prima facie* case of misconduct on the part of the respondent has **not** been established, this will be reported to Employee Relations (if the respondent is an employee) or the LSO (if the respondent is a student) and such report will need to be signed off by either the Executive Director: Human Resources or the Senior Director: Legal Services, as the case may be, who shall be required to, in turn, inform the relevant parties of the outcome of the matter.
- 10.3.10. In the event that the Inquiry Panel concludes, by majority resolution, that a *prima facie* case of misconduct on the part of the respondent has **not** been established, this will be reported to Employee Relations (if the respondent is an employee) or the LSO (if the respondent is a student) and such report together with the reasons for the decision must be submitted either to the Executive Director: Human Resources or the Senior Director: Legal Services.
- 10.3.11. Upon receiving a report from the Transformation Office, the Executive Director: HR (in the case of employees) or Senior Director: Legal Services (in the case of students) must assess the report and may make the following determination:
- 10.3.11.1. Support the report of the Inquiry Panel;
- 10.3.11.2. Refer the matter to the Inquiry Panel for reconsideration; or
- 10.3.11.3. Make any recommendation supported by legislation or institutional policy.

- 10.3.12. The Executive Director: Human Resources or the Senior Director: Legal Services will inform the parties as well as the Transformation Office (where the complaint was lodged) of the outcome of their assessment via the ERO and LSO, respectively.
- 10.3.13. Annexure 4 hereto provides an overview of the process flow of sexual harassment/offences complaints.

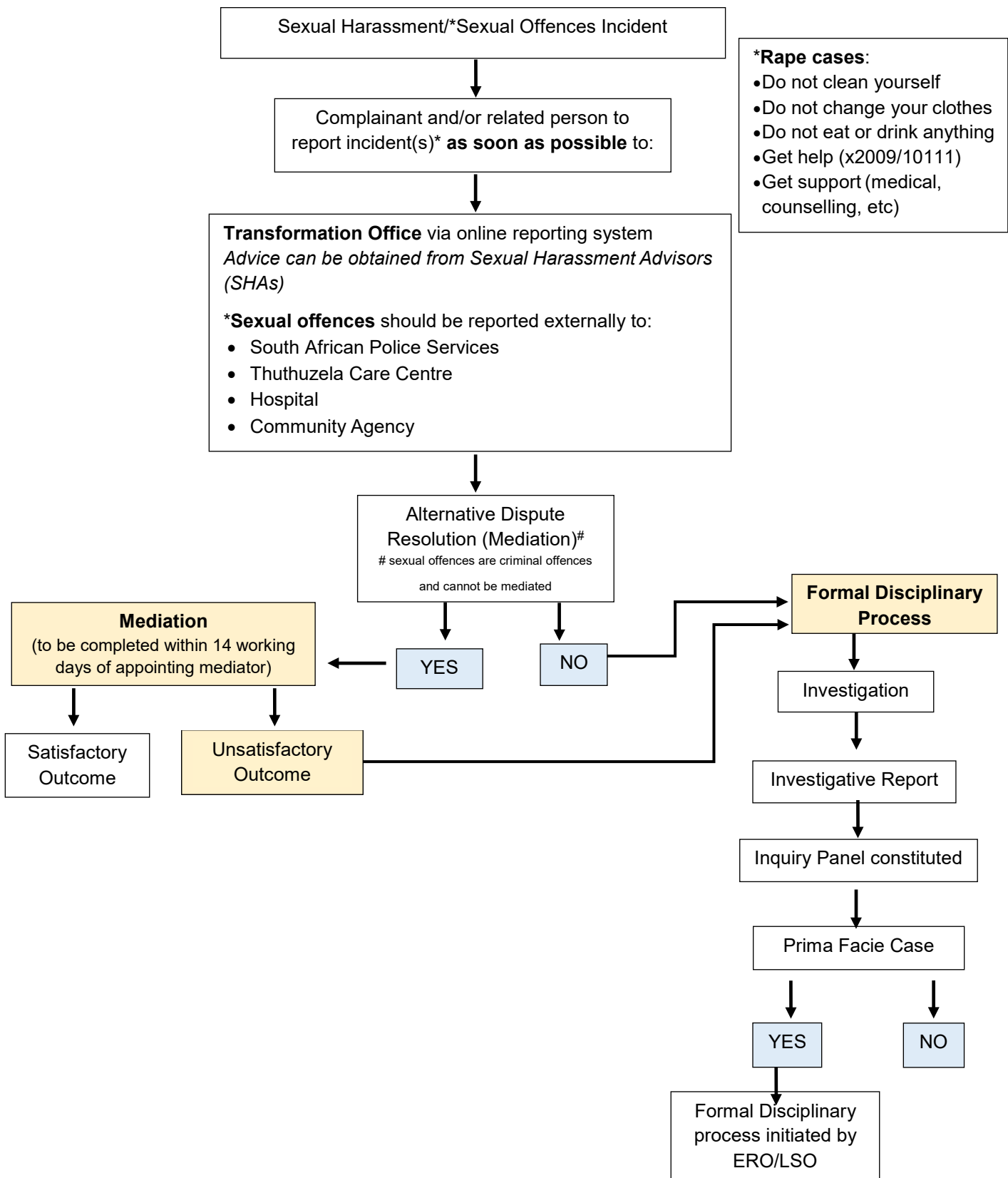
ANNEXURE 2 PROCESS FLOW – MEDIATION



ANNEXURE 3 PROCESS FLOW – INVESTIGATION



ANNEXURE 4 PROCESS FLOW OF SEXUAL HARASSMENT AND SEXUAL OFFENCES



ANNEXURE 5 PROTOCOLS ASSOCIATED WITH PSYCHOSOCIAL SUPPORT SERVICES

A. EMTHONJENI STUDENT WELLNESS PROTOCOL

Students are the main target population. Counsellors refer staff to the NMU Wellness@Work programme who have been the victim of sexual harassment. However, counsellors do see staff on a once-off basis in the case of emergencies and the need for crisis intervention.

1. Sessions held are captured on the department's statistical forms as 'sexual harassment' or 'sexual violation'. However, the statistics do not currently provide an indication of when the incident took place – it could have occurred years ago – and so cannot be reported on as a reflection of the incidence of sexual harassment.
2. The protocol followed for individual counselling is as follows:
 - a. When a client comes in:
 - i. He/she could be put through a short 15-minute intake interview. A client registration form would be completed, and then a counsellor allocated to the case. The counsellor could be the same as for the intake interview, or a referral could be made (e.g. to a counsellor on the same campus where the student is registered at, where the student reported the matter to a Student Counselling office on another campus)
 - ii. OR he/she could be seen immediately on the same day in the case of an emergency.
 - b. However the first session is arranged, counselling will proceed in the same manner as any counselling session. That is,
 - i. The norm for counselling is anything from a once-off crisis intervention to a longer-term therapeutic approach which is contracted with the client. Additional sessions are booked should the client have need of it, or where a change in intervention is required.
 - ii. Appropriate referrals will be made (e.g. medical - campus health, psychiatric, Chair: SHOC, campus protection services / police, etc.).
 - iii. The counsellor will adopt an advocacy role where necessary (e.g. lecturers will be contacted where the client has missed a class or other deadline).
 - iv. A stats form will be captured for each session (with the clients written permission) to be recorded in internal Student Counselling management reports. Such reports are used at an anonymous aggregate level to reflect on the number of clients seen, reasons for referral, impact research, and the development of new interventions.
3. Note that we put the confidentiality of the therapeutic relationship and client autonomy in decision-making first. That is, while appropriate recommendations and referrals will be made in adherence to NMU policies, we maintain the clients right to report an incident of sexual harassment. We are, in so doing, acting in accordance with the ethical code of practice set by the Professional Board for Psychology as part of the Health Professions Council of South Africa (HPCSA). Our ethical code dictates that a counsellor will break confidentiality in only three instances:
 - i. if subpoenaed to do so by a court of law, and / or
 - ii. where the client is a danger to him/herself, and / or
 - iii. where the client is a danger to others.
4. Note also that we are restricted by capacity issues, and so must focus on fulfilling our core business, which is to provide a counselling service to students on each NMU campus. We cannot, as such, also accompany the client to a disciplinary hearing. We recommend that additional capacity be created to walk both the victim AND accused through the disciplinary (DC) process. These could include:
 - i. DC Buddy (peer) – social support, and a

- ii. DC buddy (legal) – advocacy role.
- 5. We also recommend that the NMU aspires to the creation of a department or centre or position to focus on sexual harassment matters, to conduct sexual harassment training, as well as to facilitate transformation in our institution in this regard. Having a strong disciplinary process is only ONE way in which to protect our staff and students from sexual harassment and the consequences thereof. Re-education and transformation is critical. To this end, we also recommend the use of parallel disciplinary and transformative processes, and that the principles of restorative justice be embedded in the Sexual Harassment Policy.
- 6. Finally, we recommend that all line managers, new staff, residence managers, protection services staff and department sexual harassment representatives (if such are to be appointed) be trained in sexual harassment.

B. PROTECTION SERVICES PROTOCOL

The working document in respect of dealing with RAPE and Sexual assault or harassment relates to the following main aspects:

1. Providing the victim with immediate support
2. Creating a safe space for the victim to provide the report
3. Giving the case priority status
4. Ensuring the victim is assisted by way of family or friend when making such report
5. Ensuring that any evidence of value is captured and safeguarded
6. Ensuring the intervention of SAPS / Campus Health Services / Student Counselling as soon as possible
7. Engage with student residence management to ensure that parents are informed as soon as possible
8. Where the victims state of mind is of such a nature that taking statements would be inappropriate at that stage or undue duplication, handle the matter in conjunction with the various role players so as to not prolong the situation or cause further unnecessary trauma
9. Establish and maintain the necessary link with SAPS investigations where necessary
10. Ensure that where the alleged perpetrator/assailant is also a student, the matter is also referred to our internal disciplinary panel upon completion of all the relevant investigative procedures.

C. CAMPUS HEALTH SERVICES

Please see table below.

**Suspected or alleged sexual assault
or rape**

Police	Route to Health System Health System	Social Work
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Assess urgency
1. Is the assault < 72 hours ago. 2. Are there surgical/medical urgencies? e.g. Serious trauma?bleeding/pain/distress.

ACTIONS	< 72 hours or Urgency See urgently. Don't displace other life threatening emergencies.	≥ 72 hours or Urgency See as soon as possible	POLICE AND JURDICIAL PARALLEL PROCESS
IMMEDIATE	<ul style="list-style-type: none"> • Assess life threatening injuries • If HIV status unknown: give 1st dose PEP 		
MEDICAL OTHER	<ul style="list-style-type: none"> • Assess injuries <ul style="list-style-type: none"> ✓ Refer appropriately • Ascertain STD status <ul style="list-style-type: none"> ✓ Get consent for tests including HIV ✓ Determine HIV status, Syphilis status • Prevent STDs <ul style="list-style-type: none"> ✓ Give HIV PEP if not HIV positive and < 72 hours since assault ✓ Give other STI prophylaxis including Hep B • Prevent pregnancy <ul style="list-style-type: none"> ✓ Confirm not pregnant ✓ If not pregnant and if Tanne III or more give emergency contraception within 5 days 		

