

UCT GOVERNANCE INDEPENDENT INVESTIGATION

Amended Operating Procedures

Pursuant to the provisions of clause 4 of the Terms of Reference adopted by the University of Cape Town's Council, read with the Revised Terms of Reference, the Panel of Investigation has established the following amended operating procedural rules in respect of its investigation:

1. Definitions:

In these procedural rules, unless the context indicates otherwise –

“Chairperson” means the Chairperson of the Panel, Justice Lex Mpati;

“Council” means the Council of the University of Cape Town;

“Deliver” means forwarding a copy of the relevant document by email to communication@heroldgje.co.za;

“Implicated person” means any person against whom an adverse allegation relevant to the Scope of the Inquiry has been made in oral or written evidence intended for delivery or presentation to the Panel;

“Evidence Leaders” means the evidence leaders appointed by the Council, at the Request of the Panel, instructed by the Secretariat.

“Panel” means the Panel of Investigation established in terms of the Terms of Reference;

“Panel members” means the following 4 members of the Panel:

- a) Retired Supreme Court of Appeal President, Justice Lex Mpati;
- b) Retired Supreme Court of Appeal Judge, Justice Azhar Cachalia;
- c) Dr Bernadette Johnson, director: Transformation and Employment Equity at WITS; and
- d) Dr Patricia Hanekom, public sector governance expert.

“Scope of the Inquiry” means the scope of inquiry as set out in the Revised Terms of Reference;

“Secretariat” means Herold Gie Attorneys;

“Terms of Reference” means the terms of reference established by the Council for an independent investigation into the University of Cape Town’s governance;

“Revised Terms of Reference” means the revised terms of reference adopted by the Council at a meeting on 11 March 2023;

2. Commencement date:

These Amended Procedural Rules shall commence on the date upon which they are adopted by the Panel.

3. Proceedings to which the Procedural Rules apply:

3.1 These Amended Procedural Rules shall apply to all meetings and hearings held by the Panel in the execution of its mandate as determined by the Scope of the Inquiry.

3.2 A copy of these Amended Procedural Rules may be made available to any interested person by the Secretariat on written application to it.

4. Relationship between the Amended Procedural Rules, the Terms of Reference and the Revised Terms of Reference:

4.1 The Amended Procedural Rules, the Terms of Reference and the Revised Terms of Reference must be read together.

4.2 However, in the event of an inconsistency or discrepancy, the Revised Terms of Reference shall prevail.

5. Secretariat:

5.1 Herold Gie attorneys will perform the secretarial, administrative, legal, and other supporting functions to the Panel and the Evidence Leaders.

5.2 All correspondence directed to the Panel or the Evidence Leaders, and all documents intended for delivery to the Panel, shall be delivered by email to the Secretariat at communication@heroldgie.co.za marked for the attention of Mr Ashley Meyer.

6. Venue of Hearings:

6.1 Hearings shall be held at such venue, or venues, as determined by the Secretariat, after consultation with the Council.

6.2 All scheduled hearings shall be held *in camera*.

7. Right to legal representation and questioning or examination of witnesses:

7.1 Subject to Rule 10 below, no person appearing before the Panel shall have a right to legal representation nor shall any such person have the right to question or examine any other person appearing before the Panel or to make submissions to the Panel.

7.2 Any person who wishes to be legally represented when appearing before the Panel must show good cause why this should be allowed.

7.3 Likewise, any person who wishes to question or examine any other person appearing before the Panel, must show good cause why such questioning or examination should be allowed.

7.4 Any person who wishes to be legally represented, to question or examine any other person appearing before the Panel or to make submissions to the Panel, shall make written application to

the Chairperson of the Panel, in which the grounds for such a request are fully set out.

7.5 Any decision by the Chairperson shall be final.

8. Statements and other Documents:

8.1 Any statement intended for delivery or presentation to the Panel by, or on behalf of, a person appearing before the Panel must:

8.1.1 have a heading which clearly identifies the statement;

8.1.2 be clearly written, typed or reproduced;

8.1.3 be formatted in numbered paragraphs; and

8.1.4 include an index and subject matter heading if the statement is more than 5 (five) pages in length.

8.2 All documents in a language other than English, delivered or handed to the Panel must be accompanied by:

8.2.1 an English translation;

8.2.2 a declaration by the translator that the translation is accurate.

8.3 At least 7 (seven) clear and legible copies of all documents and statements shall be delivered or handed to the Panel.

8.4 All documents delivered or handed to the Panel shall remain strictly confidential.

9. Evidence:

9.1 The Panel shall conduct its work and fulfil its mandate in an inquisitorial manner.

9.2 The Panel may receive any evidence relevant to its Scope of Inquiry, including evidence that might otherwise be inadmissible in a court of law, and the Chairperson shall determine the admissibility of such evidence should questions of admissibility arise.

- 9.3 Anyone who has knowledge of the matters that fall within the Scope of Inquiry may deliver a statement or affidavit to the Secretariat to be placed before the Evidence Leaders for consideration.
- 9.4 Subject to good cause being shown, any person referred to in Rule 9.3 above, may apply to the Chairperson of the Panel, duly assisted by the Evidence Leaders if necessary, for leave to provide his or her statement or affidavit anonymously.
- 9.5 For purposes of Rule 9.4, 'good cause' shall include a reasonable fear or apprehension of intimidation or harassment by any other person, or of adverse repercussions for providing evidence to the Panel.
- 9.6 Subject to Rule 9.8 below, all evidence placed before the Panel shall be in writing.
- 9.7 Written statements, with or without any additional, relevant, documents, shall be placed before the Panel with the assistance of the Evidence Leaders.
- 9.8 The Chairperson may in his sole discretion determine whether the Panel requires oral evidence of any person, regardless of whether such a person has already provided or delivered a written statement or document(s) to the Panel or not.
- 9.9 The Evidence Leaders will assist the Panel in placing the oral evidence of any witness before the Panel, and will have the right to examine, and cross-examine, any such witness, and to make submissions to the Panel, if the Chairperson deems such examination, cross-examination or submissions necessary for the Panel to fulfil its mandate, irrespective of whether an implicated person has also been granted leave to question or examine such a witness, or to make submissions to the Panel, or not.

- 9.10 The sequence in which witnesses are called shall be subject to the discretion of the Panel, in consultation with the Evidence Leaders.
- 9.11 Any person against whom an adverse allegation relevant to the Scope of the Inquiry has been made in oral or written evidence presented to the Panel, shall be informed of his or her right to be heard by the Panel, orally or in writing.
- 9.12 Oral evidence presented to the Panel shall be recorded and transcribed as often as required by the Panel Members.

10. Implicated persons:

- 10.1 Implicated persons shall be informed in writing by the Secretariat:
 - 10.1.1 that the Evidence Leaders have been provided with a statement by a witness who has made an adverse allegation against him or her, which the Evidence Leaders intend to present to the Panel;
 - 10.1.2 what the general nature of the allegation is and, subject to Rule 9.4 above, shall be provided with a copy of the witness' statement, or relevant portions or a summary of the statement containing the allegation, together with any relevant document attached to the statement, if any;
 - 10.1.3 subject to Rule 9.4 above, the time and date when, and venue where, the witness will testify;
 - 10.1.4 that, subject to Rule 7 above regarding the right to legal representation, Rule 9.4 above regarding anonymous witnesses and the Rule of non-disclosure regarding the identity of witnesses and the contents of statements and documents in Rule 10.3 below, he or she may attend the hearing where the witness will testify and be assisted by a legal representative at the hearing;

- 10.1.5 that he or she is entitled to testify himself or herself and to call any witness to testify on his or her behalf;
 - 10.1.6 that he or she is entitled to apply to the Chairperson for leave to question or examine the witness, and to make written submissions on the findings or conclusions by the Panel on the evidence placed before it that relates to him or her. The application must be accompanied by a statement from the implicated person responding to the witness's statement insofar as it implicates him or her. The statement must clearly state which parts of the witness's statement are disputed or denied and the grounds upon which those parts are disputed or denied; and
 - 10.1.7 that the Chairperson shall in his sole discretion decide the application.
- 10.2 The application referred to Rule 10.1.7 shall be made no less than three days before the date of the hearing of the evidence of the relevant witness.
- 10.3 Subject to any direction by the Chairperson, and to protect the confidentiality of the work of the Panel, no one may disclose the identity of any witness, or the contents of any statement or document provided to the Panel, to anyone other than a legal representative for the purpose of obtaining legal advice.
- 10.4 The Chairperson may exclude any person whose presence is not reasonably required from the proceedings.

11. General:

- 11.1 The Chairperson may amend these Amended Procedural Rules and issue Practice Directions from time to time.