

# TERMS OF REFERENCE OF PANEL TO INVESTIGATE ALLEGATIONS AGAINST DORON ISAACS

## RESOLUTION

1. In terms of its powers under clause 14 of the Constitution of Equal Education (“**EE**”), the National Council (“**the NC**”) hereby appoints an independent panel (“**the Panel**”) to investigate allegations of sexual harassment and similar misconduct against the former Treasurer of EE, Doron Isaacs (“**Isaacs**”).

## BACKGROUND

2. The Constitution of EE commits EE to holding itself, its members and its leadership accountable (clauses 5.2.11 and 6.1.8). EE wishes to be an organisation that is reflective of the values and aspirations of our constitution which, includes accountable organisational practices that respect the rights of all. One of the purposes of this investigation is to ensure that EE lives up to these aspirations and values.
3. In terms of clause 14.15 of the Constitution of EE, the NC must develop and enforce policies and procedures that apply to employed staff, including a code of conduct and disciplinary and grievance procedures. Clause 14.16 provides further that the NC may develop and enforce a code of conduct for all EE members, including NC members.
4. On 6 January 2013, EE adopted a Disciplinary Code for Members (“**the Disciplinary Code**”). The Disciplinary Code provides that the offences referred to in clause 6 constitute serious misconduct. A member found to have committed such an offence may be suspended or expelled from EE. These offences include
  - 4.1. sexual harassment;

- 4.2. exhibiting a pattern of prejudicial behavior, including racism, sexism, homophobia or other prejudice;
  - 4.3. exhibiting a pattern of abusive behavior, including bullying, verbal insults and humiliation.
5. In or around 2016, EE adopted a Policies and Procedures Manual (“**the Manual**”) applicable to employees of EE. The Manual includes a harassment policy that prohibits all forms of harassment, defined in clause 8.1.2 as “*unwanted conduct perpetrated by an individual against another of any nature*”, including sexual harassment.
  6. On 18 May 2018, the *Mail & Guardian* published an article which alleged that Isaacs had sexually harassed women in the workplace and engaged in other misconduct, including an allegation that an incident occurred in 2009.
  7. In 2011, an investigation was conducted into Isaacs by the Human Resources Subcommittee of the EE Board, consisting of Professor Paula Ensor, Nathan Geffen, Sean Feinberg and Michelle Adler. The Subcommittee’s report found that “*there is no evidence whatsoever that Doron has engaged in misconduct and that there is no basis for any further investigation of this matter*”.
  8. On 18 May 2018, the Interim National Coordinator, Chief Operations Officer and Chief Financial Officer of EE wrote to the Chairperson of the NC requesting an investigation into the allegations against Isaacs.
  9. On 18 May 2018, Isaacs resigned from the NC and as a member of EE. He indicated that he may nevertheless be willing to participate in an independent investigation into his conduct.
  10. On 22 May 2018, the NC resolved to:

- 10.1. establish an independent inquiry to investigate allegations of sexual harassment and similar misconduct against Isaacs during his tenure as Treasurer and to review the process and findings of the 2011 investigation into Isaacs' conduct.
- 10.2. appoint Cheadle, Thompson & Haysom Inc. to assist the organisation in dealing with issues relevant to the inquiry, including but not limited to:
  - 10.2.1. provide legal advice and support to the Panel from time to time, and if necessary;
  - 10.2.2. request, receive or collate relevant information for the Panel and or for counsel;
  - 10.2.3. provide the organisation with legal services during the course of the investigation and after receipt of the Panel's report.

## **APPOINTMENT OF PANEL AND TERMS OF REFERENCE**

11. The NC shall appoint the members of the Panel in writing. The Panel shall consist of three suitably qualified, independent persons, at least one of whom shall be qualified as a legal practitioner. One of the members of the Panel shall be designated as its chairperson ("**the Chairperson**").

The Panel shall consist of Justice Kathleen Satchwell, Professor Rashida Manjoo and Dr Malose Langa and Justice Kathleen Satchwell shall serve as Chairperson of the Panel.

12. The terms of reference of the Panel are:

- 12.1. To investigate any allegations of sexual harassment and similar misconduct under the Constitution, Disciplinary Code, the Manual, and any other applicable policy or instrument of EE, against Isaacs during his tenure as a member and officer bearer of EE during the period from 1 January 2008 until his resignation on 18 May 2018, including:
  - 12.1.1. the allegations regarding an incident in 2009 as reported in the *Mail & Guardian* on 18 May 2018;
  - 12.1.2. any other specific complaints of sexual harassment or related misconduct, including in respect of otherwise consensual relationships, within this period received by the Panel in terms of these Terms of Reference;
  - 12.1.3. whether Isaacs or any other member, employee, or office bearer, including Zackie Achmat, silenced or intimidated any potential complainants against Isaacs;
- 12.2. To review the process and findings of the 2011 investigation into Isaacs' conduct by the then EE Board and the Human Resources Subcommittee. The Panel shall evaluate the merits of its findings and the process that it followed, including considering whether any of the members of the Subcommittee was subject to a conflict of interests.

## **PROCESS OF THE INVESTIGATION**

13. The Panel shall publish a notice inviting any person to submit a written complaint or information relevant to the inquiry within two weeks of such notice. A complainant may

request that their own identity remain confidential in terms of clause 19 below. Any information and complaints received by the panel shall be furnished to Isaacs.

14. The Panel shall have the power to regulate its own proceedings in order to fulfil its function and to ensure that the process respects the rights of all concerned, and shall have the power to take all steps necessary to fulfil its function. Its powers shall include the powers to:

- 14.1. conduct a hearing to receive evidence and information relevant to the inquiry;

- 14.2. identify, contact, and communicate with any person relevant to the inquiry;

- 14.3. request, but not compel, any member, employee or office bearer of EE to furnish information or provide evidence to the Panel.

15. Save as directed by the Panel, the proceedings of the Panel will not be open to the general public or to members of EE other than those giving evidence. No member of EE who gives evidence at the Panel shall disclose that evidence in public before the Panel concludes its inquiry and releases its report.

16. Isaacs shall be given an opportunity to give evidence and to make submissions to the Panel. For this purpose, Isaacs shall have the right to legal representation, and to have his legal representative present, at his own expense.

17. The Panel shall ordinarily receive evidence in person, unless it directs that evidence may be given in the form of an affidavit or written statement.

18. Every person involved in the execution of the functions of the Panel, including any person appointed or designated to record the proceedings or perform any other administrative role, must preserve the confidentiality of the proceedings.

19. The Panel shall have the power to direct, amongst other things, that –
  - 19.1. a summary of its report be released;
  - 19.2. its detailed written report be released or be kept confidential;
  - 19.3. the evidence of some or all of the witnesses or complainants be kept confidential;
  - 19.4. the identity of a complainant or witness shall be kept confidential;
  - 19.5. the report referred to in clause 19.2, and the information referred to in clauses 19.3 and 19.4 be disclosed to Isaacs and his representative(s), if any, subject to a confidentiality undertaking.
20. At the conclusion of its inquiry, the Panel must compile a detailed written report, and a summary of its report. The detailed written report, should amongst other things, contain:
  - 20.1. its findings arising from the investigation;
  - 20.2. its recommendations in relation to action to be taken, if any, in respect of Isaacs and any other member, employee or office bearer of EE;
  - 20.3. its recommendations, if any, regarding EE's policies, governance systems and practices in relation to the matters covered by these Terms of Reference;
  - 20.4. its recommendations that EE take further action in respect of any other issue that falls outside these Terms of Reference.
21. In the event that Panel decides to release its detailed written report, the Panel shall furnish a draft to all complainants and consult them on whether they are comfortable

with its contents being made public, provided that the Panel shall not be precluded from releasing its report by the lack of consent of any person.

22. The Panel shall conclude the investigation and deliver its report within a period of not more than three months from the date of its appointment. The NC may by resolution extend this period.