

**COMMISSION OF INQUIRY INTO ALLEGATIONS
OF RACISM AT STELLENBOSCH UNIVERSITY**

FINAL REPORT

**Chairperson: Emeritus Justice Sisi Khampepe
Former Justice of the Constitutional Court of South Africa**

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Definitions:

In this report, the following words, acronyms and phrases may be understood in terms of the following definitions—

- i. “**Black**” – unless otherwise specified, this connotes the broadest racial category that includes the Black, Indian and Coloured racial groups. The use of “Black” in this catch-all fashion is in no way intended to undermine the nuances of racial discrimination nor the unique experiences and histories of these different groups of people. It is merely a convenient means of phraseology which provides a less cumbersome read.
- ii. “**CDC**” – refers to the Central Disciplinary Committee, which is one of the disciplinary committees established by the University’s Disciplinary Code for Students which has jurisdiction to deal with all disciplinary matters.
- iii. “**Centre for the Study of the Afterlife of Violence and the Reparative Quest**” – this refers to a centre at the University that focuses on the histories and after-effects of violence. It facilitates research and trains students on transgenerational trauma, and holds public dialogue events that reflect on race and racism.
- iv. “**Commission**” – this refers to the Commission of Inquiry into Allegations of Racism at Stellenbosch University.
- v. “**Community**” – this refers to a residence or PSO at the University.
- vi. “**Constitution**” – unless otherwise specified, this refers to the Constitution of the Republic of South Africa, 1996.
- vii. “**CSC**” – the Centre for Student Communities, which is responsible for the management and welfare of all of the residences and PSOs at the University.
- viii. “**CSLEEC**” – the Centre for Student Leadership, Experiential Education and Citizenship, which is responsible for the training and development of all student leaders except for Community leaders. It also offers a variety of programmes and courses to the whole student body, including the Shared Humanities module.
- ix. “**HC**” – House Committee, which is a group of elected student leaders in each residence. Every HC has a Prim and Vice-Prim as well as other members who hold various portfolios.

- x. “**Huis Marais incident**” – this refers to the incident that took place in the Huis Marais residence in the early hours of Sunday, 15 May 2022, when a White student entered the room of a Black student without his permission, and urinated on his belongings.
- xi. “**Juridical Society**” – the student society of elected leaders who represent the interests and concerns, academic or otherwise, of the students in the Law Faculty.
- xii. “**Law Dance incident**” – this refers to the incident of alleged racism that took place when a White student and Indian student had a verbal altercation about the music at the Law Faculty Dance on Thursday, 12 May 2022.
- xiii. “**Mixed residence**” – this refers to residences that house students of all genders.
- xiv. “**Newcomer**” – this refers to students completing their first year of study at the University. This term is generally used in the context of Welcoming.
- xv. “**NSFAS**” – refers to the National Student Financial Aid Scheme.
- xvi. “**Placement Policy**” – this refers to the University’s Policy for Placement in Residences, and in Listening, Learning and Living Houses, as well as allocation to PSO Wards and Clusters.
- xvii. “**Prim**” – this refers to the *Primaria* of each Community who is, in essence, the head student of that Community. They are also the head of the HC and are responsible for overseeing and managing all of the student leadership responsibilities in their Community.
- xviii. “**Prim Committee**” – all Prims are members of the Prim Committee, which meets on a weekly basis. The purpose of this committee is to provide a platform for the Prims to support one another and to receive guidance and training. The Chair and Vice-Chair of the Prim Committee are elected from the group of Prims in the preceding year, and they are *ex officio* members of the SRC.
- xix. “**PSO**” – this refers to Private Student Organisations, which are organisations to which all students who are not members of a residence belong. PSOs host social events, critical engagement sessions, training and other offerings that are available in residences as well. They also run the Welcoming Programme for newcomers and are managed by a group of student leaders, akin to an HC.

- xx. “**Rectorate**” – refers to the office of the Rector and Vice-Chancellor of the University.
- xxi. “**Res Ed**” – the Res Ed programme is run by the Transformation Office in conjunction with HC representatives who hold the critical engagement portfolio in every Community. It consists of a series of sessions on topical issues that relate to injustice. The HC representative chooses the sessions that they consider to be most relevant to their Community, and they are then trained by the Transformation Office to facilitate the sessions during the Welcoming Programme. After the Welcoming Programme ends, the HC representatives are encouraged to host other sessions from the available selection throughout the year. The Res Ed sessions during Welcoming are compulsory, but thereafter attendance at the critical engagement sessions is voluntary.
- xxii. “**Residence Head**” – each residence has a Residence Head who is intended to function as the responsible staff member in that environment. Their role is extremely broad, but entails providing support and guidance to the students and student leaders in their residence. They oversee the operations of the residence and intervene in matters between students where necessary and appropriate. A more thorough explanation of the role of the Residence Head is provided in the University’s Residence Rules.¹
- xxiii. “**SAHRC**” – this refers to the South African Human Rights Commission, an independent Chapter 9 Institution that draws its mandate from the Constitution.
- xxiv. “**SRC**” – the Student Representative Council is the highest ranked student leadership body at the University. It is led by a Chairperson and Deputy Chairperson, and consists of other elected members as well as several *ex officio* members.
- xxv. “**SU**” – this connotes Stellenbosch University. Although this report refers to Stellenbosch University as “the University”, there are certain instances where the University’s internal documentation, which uses “SU” instead, is quoted directly.
- xxvi. “**Terms of Reference**” – refers to the Commission’s Terms of Reference that were signed into effect by the Rector of the University on 3 June 2022.

¹ See article 2.2 of the Residence Rules.

- xxvii. **“They/them/their”** – note that this is generally the pronoun that is used to refer to evidence provided by a specific witness whose identity is confidential, as provided in the Terms of Reference.
- xxviii. **“Transformation agenda”** – this refers to the University leadership’s conscious and strategic decision to pursue and prioritise transformation and the elimination of racism and discrimination at the University.
- xxix. **“Transformation apparatus”** – this refers broadly to all of the University’s policies, plans or other official documentation, and all of the personnel and offices that do work in furtherance of the University’s transformation agenda.
- xxx. **“Transformation journey”** – this refers to the University’s movement away from its historic state as an exclusionary institution during the eras of colonialism and apartheid, towards its ultimate goal of becoming an inclusive, diverse and transformed South African university. This journey is taking place in pursuit of the transformation agenda and relies in large part on the transformation apparatus.
- xxxi. **“University”** – this refers to Stellenbosch University.
- xxxii. **“University community”** – this refers to all students, members of staff, Council, the Convocation, alumni and any other office holders and persons who are affiliated with the University.
- xxxiii. **“University leadership”** – this refers to those staff members of the University who are most involved in the governance, policy choices, and daily operations of the University. This mainly includes the Rectorate, but in some contexts may include other senior leaders at the University.
- xxxiv. **“Welcoming”** – this refers to the two-week period during which the newcomers attend the Welcoming Programme and prepare to begin their studies.
- xxxv. **“Welcoming Programme”** – this refers to a programme of activities that takes place over a period of two weeks when the newcomers arrive at the University for the first time at the beginning of each year. It is intended to assist the students with settling into the University and preparing for the commencement of their studies.

Executive Summary

- 1 In May 2022, two incidents of alleged racism occurred at Stellenbosch University.
- 2 The first involved a verbal altercation between two final year law students at the Law Faculty Dance, on Thursday 12 May 2022. It was alleged by the one student, who is Indian, that the other student, who is White, made disparaging and racist remarks during the course of the altercation. The White student denies making racist remarks and alleges that the incident was a misunderstanding.
- 3 The second incident took place in the early hours of Sunday, 15 May 2022 in the Huis Marais residence when a White first year student, Mr Theuns du Toit, entered the room of a Black first year student, Mr Babalo Ndwayana, without his permission. Mr du Toit was heavily intoxicated and urinated on Mr Ndwayana's possessions, including his laptop and textbooks, before leaving the room.
- 4 Both of these incidents, and particularly the Huis Marais incident, caused a major upset amongst the members of the University community, particularly those members who are Black. It also prompted a public uproar in the broader South African society about the status of transformation at the University.
- 5 Against the backdrop of these incidents as well as the University's tumultuous history with transformation, the Rector and Vice-Chancellor of the University appointed the Commission of Inquiry into Allegations of Racism at Stellenbosch University on 3 June 2022.
- 6 The Commission was mandated by its Terms of Reference to conduct an investigation into transformation at the University, including the efficacy of the University's transformation apparatus, the broader culture at the University and the consequent experiences of students and staff members at the University. The purpose of this investigation was for the Commission to make findings and report on these issues to assist the University leadership with improving the University's culture of diversity, equity and inclusion with reference to racism.
- 7 The Inquiry effectively comprised four stages: the collection of relevant documentary evidence; the issuance of an open call for submissions from the

University community; hearings for the collection of oral evidence; and reporting. The Commission's Terms of Reference required that the identities of all witnesses who provided evidence during those processes to be treated as confidential.

- 8 Through its collection of documentary evidence, the Commission considered the various strategic documents, including policies, codes, plans and similar documents, that the University has adopted and implemented in pursuit of its transformation agenda. It also considered relevant statistics, reports and academic materials.
- 9 Thereafter, the Commission issued an open call for submissions that allowed all members of the University community an opportunity to make full and confidential written submissions on matters relating to the Terms of Reference. These submissions were considered, and those that raised relevant and novel issues were invited to provide oral evidence in a hearing.
- 10 The Commission collected oral evidence by way of closed hearings. In instances where witnesses wished to be assisted by a legal representative, that representative was permitted to attend the hearing. Otherwise, the only attendees at these hearings were the witness, the Chairperson, the Evidence Leader and the transcriber. During these hearings, the Commission heard oral testimony from all of the University's relevant and significant stakeholders, including the University leadership, members of staff, student leaders and students, and parties who were able to provide insight and perspectives on the Law Dance incident and the Huis Marais incident.
- 11 The Commission also considered the expert testimony of several witnesses who have vast experience and knowledge relating to matters of racism, discrimination and transformation in higher education.
- 12 After conducting its investigation and considering the evidence before it, the Commission made various findings and recommendations. The crux of these findings was that the University has made impressive theoretical strides towards transformation, but that these simply are not translating adequately into the lived experiences of students and staff. In other words, although the University

appears to have in its arsenal a formidable transformation apparatus, Black students and staff members still feel unwelcome and excluded at the University. The Commission found that this is due to a variety of factors, which are briefly surmised as follows:

- i. The history of the University and the symbolic meaning that it has acquired for certain members of the White, Afrikaans community poses challenges to transformation at the University. This is because there are people, both within and outside of the University, who believe that the University is culturally significant to Afrikaners and that the status quo should accordingly be preserved. These sentiments manifest in external pressures being exerted on the University by alumni and various political and interest groups, and in resistance from White, Afrikaans students who attend the University hoping to have the same experience of university life that was on offer at the University many years ago.
- ii. Similarly, the structure and problems of broader, South African society also bear consequences for the University's transformation journey. In a way, it falls on the University to grapple with the conflicts that arise between students who arrive from vastly different backgrounds and with vastly different worldviews. It is very difficult for the University to address prejudices that have been developed throughout the course of a young adult's life.
- iii. Although the University has adopted a fairly comprehensive transformation apparatus, its transformation journey has taken place in a piecemeal and uncoordinated fashion. This is because its transformation apparatus comprises complicated, bureaucratic, multifaceted systems and structures, which are evidently left to perform their separate functions with little cohesion or overarching coordination. This leads to omissions, a duplication of efforts, confusion and a lack of accountability. The University's Policy on Unfair Discrimination and Harassment is an example of a convoluted and complicated document with critical objectives that are not realised in practice.

- iv. The University's organisational structure and historic culture favour hierarchy. This has resulted in leaders at the University, both members of staff and students, overemphasising the hierarchical nature of leadership positions and underemphasising the duties of service expected of leaders, particularly in the context of the University's transformation project.
- v. This has culminated in resistance to transformation arising from members of the University's middle management. These individuals are not positioned high enough within the University to be held directly accountable for the status of its transformation, but have enough power to make decisions that frustrate the efforts of those members of the University who are responsible for the implementation and operation of the University's transformation apparatus. This occurs frequently because there is currently little incentive for or compulsion on all members of staff to support and participate in the transformation project. The upshot of this is that there is currently a profound lack of shared responsibility for transformation at the University, and the burden of transformation is thus borne by a select group of people within the University.
- vi. In addition, many of the key structures within the University's transformation apparatus are ineffective in practice. The most problematic of these is the Equality Unit, which is largely perceived as invisible, ineffective, inefficient and the inappropriate body to be dealing with all matters of unfair discrimination. The manner in which the Equality Unit dealt with the Law Dance incident supported and entrenched these perceptions. There is also a lack of coordination and collaboration between the Equality Unit and the Transformation Office. In addition, both of these bodies are under-resourced, under-supported and under-equipped to perform the Sisyphean task that is expected of them.
- vii. Similarly, there is a conspicuous lack of coordination and cohesion between the CSC and the CSLEEC in respect of the training and development of student leaders. This entrenches the perceived divide

between Community leaders and the SRC and results in the student leaders receiving inconsistent and insufficient training.

- viii. Similarly, the Commission found that there are variables, some within and some outside of the University's control, that are impeding the efficacy of some of its key policies and programmes, including its Code for Employment Equity and Diversity, its Policy on Unfair Discrimination and Harassment, the Placement Policy, the Admissions Policy and the Shared Humanities Pilot Module.
- ix. In the case of the Shared Humanities Pilot Module, the Commission found that the current format of the module attracts only students with a predisposition towards matters relating to transformation. Since it is not compulsory, it is failing to reach and impact the students with pre-existing beliefs and attitudes that harm the transformation project. It is accordingly failing to fulfil its objectives.
- x. The experiences of staff members indicated that there is a culture of intimidation that discourages staff members from reporting their grievances. Black staff members frequently experience subtle forms of racism and exclusion and believe that they have to work harder to progress in their careers and earn the respect of their students and colleagues. The training and opportunities for critical engagement that are provided for members of staff are not sufficiently supported and attended, especially by White staff members. Thus programmes like the Siyakhula Programme are not being optimised.
- xi. The experiences of students indicate that despite progress and reform being achieved in some residences, there still exists a toxic and exclusionary culture in many of the residences and communities. There is a perception among Black students that this culture favours Afrikaans preferences and fails to cater to diversity. This results in racial segregation in the residences. In addition, Black students also experience subtle and underhanded racism and exclusionary acts, both in Community and faculty environments.

- xii. Many students criticised the Welcoming Programme for emphasising fun activities and failing to recognise the needs of vulnerable students from disadvantaged backgrounds arriving at the University with minimal support. In particular, the students on NSFAS bursaries are particularly prejudiced as they often arrive later on in the programme because of administrative issues with NSFAS.
- xiii. Student leaders do not receive adequate and appropriate training and support to enable them to fulfil their leadership duties. This overburdens and frustrates them, which is particularly so in the case of leaders in PSOs, who do not have the support of a figure akin to a Residence Head. Furthermore, student leaders are eager to participate in the transformation project and assist the University in achieving its transformation objectives, but do not believe that the University leadership considers or values their input.
- xiv. Furthermore, the Res Ed programme is failing to adequately address the problems and exclusion experienced by students. This is because it is not facilitated by appropriately qualified individuals, and only consists of compulsory sessions during Welcoming. After Welcoming ends, very few White students attend critical engagement sessions on matters relating to racism and transformation because there is little incentive for them to do so. This leaves many Black students feeling resentful, unheard and overlooked. It also entrenches racial segregation.
- xv. A major source of contention at the University is the issue of language. Despite the University's favouring of multilingualism in its language policy, there is a perception that Afrikaans remains the language of choice in unofficial and social settings. This excludes Black members of the University community. It also prejudices Black members of staff who do not speak Afrikaans and accordingly have to make special arrangements to assess students in English and Afrikaans. This also has negative consequences for the University's employment equity objectives.

- 13 In addition to its investigation into the culture and systems of the University, the Commission also considered evidence relating to the Law Dance incident and the Huis Marais incident. Its findings on these were as follows:
- i. At the time of the Commission’s reporting, the Law Dance incident was pending before the CDC. The Commission accordingly declined to make findings or recommendations on the incident.
 - ii. During the course of the Inquiry, the Huis Marais incident was dealt with by the CDC and Mr du Toit was expelled for misconduct, which included acting in a racist manner. Mr du Toit appealed this finding, and at the time of reporting the matter was yet to be finalised. The Commission therefore also declined to make any findings on the incident.
 - iii. The Commission did, however, find that the culture in Huis Marais was not conducive to a harmonious and socially-cohesive environment, and that the student leaders of that residence evidently had not genuinely bought into the University’s transformation project. The relationship between the Residence Head and the students in Huis Marais was a major contributing factor to these problems. Furthermore, it was perspicuous that the Residence Head of Huis Marais was ill-equipped for his role, and ill-suited to the challenging task of transforming Huis Marais. With these considerations in mind, the Commission found that the University ought to implement major interventions to successfully reform the culture in Huis Marais, which could include a return to the proposal of reconstituting Huis Marais as a mixed residence.
- 14 Pursuant to making these findings, the Commission made various recommendations that were targeted at assisting the University with optimising its transformation apparatus so that it will transform in practice, and not just on paper. These recommendations were classified into the following groups: structural improvements, educational interventions, the student experience; the language policy and incidental recommendations. Several of these were drawn from or accord with a memorandum titled “Addressing Social Injustices at

Stellenbosch University”, which was drafted by the student leaders of the University.

15 The most significant recommendations of the Commission included the following:

- i. A thorough review of the Equality Unit’s processes, capacity and presence at the University ought to be conducted. The ultimate goal of the recommended interventions is to improve the Equality Unit’s reputation and efficacy as an instrumental role player in resolving disputes relating to unfair discrimination. This will involve efforts to: increase awareness and understanding of the Equality Unit and its processes; upskill and equip the Equality Unit to perform its duties diligently, professionally, effectively and with due regard to the complainant’s needs; and simplify and expedite the Equality Unit’s existing processes to facilitate a more cohesive collaboration with the Office of Student Discipline.
- ii. The University leadership ought to seriously contemplate allocating greater resources and support to the Transformation Office, and measures must be taken to ensure that no environments at the University, including the Rectorate, are beyond the reach of the Transformation Office.
- iii. Comprehensive training on the University’s transformation apparatus must be provided to all newcomers during Welcoming. Additionally, awareness on the transformation apparatus must be enhanced through a campaign to place visual reminders in appropriate physical and virtual spaces.
- iv. The University must consider implementing a compulsory module for all first year students to facilitate their learning and critical engagement on matters relating to equality, transformation and justice. This module may be based on the existing Shared Humanities module suitably adapted to optimise its efficacy when taught to a larger group of students. The University ought to utilise the ample academic and human resources at its disposal to design and optimise this course.

- v. Training on matters relating to discrimination and transformation must be made compulsory for all members of staff at the University. The University may consider utilising and upscaling the Siyakhula Programme for this purpose. In addition, the University ought to consider including this participation as a component of all staff members' performance evaluation to incentivise a shared sense of responsibility for transformation at the University.
- vi. Measures must be taken to facilitate enhanced collaboration between key role players with overlapping and symbiotic objectives, for instance, the Equality Unit and the Transformation Office, as well as the CSC and the CSLEEC.
- vii. A Transformation Charter ought to be drafted by the key stakeholders across the University community in order to clarify what the University stands for and what measures are in place to hold it to its values. The process of creating the Charter should be leveraged to spark University-wide discourse on transformation.
- viii. In the future, the Division of Student Affairs must ensure that the Welcoming Programme is geared towards meeting all students' pragmatic needs, with careful attention being given to the needs of vulnerable students. The Res Ed programme must also be revised to ensure that it is facilitated by suitably qualified professionals. Its contents must be improved, made more relevant, and adapted to consist of compulsory sessions that will be provided to first year students throughout the year.
- ix. The appointment processes of Residence Heads and the procedures for lodging grievances against Residence Heads must be reviewed and clarified to ensure that all Residence Heads are capable of and suited to meeting the demands of their positions.
- x. The training provided to all student leaders must be improved and aligned. The Division of Student Affairs ought to investigate ways of utilising collaborative partnerships between different role players at the University

who are able to equip student leaders to grapple with their duties and the role that they must play in the University's transformation project. This collaboration must commence with the CSLEEC and the CSC, but could also include the Centre for the Study of the Afterlife of Violence and the Reparative Quest and the Transformation Office.

- xi. The University must take deliberate steps to ensure that all student leaders at the University have access to support and guidance, especially during times of crisis. The University also ought to consider implementing mentorship programmes for student leaders to enhance their development, including specialised mentorship programmes for Black student leaders to assist them with building confidence and overcoming the various challenges that are outlined in the Commission's report.
- xii. On the basis of all of the evidence about the tensions and problems created by the University's multilingual language policy, the University should consider reviewing and revising this policy to remove the possibility of language exclusion through the preference of Afrikaans.
- xiii. The University leadership must take firm and decisive action to address the problems in Huis Marais. This includes a change of leadership in the residence, starting with the Residence Head. In addition, the new HC and Prim of Huis Marais should undergo leadership training and mentorship to assist them in reforming the Community. To this end, it would be appropriate for Huis Marais to partner with the Centre for the Study of the Afterlife of Violence and the Reparative Quest, which offers excellent leadership development programmes with a focus on building cohesion in environments with a history of conflict.
- xiv. Finally, Huis Marais' culture must be closely examined by the Division of Student Affairs with the intention of introducing long-term solutions that will reform Huis Marais as a Community that represents and upholds the University's values. The suggestion of converting Huis Marais into a mixed residence should be revisited as the agreement between Huis

Marais and the University that was signed in 2020 appears not to have accomplished its desired ends.

- 16 After making these recommendations, the Commission concluded that members of the University community are missing opportunities to communicate, connect and understand one another in terms of similarities rather than difference. It further concluded that this state of affairs must be interrupted through the Commission's findings and recommendations so that the University can optimise its transformation apparatus. If this does not happen, it is unlikely that the University will be able to shed its historic scars, heal and grow into the national asset to which it aspires.
- 17 The Commission emphasised that, although it is the work of the entire University community and our greater society to rebuild a country in which all people are provided opportunities to flourish, this cannot be achieved unless every individual is willing to look inwards and change. That is precisely why the Commission recommended the implementation of a compulsory, Shared Humanities module, in order to facilitate this critical process of introspection and growth.

“One of the most difficult things is not to change society – but to change yourself.”
– Nelson Mandela

I Part 1: Introduction

[1] Education is universally recognised as the key that unlocks the door to a brighter, prosperous future.

[2] In South Africa, where the legacy of apartheid lives on in horrifying levels of inequality and racially engineered social stratifications, the importance of availing this key to all young South Africans cannot be overemphasised. This is no small task that can be borne solely by one player, or small group of players, in society. The responsibility to create opportunities for all young South Africans to seek better futures for themselves, their families and their communities must be shared by society as a whole.

[3] Inevitably, institutions of higher education must play a leading role in discharging this societal duty. After all, they are invaluable national assets where knowledge is cultivated and dispensed and where young minds are nurtured, developed and challenged for the benefit of both present and future generations. The education offered by these institutions extends beyond what they formally teach. In addition, they function as places where young South Africans from vastly different cultural and financial backgrounds come together and share spaces with one another during some of the most formative years of their lives.

[4] Stellenbosch University is one of the many institutions of higher education that must play this role.

(a) *The appointment of the Commission of Inquiry*

[5] The Commission of Inquiry into Allegations of Racism at Stellenbosch University was appointed by the Rector of the University on 3 June 2022. This appointment was made against the backdrop of the University’s historic struggle with transformation and in response to two instances of alleged racism that occurred on 12 and 15 May 2022.

[6] The incidents that took place in May sparked outrage within the University community. They set off a chain of reactions at the University, including

student protests and the exceptional decision by the Rectorate to postpone the mid-year examinations. These incidents will be discussed in greater detail later in this report, but for the time being, they may be briefly surmised as follows:

[7] On the evening of Thursday, 12 May 2022, there was a verbal altercation between two final year students at the Law Faculty Dance. The incident occurred towards the end of the event when both students were attempting to request songs from the DJ. The students involved were Student 1, a White² student, and Student 2, an Indian student. Student 2 alleged that they were verbally abused by Student 1 after requesting an Indian song, and that Student 1 had made racially offensive remarks during the course of their disagreement. The factual disputes around this incident will be addressed later in the report, for now Student 2's allegations are sufficient as they led to this incident's inclusion in this Commission's Terms of Reference. (*the Law Dance incident*)

[8] In the early hours of the morning of Sunday, 15 May 2022, a shocking incident took place in Huis Marais, one of the men's residences. The incident took place when Mr Theuns du Toit, a White male student, entered the room of Mr Babalo Ndwayana, a Black male student without permission. Mr du Toit was severely intoxicated at the time, and proceeded to urinate on Mr Ndwayana's laptop and textbooks. When Mr Ndwayana asked Mr du Toit why he had urinated on his belongings, Mr du Toit responded by saying "it's a White boy thing". Mr Ndwayana recorded the incident using his cell phone. This recording found its way into the public domain, leading to an explosive reaction from the University community, the media and South African society at large. Mr du Toit has since been expelled by the Central Disciplinary Committee of the University for contravening various rules by trespassing, urinating on Mr Ndwayana's property, and conducting himself in a racist manner. (*the Huis Marais incident*)

² The racial and cultural identities of people and groups are, where relevant, referenced explicitly throughout this report. I have adopted the convention of capitalising all of these identities to emphasise that these categories are socially constructed as opposed to natural. Having taken this approach, I must acknowledge that this is not an accepted and settled practice and that there remains debate between scholars as to the best practice in relation to race and language. Some of these debates are helpfully summarised by Kwame Anthony Appiah in "The Case for Capitalising the 'B' in Black" *The Atlantic* (18 June 2020), available at <https://www.theatlantic.com/ideas/archive/2020/06/time-to-capitalize-blackand-white/613159/>.

[9] Although these incidents ignited a campus-wide uproar and shone a public spotlight on the University, it is important to note that they did not occur within a vacuum and that this Commission was not appointed solely as an antidote to the scandal. Stellenbosch University is over 100 years old and, as an historically White, Afrikaans institution, its journey of transformation in the new South Africa has not been without significant challenges and resistance. It has, however, taken various deliberate steps aimed at becoming an inclusive, transformed and welcoming environment for all, free from racism and other ills of the past. The Rectorate of the University accordingly considered the Law Dance incident and Huis Marais incident to be distressing symptoms of problems that remain in the system despite the University's best efforts to transform.

[10] Thus, this Commission was appointed by the Rectorate to investigate and understand the environment, system, and institutional culture in which these incidents took place. Its purpose is to assess the connection between the former and the latter, and to identify the problems that must be solved in order for the University to achieve its transformation goals and better serve South African society as a whole.

(b) *Terms of Reference*

[11] In performing its functions, the Commission is bound and guided by its Terms of Reference which were signed by the Rector on 3 June 2022. They provide as follows:

- “1. Retired Justice Khampepe is appointed as Commissioner to conduct the inquiry into incidents of racism and harassment related to racism and to make findings, to report on, and to make recommendations to the Rector to assist the University in improving its culture of diversity, equity and inclusion with reference to racism that will safeguard and promote the dignity and self-worth of all students and staff.
2. The Commission must, in its inquiry for the purposes of its findings, report and recommendations to the Rector, consider the following:
 - 2.1. Incidents of racism at the University, with reference to the recent occurrences at Huis Marais and the Faculty of Law's Law Dance;
 - 2.2. The current state of diversity, equity, and inclusion within the University campus culture, with specific reference to racism;
 - 2.3. Given the University's stance of zero tolerance towards racism, whether the current structures of the University and its material university policies, rules and processes, are sufficient and most effective to address the lived experience of students and staff with regard to racism in all its guises; and

- 2.4. Related issues and concerns that may arise in the course of the inquiry, including the need for further investigation or consideration of related issues.”

[12] It follows from these Terms of Reference that this Commission is endowed with a broad mandate and extensive investigatory powers. Yet, finding the cause of and solution to the problem of racism is no minor task. Furthermore, in the absence of a set formula and prescribed methodology, the Commission was both free and challenged to determine the appropriate processes to meet the obligations imposed by the Terms of Reference. This report is the product of the processes that the Commission adopted and the consequent findings and recommendations.

(c) *Outline of this report*

[13] This report comprises six parts including this introductory section. The remaining five parts of the report deal with the following: first, the Commission’s processes; second, the evidence before the Commission; third, its findings pursuant to the evidence; fourth, recommendations based on the findings; and, finally, the conclusion.

II Part 2: Processes

(a) *Overview*

[14] For the purpose of the Inquiry, this Commission determined and administered its own processes independently of the University, which offered support of only an administrative nature to meet the technical needs of the Commission. Furthermore, these processes had to be determined in accordance with the Terms of Reference, which stipulated that the Inquiry be conducted “by means of closed proceedings to provide confidence in the inquiry and to enable candid participation on a broad basis”.³

[15] Thus, the Commission was at all times mindful of the sensitive and confidential nature of its work as well as the imperative to maintain its independence by keeping the University at arm’s length, even when relying on it for administrative support.

[16] It is accordingly necessary for me to emphatically state that I am satisfied that the Commission ran its processes in a manner consistent with the requirements of the Terms of Reference, and that its integrity as an independent commission of inquiry was at all times and remains intact.

[17] The Inquiry effectively began after the Terms of Reference were signed and the necessary logistical arrangements were in place. This included the adoption of the Commission’s Rules, which I signed into effect on 10 June 2022. The Rules were drafted and adopted to govern the Commission’s procedures. They provide for the confidentiality of witnesses’ identities and evidence, the presentation of evidence and leading of witnesses before the Commission, and related administrative details, for instance, the venue for hearings.

³ To this end, the Terms of Reference also provide:

- “7.1. The identity, other personal information and evidence of witnesses are to be kept confidential.
- 7.2. All witnesses, irrespective the nature and format of their evidence to the Commission, must be advised that their evidence will be treated confidential.
- 7.3. During the conduct of the enquiry, neither the Commission nor any other person shall without the written permission of the University -
 - 7.3.1. communicate to any other person any matter or information which may have come to his or her knowledge in connection with the enquiry, or allow or permit any other person to have access to any records of the Commission, except in so far as it is necessary for the Commission to perform its functions; or
 - 7.3.2. disseminate or publish the contents or any portion of the contents of any evidence submitted to the Commission.”

[18] After the Commission's Rules were adopted, the investigation commenced. In sum, the Inquiry comprised four phases: the first phase entailed the collection of documentary evidence; the second involved a call for submissions; the third involved hearings with witnesses for the leading of oral evidence; and the fourth and final phase of the Inquiry was the process of reporting. Each of these stages comprised processes that will be described in greater detail below.

(b) *Phase 1: the collection of documentary evidence*

[19] The first phase of the Inquiry involved the collection of various documents that were relevant to the Terms of Reference. This process began when the University submitted a preliminary bundle of documents to the Commission for consideration. In broad terms, the bundle included the following:

- a. Summary and timeline: these included documents summarising the relevant events that unfolded in the weeks leading to the Commission's inception;
- b. Preliminary list of witnesses: the University provided a list of suggested witnesses, including students and members of staff and management, who in its view could provide relevant evidence;
- c. Reports: these included reports that have been compiled between 2003 and 2022 on issues relating to transformation and the University's culture, including specific reports and memoranda pertaining to transformation in Huis Marais;
- d. Policies and rules: these included a batch of the relevant University policies, rules and statements; and
- e. Documents relating to the recent incidents: these included the various communications disseminated by the University in response to the Law Dance incident and Huis Marais incident, as well as articles that were published in the media.

[20] The above documents provided in the preliminary bundle were considered by the Commission from the initial stage of the Inquiry, and were of great assistance in contextualising the issues and guiding the Commission in its investigation.

However, they were not the only form of documentary evidence that was collected and considered by the Commission.

[21] In addition to the documents provided in the preliminary bundle, the Commission collected documents during the course of its investigation with the assistance of witnesses, as well as through its call for public submissions discussed below. These included the following documents:

- a. An opening statement submitted by the Rector;
- b. A written submission from the Law Faculty;
- c. The University's draft Transformation Policy;
- d. A presentation providing an overview of residence placements;
- e. Summarised data reflecting the success rates of students;
- f. The annual report and showcase for the CSLEEC;
- g. The 2022 syllabus of the Shared Humanities module;
- h. An explanatory note on the Siyakhula programme;
- i. The 2022 Welcoming Programme;
- j. Surveys providing feedback on the Welcoming Programme from students who are recipients of NSFAS;
- k. A draft of the revised Residence Rules;
- l. A summary of incidents relating to racism dealt with by Student Discipline since 2011;
- m. A summary of matters relating to unfair discrimination dealt with by the Equality Unit from 2016;
- n. The Equality Unit's annual reports;
- o. The Transformation Charter of the Division of Student Affairs, and related documents;
- p. Recommendations following the Law Dance and Huis Marais incidents, tendered by the Division of Student Affairs and student leaders;
- q. Articles written by students summarising their experiences of racism at the University;

- r. The formal documentation issued in relation to the disciplinary processes instituted against Mr du Toit pursuant to the Huis Marais incident, as well as the finding of the CDC;
- s. The formal documentation relating to the Equality Unit’s investigation into the Law Dance incident, including witness statements and the final recommendations; and
- t. A collection of relevant academic resources relating to racism and transformation in higher education.

[22] All of the above documentary evidence has been considered by the Commission and, to the extent of its relevance, has been of tremendous assistance to the Commission in making its findings and recommendations.

(c) *Phase 2: the call for submissions*

[23] It goes without saying that the experiences of the greater University community, students and staff members alike, are central to this Inquiry. Thus, despite the obligation on the Commission to run its processes by way of closed and confidential proceedings, it was necessary to ensure that there was a means by which the Commission could hear all voices wishing to be heard.

[24] The Commission accordingly decided to issue a call for submissions to all members of the University, including students and staff members. This call was issued on 21 June 2022 and distributed by the University on 24 June 2022. The call for submissions summarised the Terms of Reference, and invited submissions from “all students and staff members who possess any knowledge or experience that relates to the Commission’s work”.

[25] Any party wishing to respond to the call for submissions was given until 26 July 2022 to do so, as this extensive period accounted for the University’s mid-year holiday period to ensure that students would be given a reasonable opportunity to participate in this process.

[26] To facilitate the receipt of submissions, an independent email address was established and managed by Deloitte through a system ordinarily used for whistle-blowers at companies. This system ensured that the identities of and

submissions made by students and staff members were treated with utmost confidentiality and that the submissions were received only by the Commission. The University was at no stage privy to any of this information.

[27] The call for submissions was communicated to all students and staff members via email, and several reminders were sent throughout the period provided for submissions. In addition, physical copies of the call for submissions were distributed to members of staff who do not ordinarily have access to a computer. In addition, the Commission's Attorney's cellular mobile number was provided in the physical copies to enable these members of staff to contact her in the event that they were unable to make submissions via email.

[28] Despite these efforts, the Commission received only 22 submissions by the prescribed deadline. After considering these submissions, one witness was invited to provide oral evidence before the Commission. The rest of the submissions, insofar as they were relevant and useful, were considered by the Commission for the purpose of this report.

[29] I am satisfied that the Commission was diligent and thorough in its efforts to invite submissions and hear the voices of all members of the University community, and that its call for submissions was effective and met the requirements of the Terms of Reference.

(d) *Phase 3: hearings*

[30] A critical component of the Inquiry was the Commission's hearing of *viva voce* evidence. The hearings phase of the Inquiry was dealt with in Rule 6 of the Commission's Rules, which provides as follows:

- “6.1. Witnesses will be called to give oral evidence before the Commission at the discretion of the Chairperson. The Chairperson's decision to call a witness will be informed by the likely significance of the evidence in advancing the work of the Commission.
- 6.2. A witness appearing before the Commission may be assisted by a legal representative.
- 6.3. The Chairperson or another person who is generally or specifically authorised by the Chairperson to do so, shall administer the oath or affirmation to a witness before the witness may commence giving evidence.”

[31] Furthermore, these hearings that were held *in camera*. The only parties in attendance were the witness, the Commission's Attorney, the transcriber and the Chairperson. In circumstances where witnesses elected to be assisted by a legal representative, they too were permitted to be present.

[32] Witnesses were invited to attend hearings on the basis of their likelihood of providing relevant evidence that would assist the Commission in fulfilling its mandate. These witnesses were identified through the preliminary list that was provided by the University and by way of a further investigation conducted by the Commission's Attorney, who interviewed most witnesses to ascertain the scope of their knowledge relating to the Terms of Reference.

[33] Following this investigation, the witnesses were categorised into groups based on the nature of their evidence, and were then invited to attend hearings. The overwhelming majority of invitations were accepted. Only two invitations went unanswered, including the one issued to Mr Theuns du Toit.

[34] The hearings took place during the period between 11 July 2022 and 15 August 2022. A total of 48 hearings were conducted, and 47 witnesses were heard. Most of the hearings were held in person at a closed venue at the Stellenbosch Institute for Advanced Studies. The Commission did, however, accommodate four witnesses by way of virtual proceedings held via Microsoft Teams as these particular witnesses were unable to physically attend the Commission's proceedings.

[35] The Commission's Attorney, as the Commission's evidence leader, held and executed the responsibility of leading all of the witnesses during the hearings. In instances where legal representatives were present, they were permitted an opportunity to pose questions of clarification to the witness after the evidence leader concluded her questioning.

[36] The oral evidence that was heard by the Commission during this phase of the Inquiry has been of invaluable assistance to the Commission, and will be summarised in the next part of this report.

(e) *Phase 4: reporting*

[37] The final stage of the Inquiry took place after the Commission concluded its collection of evidence as detailed in the preceding paragraphs. With the relevant evidence before it, the Commission was able to proceed to the next and final step in its investigation: the preparation of this report.

[38] In its reporting phase, the Commission was charged with two duties: first, to make findings based on the evidence before it; and, second, to make recommendations. Both are included later in this report.

III Part 3: the Evidence

[39] Before I deal with the Commission's findings and recommendations, it is necessary to surmise the evidence that emerged throughout the Inquiry. I do so by dealing separately with what arose in the documentary evidence, *viva voce* evidence, and expert evidence.

(a) *Documentary evidence*

[40] As described above, this Commission considered a body of documentary evidence that assisted in providing a contextual overview of the systems, history and culture at the University. It also considered academic materials addressing various theories and studies relating to racism, discrimination and transformation, as well as a series of relevant reports that were previously compiled after investigations into certain facets of the University and South African higher education in general.

[41] A great deal of this evidence, supplemented by the oral evidence of witnesses, assisted the Commission in understanding the structure of the University. Thus, for the sake of any person who should read this report being unfamiliar with the complex operations of the University, I shall provide a brief overview insofar as it is relevant to the work of the Commission.

The structure of the University

[42] The top level of leadership at the University is the Rectorate, which is headed by the Rector and Vice-Chancellor. The rest of the Rectorate consists of the Registrar, the Chief Operating Officer and four Deputy Vice-Chancellors each with their own distinct portfolio. These include the following: the Deputy Vice-Chancellor for Research, Innovation and Postgraduate Studies; the Deputy Vice-Chancellor for Learning and Teaching; the Deputy Vice-Chancellor for Social Impact, Transformation and Personnel; and the Deputy Vice-Chancellor for Strategy Global Corporate Affairs.

[43] Each member of the Rectorate, other than the Rector, heads a responsibility centre within the University. Each responsibility centre comprises various divisions which, in turn, are constituted of many different centres and offices that are responsible for the many functions of that responsibility centre. In general, each

division is headed by a senior director or staff member of similar standing who is responsible for reporting to the relevant member of the Rectorate.

[44] I shall not recount every single structure at the University for that would be an entirely unnecessary and wasteful exercise. I shall only explain where the relevant divisions, centres and offices fit into this structure:

- a. The Division of Student Affairs and the Equality Unit both fall within the responsibility centre of the Deputy Vice-Chancellor for Learning and Teaching. Furthermore, the Division of Student Affairs consists of three significant centres: the CSC, the CSLEEC, and the Centre for Student Counselling and Development.
- b. The Transformation Office falls within the Division of Social Impact and Transformation. Together with the Division of Human Resources, that division falls under the responsibility centre of the Deputy Vice-Chancellor for Social Impact, Transformation and Personnel.
- c. The responsibility centre of the Chief Operating Officer includes the following divisions: Finance, Facilities Management, Innovation and Commercialisation, Maties Sport and Information Technology.
- d. The responsibility centre of the Registrar includes, among other administrative functionaries, the division of Legal Services and the Division of Applications, Student Accommodation and Client Services.

[45] Other relevant structures within the University include the faculties and the student communities. Each faculty reports to the Deputy Vice-Chancellor for Research, Innovation and Postgraduate Studies and is headed by a Dean who is generally supported by Vice Deans with different portfolios. The faculties also have their own bodies of student leaders who represent the students' interests within the faculties.

[46] The student communities, which fall under the responsibility of the CSC, are grouped into clusters. Each cluster comprises multiple communities, including several residences and PSOs. Each cluster is coordinated by a designated member of staff. Each residence has a Residence Head and a group of student leaders, including a Prim, Vice-Prim, HC and student mentors. The same leadership structures apply in the

case of PSOs, except that each PSO does not have an equivalent of the Residence Head. Instead, all PSOs are managed by one PSO coordinator.

[47] Although the University's rules, policies and codes apply to the faculties and Student Communities, it is commonplace for each of these environments to have their own constitution, policies and rules that are specific to their culture and needs.

[48] For the sake of completeness, it bears mentioning that the Rectorate reports and is accountable to the Council. The Council is not involved in the daily operations of the University, but is responsible for the oversight and monitoring of the governance of the University.

[49] This brief overview of the University's structures omits many other important structures and aspects of the University's operations. However, for the purpose of this report, this explanation should suffice.

Strategic documents

[50] The Commission was furnished with a litany of policies, plans, codes and various other documents that the University has drafted and adopted in furtherance of its transformation objectives. Underlying all of these is the University's recognition of the need for restitution, which is surmised no better than in its Restitution Statement of 2018:

“Stellenbosch University (SU) acknowledges its inextricable connection with generations past, present and future. In the 2018 Centenary Year, SU celebrates its many successes and achievements. SU simultaneously acknowledges its contribution towards the injustices of the past. For this we have deep regret. We apologise unreservedly to the communities and individuals who were excluded from the historical privileges that SU enjoyed and we honour the critical Matie voices of the time who would not be silenced. In responsibility towards the present and future generations, SU commits itself unconditionally to the ideal of an inclusive world-class university in and for Africa.”

[51] In addition to the Restitution Statement, the University's transformation objectives are evident in several codes, policies and programmes. In fact, the documents that further the University's transformation agenda are manifold, but for the purpose of this Inquiry the Commission considered only those which were relevant and significant to its work. I shall now summarise these documents and their connection to the University's transformation agenda.

Admissions Policy:

[52] the University expressly recognises and prioritises its transformation objectives through this policy, the “essence” of which aims to support the University’s strategic commitment to “creating and sustaining ‘an environment of inclusivity, transformation, innovation, diversity, and maintaining excellence with a focus on the future’”. It accordingly aims to promote “access and success for students from diverse communities”. It does so through the stipulation of admission requirements that target talented and academically excellent students, but recognising the need to increase accessibility to students who have been prejudiced by South Africa’s unjust past.

[53] The policy emphasises that diversity is valued as an asset by the University, and that its entry requirements are intended to foster substantively equal opportunities for all students. In this regard, the policy requires the University to consider race in its admissions process in order to redress historical discrimination which in many instances results in ongoing disadvantage to certain groups. The University determines the racial classifications of applicants by inviting them to self-classify during the application process. This is an invitation, not a requirement. In addition to race, the policy requires the University to consider an applicant’s socioeconomic status. This is a “reflection of the current socio-economic disadvantages an applicant has had to overcome”, and is determined by the University through the consideration of three indicators. These include: educational disadvantage⁴, economic disadvantage⁵ and first-generation student status.⁶

[54] The policy provides that each faculty must determine the minimum entry requirements for every course and programme, and that these requirements must enable the University to be satisfied that each successful applicant has the ability to successfully complete the programme to which they are admitted. In addition, the policy allows faculties to offer extended degree programmes in appropriate circumstances.

⁴ This indicator refers to:

“inadequate access to quality education, which has resulted in insufficient opportunities to develop academic potential. It is closely linked to poor provision of favourable teaching conditions and facilities, quality teachers and education leaders, well-situated schools as well as support from parents and the community at large.”

⁵ In this regard, the Admissions Policy targets applicants “with strong academic potential but poor socio-economic circumstances, whose low financial status serves as primary impediment to admission.”

⁶ The Admissions Policy defines first-generation applicants “as any applicant for whom none of the parents/guardian(s) has a higher education qualification.”

[55] The policy provides for the annual determination of the number of available places in each faculty and programme. Once determined, these places must be allocated and filled based on three key factors in the following order of priority: academic performance (irrespective of race and socioeconomic status), race and socio-economic status.

[56] Finally, the policy provides for diversity targets in respect of race and socioeconomic status to be determined by the University leadership⁷ on an annual basis.

Policy for Placement in Residences, and in Listening, Learning and Living Houses, as well as allocation to PSO Wards and Clusters:

[57] This policy is guided by the University’s policy principle of “enhancing excellence through diversity”. It is aimed at optimising the “whole university experience” of students as this is understood as a contributing factor to student success. Furthermore, the policy specifies that students must be placed in a manner that will “contribute positively to the formation of sound, diverse communities that will in turn contribute to optimal growth and development in the out-of-class context and to eventual success”.

[58] The first criteria that is applied for the placement of first year students on the main, Stellenbosch campus, is academic merit. Thereafter, students’ diversity profiles are taken into account. This entails the consideration of the following variables:

“(1) South African citizen or international student; (2) language preference (Afrikaans, English or Other); (3) ethnicity (Coloured, Black, Indian or White); (4) first- or non-first-generation student; and (5) economic class (for students who need financial support in the form of bursaries and who qualify for such support on the basis of a means test).”

[59] The policy also facilitates the realisation of the University’s transformation objectives by prioritising the placement of vulnerable students in residences. In order to do this, preference is given to first year students, students on extended degree programmes, students on financial support bursaries and those with special learning needs.

⁷ The Admissions Policy refers, in particular, to “the Rector’s Management Team, in consultation with faculties”.

[60] These placement requirements differ slightly for the placement of students in residences on different campuses (for instance, Tygerberg), the placement of students in Listening, Learning and Living Houses and PSO wards and clusters, and the placement of students in senior residences. These differences are irrelevant for the purpose of this Inquiry and, in any event, all of the University's placement requirements are guided by the overall objectives of this policy as described above.

Policy for Unfair Discrimination and Harassment:

[61] This policy provides an “overarching framework for promoting equality and for preventing and addressing unfair discrimination” and aims to guide all of the University's documents, policies and principles that relate to “unfair discrimination, victimisation, harassment and sexual harassment”. In this regard, it is one of the University's most important policies related to transformation.

[62] The policy provides the following relevant definitions:

“Harassment: unwanted conduct which demeans, humiliates or creates a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences, and which may be persistent, once-off or serious and may relate to a person's belonging or presumed belonging to a group identified by one or more of the prohibited grounds or characteristics associated with such group;

...

Microaggressions: any brief, everyday verbal, nonverbal or environmental slights, snubs or insults, whether intentional or unintentional, that communicate hostile, derogatory or negative messages to marginalised and disempowered groups in society;

...

Unfair discrimination: any act or omission – including a policy, rule or practice – that undermines people's human dignity or has the effect of preventing them from participating as equals in any aspect of University life on the grounds of their race, gender, sex, pregnancy, marital status, HIV/Aids status, socio-economic status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, birth or any other legally recognised prohibited ground of discrimination, or a combination of more than one of these grounds.

No person may discriminate unfairly – whether directly or indirectly – against an employee in any employment policy or practice on the grounds of race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV/Aids status, conscience, belief, political opinion, culture, language, birth or any other arbitrary ground, or a combination of more than one of these grounds. Promoting affirmative action consistent with the Employment Equity Act 55 of 1998, as amended, does not constitute unfair discrimination; neither does preferring or excluding any person based on an inherent job requirement.

Unfair discrimination can happen either directly or indirectly:

Direct unfair discrimination is overt discrimination that occurs when a person is treated less favourably than others on any of the grounds included by the definition of ‘unfair discrimination’ above. Hate speech – i.e. communication, including remarks and

gestures, that violates the human dignity of other persons – is a form of direct unfair discrimination.

Indirect unfair discrimination occurs when a requirement, condition or practice is set which appears neutral, but in effect discriminates unfairly against people on any of the grounds included by the definition of ‘unfair discrimination’ above. An example of indirect unfair discrimination is when a requirement, condition or practice seems reasonable, but imposing it excludes persons with one or more of the attributes included above, whereas most persons without those attributes can comply with such requirement, condition or practice;

Victimisation: any detrimental consequences (or threat of such consequences) visited upon people because they have lodged, intend to lodge, or have helped someone else lodge a complaint of unfair discrimination, or because the people in question have provided information about a complaint (e.g. by whistle-blowing) or acted as a witness regarding a complaint of unfair discrimination.”

[63] In addition, the policy recognises equality as a strategic priority of the University, and expressly states that equal opportunities, diversity and employment equity are primary drivers of the University’s recruitment and appointment processes.

[64] Furthermore, the policy prohibits all students and staff members at the University from engaging in any of the above conduct. It also obliges the University leadership to take reasonable steps to “create a diverse working environment which is free from all forms of unfair discrimination, harassment, sexual harassment and victimisation”. It requires all members of staff to undergo relevant training as part of their induction to the University. It also requires the University to ensure that all student leaders receive training on the policy so that they are informed of and understand its contents.

[65] Moreover, the policy places responsibility on all members of the University community to carry out its objectives and to work towards an environment of equality for all, but particular emphasis is placed on the duty on University leaders to exemplify the policy and to build the capacity of the rest of the University to do likewise.

[66] Importantly, the policy provides guiding principles on the processes that must be followed in the instance of complaints of unfair discrimination. These processes are intended to be confidential, procedurally fair and expedient. The policy also provides that the preferred method of resolution is—

“discussion, mediation or a process of conciliation or education – or a combination of these methods – with a view to redressing any contraventions of this policy and assist the parties to agree on an outcome which is consistent with constitutional rights and values as well as related legislation.”

The policy obliges the officer at the Equality Unit who is dealing with a complaint to explain the preferred method of resolution to the complainant and to ensure that they understand why it is available and appropriate. The policy specifies that the remedy preferred by the complainant, for instance a disciplinary approach or a mediatory approach, is an important and relevant consideration in addressing complaints. It also stipulates that mediation must be a voluntary process for all parties concerned, and recognises that mediation will be inappropriate and unsatisfactory in certain instances. In these instances, a disciplinary approach must be followed instead.

[67] Additionally, the policy requires steps to be taken to ensure that appropriate psychological support is offered to all parties involved in the aforementioned processes. It also requires all students and staff members to be informed of the policy and the procedures specified therein.

[68] The policy outlines the responsibilities and processes of the Equality Unit. In short, it provides that the Equality Unit bears the responsibility for ensuring that the University community is aware of and familiar with the policy, and that student leaders receive training on the policy. It also obliges the Equality Unit to ensure that the induction programme for all staff and students “includes education on fundamental constitutional rights and the relevant University policies, particularly the prohibition of all forms of unfair discrimination, harassment and victimisation.” It requires the Equality Unit to work together with the Transformation Office to further the objectives of the policy and to take various other steps to generally oversee the successful implementation of the policy.

[69] Significantly, the policy provides that all complaints of unfair discrimination must be reported to the Equality Unit. It obliges the Equality Unit to conduct an investigation into each complaint in accordance with the procedures provided in the policy. Once the complaint is received, the Equality Unit conducts a preliminary assessment and is supposed to make a recommendation on the best pathway to resolution within three days of the complaint being lodged. The policy provides that the following resolution methods may be recommended:

- a. Mediation;

- b. Staff advisory panel;
- c. Student advisory panel;
- d. Staff disciplinary investigation;
- e. Student disciplinary investigation;
- f. Human Resources process; or
- g. Referral back to the appropriate line function for intervention.

Depending on which recommendation is tendered by the Equality Unit, further steps and interventions are taken as necessary and appropriate.

[70] The policy provides further details on the processes and functionaries at the University who are responsible for dealing with complaints of unfair discrimination. However, these do not bear repetition here. It is simply worth noting that the policy is fairly lengthy and requires close reading in order to understand the precise procedures that are used by the University to deal with unfair discrimination. I have simply captured the gist above.

Transformation Plan and Policy:

[71] I must preface this by noting that, at the time of writing, the University is in the process of adopting a Transformation Policy, and revising its Transformation Plan. The Commission accordingly only considered the existing plan (which is under revision), and the draft policy.

[72] The existing Transformation Plan provides a very broad list of objectives targeted at achieving quantitative⁸ and qualitative⁹ transformation at the University. The transformation objectives in the plan are categorised into the following broad themes:

⁸ The Transformation Plan defines quantitative transformation as—
 “those dimensions of transformation that can be clearly measured. Quantitative indicators . . . include indicators that, for instance, describe the statistical diversity of the staff corps and student body, student success rates, the number of publications dealing with transformation themes, and the number of courses that build transformation competencies among students and staff.”

⁹ The Transformation Plan defines qualitative transformation as—
 “those dimensions of transformation that have to do with presuppositions, prejudices, attitudes, behaviours and intellectual frameworks that determine institutional processes and practices. These subconscious beliefs and attitudes often advance discrimination in terms of race, socio-economic standing, gender, sexual orientation, levels of disability, age, nationality and so forth and form part of the institutional culture. The profound change and renewal of institutional culture is at the heart of qualitative transformation. Qualitative indicators . . . are captured as intentional transformation processes and practices.”

- a. Place: this refers to changes that are necessary to facilitate social inclusion, both in the physical environment of the University and in its institutional culture;
- b. Programmes: this refers to the University's core programmes as well as the programmes, tools and educational interventions that it uses to enable transformation; and
- c. People: this includes all strategies targeted at ensuring that the members of the University community reflect the diversity of the broader South African and African societies.

[73] The plan provides greater detail on the various objectives that fall within each of these categories. It also lists indicators related to processes and institutional practices that are linked to each objective. It would add no value to repeat these here, because the list is fairly expansive and the objectives and indicators are framed in broad terms. In any event, the essence of the plan is captured in its commitment to transformation of place, programmes and people, and it suffices to note that this plan is intended to act as a roadmap to the University's transformation journey.

[74] The draft Transformation Policy is a concise document, evidently envisaged as the future lodestar of the University's Transformation Plan. It articulates the key guiding principles of transformation at the University, including human dignity, inclusion, restitution and equity. Furthermore, it aims to "integrate the logic and ethics of transformation with the University's core business and ensure shared ownership of transformation at the University."

[75] The policy specifies that it must be read and interpreted as the overarching policy of transformation at the University, and requires all future policies and documents to align with it. In other words, this policy is intended to operate as the "constitution of transformation" at the University in the sense that it provides the foundational transformation values and objectives of the University, and because it will guide all decisions and efforts aimed towards transformation, all of which must be consistent with the policy.

[76] The draft policy also confers responsibility for transformation at the University on several role players within the University, and specifies the extent of their

responsibilities. For the sake of completeness and convenience, I directly quote these responsibilities from the policy:

“SU’s Rector and Vice-Chancellor is accountable for the transformation mandate of the University. The Rector and Vice-Chancellor is also responsible for the transformation-related performance management of the University’s:

- Deputy Vice-Chancellors (DVCs);
- Registrar; and
- Chief Operating Officer.

The DVC: Social Impact, Transformation and Personnel is the owner of, and institutional functionary with overall responsibility for, this policy, and shall be responsible for establishing the requisite controls to monitor its implementation.

The Senior Director: Social Impact and Transformation and the Head: Transformation Office are the co-curators of this policy. They shall be the primary functionaries in terms of implementing the policy, and facilitating and guiding the process of its development and revision.

The Institutional Transformation Committee (ITC) serves as an advisory structure to the Rectorate on transformation matters, and initiates recommendations for policy adjustments as required.

Staff are responsible for co-developing their workplans with their line managers, and for meeting their transformation key performance areas.

Students are responsible for taking up opportunities to participate in transformation-related engagements, and for holding the University to account for providing (or the failure to provide) a transformative student experience.”

[77] In sum, the draft Transformation Policy is evidently intended to function as a simple, accessible and effective document that can guide and coordinate transformation at the University.

Code for Employment Equity and Diversity and the Code for Management Practices for Employment Equity:

[78] Both of these codes are targeted at facilitating employment equity and diversity amongst the University’s staff members. They contain provisions aimed at eliminating existing barriers to employment equity, including unfair discrimination, and are intended to assist all environments within the University with achieving the University’s employment equity objectives.

[79] The codes seek to manage the various steps involved in the recruitment process to ensure that there are no barriers to the employment of Black candidates. The codes’ provisions on these steps are manifold but include, for instance, the requirement

that a comprehensive job description must be provided for every available post to ensure that all applicants are assessed against the same, relevant criteria. Another example of the codes' expectations is that all available positions must be advertised in a manner that will "ensure maximum exposure to candidates from the designated groups."

[80] In addition, the codes provide that employment equity targets that are "aspirational, realistic and achievable with reference to what is available in the relevant job market" must be set for all sectors of staff at the University. They also include many other provisions targeted at ancillary means of enhancing employment equity, including training, the management of head-hunting, reporting on the achievement of targets, succession planning, and the "Grow Our Own Timber Initiative".¹⁰

Disciplinary Code for Students:

[81] This is an extensive and comprehensive code that stipulates the University's disciplinary processes as well as the personnel that deal with all disciplinary matters. It is entirely unnecessary to outline these processes and functionaries here, save to note that this code is relevant to the University's transformation project as it provides for disciplinary processes to be instituted in cases of alleged discrimination. It is also noteworthy that the code prescribes rules for student conduct at the University, one of which expressly prohibits racist conduct as follows:

"A student shall not act in a manner that is racist, unfairly discriminatory, violent, grossly insulting, abusive or intimidating against any other person. This prohibition extends but is not limited to conduct which causes either mental or physical harm, is intended to cause humiliation, or which assails the dignity of any other person."

[82] As is the case with the other rules provided in the code, a breach of this rule constitutes disciplinary misconduct in terms of the code.

Residence Rules:

[83] The Residence Rules are intended to regulate the practical aspects of life within the residences. For instance, they provide for quiet times in the residence, as well

¹⁰ In simple terms, this initiative aims to facilitate the development and professional capacities of existing students or junior members of staff so that they will be able to progress their careers and ultimately reach senior ranks of the University over time.

as the election procedures for members of the HC. They are relevant to the University's transformation agenda and the work of the Commission in several regards.

[84] Firstly, they proscribe in very strong terms all unacceptable Welcoming practices, which are defined as “any attitude, action, rule or practice that is typical of a hierarchical power system and that does not promote a value-driven system”. In amplification of this rule, a non-exhaustive list of examples of transgressions is provided. The list is too long to repeat here, but includes many examples of conduct that would be impermissible even in the context of correctional facilities, for instance, “deliberately depriving newcomers of food” and “any form of physical assault”. In addition to this, the rules generally regulate conduct in and between residences to ensure that it is orderly and respectful.

[85] Secondly, these rules provide for each residence to develop its own set of house rules. Any house rule that is incompatible with the Residence Rules is invalid. Moreover, the Residence Head and HC of each residence are responsible for the implementation of the Residence Rules, and any contravention of the rules could lead to disciplinary action against the residence or students involved.

The Division of Student Affairs Transformation Charter:

[86] This charter is best described as a pledge that has been adopted by the Division of Student Affairs. In this pledge, it defines its values and commits itself to facilitating a transformative learning experience for all students and members of staff which is inclusive and entirely free of discrimination in any form. Furthermore, the charter recognises the privileged and exclusionary roots of the University, and strives towards creating a culture that “celebrates differences, challenges prejudices and ensures fairness.” Further aims of this aspirational document include fostering a supportive and engaging environment for students and staff, and to “give impetus to coordinated institutional efforts to redress, and build a society envisioned by the post-apartheid stakeholders.”

[87] The charter is phrased in broad and vague terms and is only applicable to the Division of Student Affairs. However, it is an example of a deliberate effort being

made by an environment within the University to accept responsibility for and proactively partake in the transformation project.

The Siyakhula Programme:

[88] The Siyakhula Programme was developed in 2017 as an instrumental means of enhancing transformation competencies of the University’s staff members. Its framework specifies that it achieves this by providing “training, facilitation and support to staff to enable them to model, guide and capacitate equity strategies, inclusion and staff well-being and agency”.

[89] The theoretical underpinning of the Siyakhula Programme is critical diversity literacy. This entails—

“an informed analytical orientation that enables a person to read prevailing social relations as one would a text, recognising the ways in which possibilities are being opened up or closed down for those differently positioned within the unfolding dynamics of specific social contexts.”¹¹

[90] In order to improve staff members’ transformation competencies, the Siyakhula Programme partners with other components of the University’s transformation apparatus, including the Transformation Office, Human Resources, the Equality Unit and the Disability Unit. Together with these partners, the programme facilitates staff training on the following topics:

- a. The Employment Equity Act and the University’s Employment Equity Policy and Plan;
- b. Code for Employment Equity and Diversity;
- c. Leadership and staff development on managing diversity;
- d. Understanding the Transformation Plan and Key Performance Area (KPA) Indicators;
- e. Understanding and responding to unfair discrimination;
- f. Understanding and responding to sexual harassment;
- g. Biases in selection processes, management, performance, promotion; and
- h. Engaging disability frameworks.

¹¹ This description of critical diversity literacy is taken from the Siyakhula Diversity and Transformation Capacity Development Programme Framework Document (February, 2022) which, in turn, cites the following: Steyn, M. (2015). Critical diversity literacy: Essentials for the twenty-first century. In S. Vertovec, *Routledge International Handbook of Diversity Studies* (pp. 379-389). New York: Routledge.

[91] In addition, the programme provides training on a range of topics that are necessary to enhance the critical diversity literacy of staff members. These topics encompass various manifestations of oppression, privilege and previous patterns of disadvantage. They include, for instance: “Diversity and difference; Race, Racism, Racism at work; Workplace Bullying; Human Rights; Decoloniality Dialogues; Gender and Gender Violence; Institutional culture and SU Values; Stereotype threat and unconscious bias; Visual redress; Religious and cultural inclusion; Harassment; Rape culture; and Ableism”.

[92] These various training sessions are aimed at facilitating meaningful engagement between members of staff. They accordingly take the form of group workshops that are provided online and in-person to staff across various departments and levels at the University.

Statistics

[93] In addition to the University’s strategic documents, the Commission also considered various statistics that are relevant to the status of transformation at the University. These are briefly surmised below.

*Student demographics*¹²

[94] In 2022, the total number of first year enrolments was divided between racial groups as follows:

- a. White: 54%
- b. Coloured: 19%
- c. Black African: 21%
- d. Indian: 3%
- e. Asian: >1%
- f. Withheld: 3%¹³

¹² Note that most of these statistics were rounded to the closest whole number and accordingly do not precisely add up to 100%. This minor inaccuracy is of no practical consequence to the work of the Commission.

¹³ This category of students declined to self-classify their race in their application to the University.

[95] In addition, the Commission was provided with statistics reflecting the demographic representation within the University's student housing¹⁴ in 2022. These statistics were as follows:

- a. White: 46%
- b. Coloured: 22%
- c. Black African: 28%
- d. Indian and Asian: 3%

[96] Of this, the racial representation of first years in residences in 2022 is as follows:

- a. White: 47,1%
- b. Coloured: 18,2%
- c. Black African: 29,6%
- d. Indian, Asian and withheld: 5,1%

[97] By contrast, in 2017 the racial representation of first years in residences were as follows:

- a. White: 55,9%
- b. Coloured: 22,2%
- c. Black African: 17,7%
- d. Indian and Asian:¹⁵ 4,2%

Student success rates

[98] The Commission was also furnished with the success rates¹⁶ of students at the University, classified according to race for each year from 2015 to 2020. For comparative purposes, these success rates were provided alongside the success rates of the different racial groups at all universities in the country.

¹⁴ These statistics take into account all student housing offered by the University at its Stellenbosch and Tygerberg campuses.

¹⁵ Note that no category of withheld students was included in these statistics provided for 2017.

¹⁶ The success rate—

“refers to the total number of courses passed by students in a given academic year relative to course enrolments. It is calculated by dividing the total number of FTE degree credits (courses completed) by FTE enrolments. These calculations, for a programme or for an institution as a whole, produce weighted average success rates.”

For the purpose of this calculation, “FTE student enrolments” are calculated (a) by assigning to each course a fraction representing the weighting it has in the curriculum of a qualification, and (b) by multiplying the headcount enrolment of that course by this fraction.

[99] In 2020, the undergraduate success rates of students at the University were as follows:

- a. White: 93,6%
- b. Coloured: 86,7%
- c. Black African: 76,7%
- d. Indian: 88,6%

[100] In 2020, the undergraduate success rates of students at all universities were as follows:

- a. White: 94,1%
- b. Coloured: 88,7%
- c. Black African: 85,6%
- d. Indian: 94%

[101] In 2015, the undergraduate success rates of students at the University were as follows:

- a. White: 89,1%
- b. Coloured: 82,5%
- c. Black African: 79,5%
- d. Indian: 88%

[102] In 2015, the undergraduate success rates of students at all universities were as follows:

- a. White: 89,4%
- b. Coloured: 84,1%
- c. Black African: 81,3%
- d. Indian: 87%

[103] In 2020, the postgraduate success rates of students at the University were as follows:

- a. White: 91,6%
- b. Coloured: 82%
- c. Black African: 77,5%
- d. Indian: 78,9%

[104] In 2020, the postgraduate success rates of students at all universities were as follows:

- a. White: 87,2%
- b. Coloured: 79,1%
- c. Black African: 70,8%
- d. Indian: 78,9%

[105] In 2015, the postgraduate success rates of students at the University were as follows:

- a. White: 91,8%
- b. Coloured: 77,4%
- c. Black African: 80,6%
- d. Indian: 71,9%

[106] In 2015, the postgraduate success rates of students at all universities were as follows:

- a. White: 85,5%
- b. Coloured: 75,6%
- c. Black African: 73,4%
- d. Indian: 76,1%

[107] A brief glance at these statistics reveal that the undergraduate success rates of students at the University were relatively lower than the national success rates for students in all racial groups. However, the opposite is the case for the success rates of postgraduate students.

Complaints

[108] Considering that the Commission is mandated to investigate racism at the University, it requested information on the number of complaints related to matters of unfair discrimination that have made their way through the formal channels at the University. To be precise, these formal channels include the Equality Unit and the Office of Student Discipline.

[109] The Equality Unit provided a breakdown of the statistics on the cases it has investigated since 2016. This breakdown is summarised in the following table:

Complaints	2016	2017	2018	2019	2020	2021
Official complaints	37	37	28	23	22	23
Unofficial complaints ¹⁷	36	25	30	8	5	17
Case management	2016	2017	2018	2019	2020	2021
Official cases completed	32	31	26	20	20	16
Official cases pending	5	6	2	3	2	7
Type of complaints¹⁸	2016	2017	2018	2019	2020	2021
Sexual harassment	17	6	19	21	7	6
Harassment	13	13	4	11	3	4
Discrimination	3	16	13	3	4	5
Victimisation	13	5	3	4	0	0
Racial discrimination	27	6	8	4	3	2
Sexism	2	3	1	1	0	0
Transphobia	1	1	0	2	1	0
Cyber bullying	1	1	2	0	5	0
Sexual Assault	2	6	1	1	3	3
Advice	14	1	14	4	0	2
Workplace relations	3	3	2	3	0	18
Other	1	4	2	0	0	0
Social media	2016	2017	2018	2019	2020	2021
Social media related complaints	7	8	0	0	4	1
Mediation	2016	2017	2018	2019	2020	2021
Stalemate agreement	1	1	1	1		
Mutual agreement	16	6	3	1	4	2
No agreement	0	0	2	0		

[110] Prior to the Huis Marais incident and the Law Dance incident, the Office of Student Discipline has investigated only four incidents of alleged misconduct relating to claims of racism since 2011. Two of these incidents led to findings of misconduct and sanctions being imposed on the offending students.

Academic resources and reports

Reports

[111] The Commission was provided with a plethora of reports relating to transformation at the University and in higher education in South Africa. As well as reports on transformation and issues in Huis Marais.

¹⁷ Unofficial complaints are matters that are reported to the Equality Unit but are not treated as formal complaints that require further action because the complainant chooses not to take it any further. In other words, they are incidents that are merely brought to the attention of the Equality Unit.

¹⁸ It was emphasised to the Commission that many complainants prefer to select more than one category of complaint per incident.

[112] These documents included reports on transformation at the University that were prepared for the Department of Higher Education and Training in the years between 2018 and 2021. These reports were fairly voluminous and repetitive as they outline the University’s transformation apparatus, objectives and annual progress for each year. They also disclose the racial composition of students, staff members and key stakeholders at the University. They provide a contextual overview of transformation at the University and it would serve little purpose to provide any further details on their contents here.

[113] One of the reports considered by the Commission was the Report of the Panel on Student and Residence Culture, published in 2003. Although this report predates this Commission by almost 20 years, it made some interesting findings and recommendations that are worth bearing in mind for the latter parts of this report. In brief, these are:

- a. That the University was undergoing a disruptive process of transition at the time owing to the external, societal pressures on it to transform from the institution that it was during apartheid. Moreover, these pressures were felt at the University relatively late compared to other institutions, which is partly why various practices and traditions endured at the University despite their irreconcilability with the Constitution and the new, democratic regime.
- b. That there was a lingering reluctance to let go of “obsolete practices that are neither functional nor respectful of basic human dignity” in the residences.
- c. That the relationship between the students and the University leadership was characterised by mistrust and a lack of appreciation for the fact that they are partners that share common goals. Furthermore, the students consistently perceived themselves to be under-represented throughout important decision-making processes.
- d. That Residence Heads and HC members are—
“given great responsibilities and a high level of accountability is expected from them without their having been given adequate training and empowerment as far as management skills, the implications of a human rights culture, dealing

with diversity, legal responsibility and disciplinary procedures are concerned. If things go wrong, such management teams are held responsible, but it is questionable whether this is a realistic and fair expectation.”

- e. That the previous homogeneity of the University had fostered a culture that had little sensitivity or regard for the rights of minority groups. Since the University had diversified, there was a need for a greater sense of critical awareness among all members of the University community.
- f. That incidents of misconduct and unacceptable behaviour were frequently dealt with on a reactionary basis, often culminating in the wrongdoers being scapegoated without the necessary changes being made to the culture of the University.
- g. That the disciplinary system at the University comprised structures and processes that were too rule-driven, too complex, and too multi-layered to function effectively. In addition, there was a perception among students that punishment was rarely in line with the nature and seriousness of the offence, nor was it applied consistently.
- h. That there was great scope for meaningful engagement and collaboration between the University leadership and the students, because the vast majority of them were actually seeking the same objectives without realising it.

[114] The Commission also considered the Report of the Task Team on the Inquiry into Unacceptable Welcoming Practices that was published in October, 2014. As the name implies, this report exposed the existence of unacceptable Welcoming practices at the University and provided an extensive analysis of the reasons that these practices persist, despite the University’s transformation agenda. These reasons were multifaceted and included: the students’ prior experiences that positioned them to value hierarchy; the developmental phase of students which predisposes them to emphasise “inclusion in the group” and competition without a proper appreciation of what is right and wrong; and the allure of alumni’s and older students’ experiences of these practices and traditions. The report aims to curb these unacceptable practices while recognising that certain Welcoming practices are constructive and ought to be retained. To this end,

the report recommended the introduction of a monitoring system for the Welcoming period.

[115] Another report before the Commission was the SAHRC's Report on Transformation at Public Universities in South Africa. This report was drafted in response to various troubling incidents that occurred at different universities, which prompted an investigation into racial integration and transformation at all public universities. It is unnecessary to discuss this report in any great detail. It is merely worth noting that it found that universities had not sufficiently transformed more than 20 years into South Africa's democracy, and that the relative gains made in terms of transformation had been relatively slow. Furthermore, it found that discrimination on the grounds of "race, gender, disability and socioeconomic class" remained prevalent at these universities. It made several recommendations targeted at both the Department of Higher Education and Training and the universities themselves to encourage them to improve transformation in higher education.

[116] Finally, the reports and documents relating to the issues around transformation in Huis Marais provide background information on the events that led to the agreement that was signed between Huis Marais and the University in 2020. These events are canvassed in great detail in the *viva voce* evidence that follows. For the time being, it is merely worth noting that these documents trace the conflict that arose between the student leaders of Huis Marais and the University. This conflict arose because of the unacceptable culture and practices taking place in Huis Marais, which were aggravated by the poor relationship between the student leaders and the Residence Head.

[117] This conflict came to a head when the Division of Student Affairs sought to solve these problems by converting Huis Marais into a mixed residence, which caused a great upset to the existing and former students of Huis Marais and ultimately led to the involvement of lawyers. This brief synopsis more or less captures the gist of these documents, which ultimately indicates that transformation has had a fairly turbulent history in Huis Marais.

Transformation literature

[118] In addition to the variety of reports that provided context and insight, the Commission also considered various academic materials that assisted it in understanding the true underlying issues at the heart of this Inquiry. I shall not provide a literature review, for that is not the purpose of this report. However, I must emphasise that the Commission benefitted greatly from the academic expertise that it gleaned from this literature, a list of which is included as an addendum to this report.

[119] At the risk of oversimplifying the well-reasoned arguments put forward in the literature, I shall simply add that these sources emphasise that racism and discrimination are nuanced and complex matters. They demand a deep understanding of and appreciation for the history of South Africa and the many patterns of oppression and disadvantage that were visited upon Black people through colonialism and apartheid. Moreover, a fundamental principle required for understanding these issues is that each person's history, culture and race plays a pivotal role in positioning them in society which, in turn, shapes their normative understanding of the world. In other words, everything that all people believe and understand is, in a way, a product of subjectivity. The upshot of all of this is that inter-racial harmony demands humility and an open mind to the possibility that everything that all people believe to be normal is, in fact, socially constructed. It is trite that eradicating racism and discrimination is accordingly not a simple matter of changing laws.

[120] I also note, as a mere matter of interest, that there are certain principles and concepts that are not settled in the literature. One of these contested topics is that of "microaggressions", which can be defined as "subtle snubs, slights and insults directed towards minority groups . . . that implicitly communicate or at least engender hostility."¹⁹ While some have accepted this concept as a useful tool for understanding and addressing racism, others have argued that the terminology employed actually exacerbates racial tensions and is counterproductive.²⁰ This is neither the time nor the place to resolve these conflicts, so despite the fact that many witnesses referred to

¹⁹ Lilienfeld "Microaggressions: Strong Claims, Inadequate Evidence" (2017) 12 *Perspectives on Psychological Science* 138 at 139.

²⁰ See Lilienfeld, and Haidt and Lukianoff *The Coddling of the American Mind* (Penguin Books, 2018).

“microaggressions” in their evidence, I have declined to use this terminology and instead refer to any variation of “subtle or underhanded racism”.

[121] On that note, and having provided an overview of the vast body of documentary evidence that assisted the Commission with its investigation, I now turn to the oral evidence that came to light during the Inquiry.

(b) *Viva voce evidence*

Overview

[122] During the course of the Inquiry, the Commission heard the oral testimony of a variety of witnesses. As explained earlier, the witnesses were called on the basis of the likelihood of their evidence being relevant and useful to the Commission. The witnesses were presented to the Commission in a thematic order, and were accordingly grouped into the following broad themes:

- a. Members of the Rectorate and other related officeholders;
- b. Members of staff responsible for transformation at the University;
- c. Members of staff responsible for students and the student experience at the University;
- d. Members of staff involved in the residences;
- e. Student leaders;
- f. Members of staff with perspectives on discrimination at the University;
- g. Parties related to the Huis Marais incident;
- h. Parties related to the Law Dance incident; and
- i. Experts.

[123] As guaranteed by the Terms of Reference, the identities of the individual witnesses will not be disclosed in this report. For the same reason, limited descriptions of the groups are provided above.

[124] The evidence of the latter group of witnesses will be discussed in the next section titled “expert evidence”. The key elements of the evidence of the remaining groups will be surmised presently.

The evidence of the Rectorate and other related officeholders

[125] As members of the University who are directly responsible for its management, this group of witnesses provided an invaluable perspective. The first common thread in their evidence that bears mentioning is that the University has undertaken various deliberate steps in its transformation journey under the current Rectorate and that this is a marked change from its past. These steps have included policy changes and the introduction of new policies, as well as various projects targeted at visual redress. This group of witnesses was accordingly in agreement about the fact that the University has indeed made strides in transforming as far as its official progress, or “progress on paper” is concerned.

[126] As for the University’s progress in reality, the opinions put forward by these witnesses varied. Some felt that the University has made enormous progress and were surprised by the recently publicised discontent at the University, whereas others described the University’s progress as ambivalent at best. They did, however, agree that incidents like those included in the Commission’s Terms of Reference indicate that there is a disconnect between the University’s expressed values and aspirations and the on-the-ground experiences of students and staff. In other words, the University’s express commitment to transformation and non-racism has failed to translate into a transformed and completely racism-free environment. This group of witnesses all demonstrated genuine remorse and distress about this failure. It was evident that they were affected by the fact that the incidents occurred notwithstanding their hard work and efforts.

[127] After identifying the gap between transformation “on paper” as opposed to transformation in reality at the University, the next issue that was raised with each of these witnesses was the question of what is causing this gap, and how it can be addressed. A variety of answers was provided. From a structural perspective, there appeared to be a general consensus between this group of witnesses that the University has the adequate infrastructure in place to implement transformation. Several witnesses observed that progress has been made through the introduction of various portfolios and committees, as well as through the change in the reporting structure of the Equality Unit, which now reports to and is overseen by the Deputy Vice Chancellor for Learning

and Teaching. That being said, several of these witnesses were alive to the reality that the Rectorate may have blind spots and fear that further incidents may occur in the future if these are not brought to light.

[128] Another recurring theme that emerged in the evidence of this group of witnesses was the relevance of the history of the institution and its legacy which is proudly sustained by external groups, including the alumni and political parties. On the one hand, the witnesses emphasised that the University bears restitutory obligations because of its history of White, male, Afrikaans dominance. On the other hand, they recognised that their attempts to act on these obligations and to depart from this history is met with resistance from certain members of the Convocation and Council. A related point that was raised in this evidence was that the University is inevitably affected by the broader racial dynamics and socioeconomic circumstances of South African society, and that overcoming these realities to transform the University is no small task.

[129] For instance, a recurring point made by many of the witnesses was that achieving the University's transformation objectives and shifting attitudes on campus requires a critical mass of Black students. However, attracting Black candidates who meet the University's admission criteria is challenging for reasons beyond the University's control – for instance, the quality of public high school education. The witnesses were also under the impression that another challenge to improving diversity and representation at the University is that the University bears the reputation of catering primarily to White, Afrikaans students, and that it is an unwelcoming environment for Black students.

[130] Several witnesses added that part of this particular problem is the influence of the Stellenbosch town which, despite being separate to and beyond the control of the University, is inextricably linked to the experiences of students while attending the University. They explained that the town is home to many conservative, typically White, Afrikaners who bear racist and other bigoted beliefs and attitudes. Thus, students and staff members often experience racism when encountering people from the town who are not affiliated with the University at all. This distinction does little to diminish the harm caused by the encounter and this negativity naturally forms part of the student's or staff member's holistic experience of their time at the University.

[131] A related point that was identified was that Stellenbosch, the town and the University, is a very insular place. For instance, it is relatively common to find current staff members who studied at the University and have lived in the town their whole lives because their parents attended and then taught at the University before them, and so on and so forth.²¹ The witnesses were of the view that this trend plays a role in stagnating the progression of the University and town from what they were in the past to what they could become now, in a democratic South Africa.

[132] Linked to this is the issue of language which, in the case of the University, is truly a minefield. These witnesses observed that language is highly controversial at the University. They acknowledged that the use of Afrikaans often has exclusionary effects, and equally noted that a constant threat of legal action from various Afrikaans interest groups hangs over the University, awaiting the moment it contemplates any changes to its language policy. This is because the University is seen as an integral part of the heritage of the Afrikaans community, and these groups accordingly believe that the University bears a duty to continue to function as a space where White, Afrikaans South Africans can celebrate their culture, language and heritage. Aside from the exclusionary consequences of these external pressures, members of the Rectorate also have to expend a great deal of time and energy in appeasing these groups, addressing complaints, and defending any action or decision that deviates from the University's historic use of Afrikaans as its main language.

[133] While these are issues that the Rectorate must overcome in pursuit of transforming the University, another point that was made in the evidence was that it would be unrealistic and inappropriate to require the University to achieve demographic representation that reflects national demographics. This would be ignorant of the aforementioned problems that are beyond the University's control, as well as the nature of provincial demographics, which differ to those at the national level, and the impact that this has on the University's ability to attract candidates from different racial groups.

[134] Several of the witnesses in this group noted that despite the Rectorate's expressed commitment to transformation, there is not a shared sense of responsibility and buy-in from the entire University community in this regard. Their impression is that

²¹ As a matter of interest, in the course of the Inquiry, this Commission met several witnesses who meet this description.

there are lingering subconscious prejudices and embedded attitudes in certain parts of the University community. These attitudes and beliefs, whether at the conscious or subconscious level, perceive transformation as an unimportant or even unworthy objective. One of the ways in which this visibly manifests is in the poor attendance at critical engagement events and other transformation initiatives at the University. The question then is how to address these attitudes and encourage all members of the University community to become involved in and support the transformation agenda. Several witnesses in this group contemplated the possibility of making participation in these sorts of events and initiatives compulsory, but this debate was not resolved in the evidence as once again there were varied views put forward on how effective this would be at incentivising genuine and authentic participation and engagement from all members of the University community.

[135] In relation to this point, there was one firm view that emerged from the evidence of this group. This was that members of staff at the University need to be incentivised and held responsible for transforming their various responsibility centres and departments through the introduction of a transformation component in the criteria used for their performance evaluations. Several witnesses anticipated that this would frame transformation as a serious and important objective for all as opposed to a select few members of staff. It was suggested by many witnesses that this is necessary because there is currently a great deal of resistance to transformation that emanates from the middle management level of the University. This is from members of staff who have enough power to resist making changes, but not enough to be visibly seen by the top levels of management as a source of resistance.

[136] One of the observations that emerged from this group's evidence was that the University structure is extremely hierarchical. A witness described this as being inconducive to transformation, which would be better facilitated through a matrix organisational structure. What this witness meant by this is that transformation at the University requires cross-team collaboration between many different structures and staff members. The problem with the University's emphasis on hierarchy is that it is easy for people to resist transformation by refusing to collaborate across teams and responsibility centres and insisting on only taking instructions from the superiors in

their reporting line. This makes it challenging for staff members whose transformation-related responsibilities cut across all responsibility centres, but whose authority is not recognised within the hierarchies of those other centres. This issue of hierarchy arose in other witnesses' evidence and will accordingly be explored further later in this report.

[137] All of the witnesses in this group identified the residences, and the male residences in particular, as spaces where the University's transformation agenda is most challenged. They explained that the University is known for offering a "residence experience" to students, and that each residence has its own distinct culture. Some of the older residences, especially the male residences, have a rich history and set of traditions and practices that are perceived by some of their current and former members as being integral to those residences' identities. Problems arise, however, when these residences espouse and promote values and practices that do not align with the values and objectives of the University. Historically, residence traditions have included practices that could easily be described as discriminatory, humiliating and even violent. Although these practices are now prohibited, a particular challenge that arises is that many students who are members of these residences understand their "residence identity" as distinct and pre-eminent to their "university identity". Consequently, residence traditions override the values and objectives of the University in the minds of these students. For example, it was striking that almost every witness in this group confidently explained that Welcoming and initiation practices have been prohibited in the residences, but appeared to suspect that at least some of these practices secretly endure in some of the residences.

[138] The evidence of these witnesses suggests that one of the reasons that the residences are so resistant to change is because of their history of accommodating intergenerational membership. Thus, these residences have assumed a special meaning in certain families which, owing to the history of the University, are typically White and Afrikaans. There are students who are currently living in some of these residences, whose father and grandfather²² were both in that residence. These students are not simply there to study and enjoy a life at university and in residence, they are upholding

²² I refer to male students by example because this trend was identified by the witnesses as being more common in the case of male residences than female residences. This does not exclude the fact that the same problems occur in female residences, albeit less common or severe.

a proud family tradition. They are accordingly more likely to perceive residence traditions, for instance initiation practices, as normal and even beneficial.

[139] Many of the residences have very involved alumni who discourage and lobby against any changes that might, in their eyes, erode the identity and essence of their former residence. In extreme cases this manifests in the alumni exerting their influence and financial power to preserve the status quo at these residences. Various examples of this emerged in the evidence, including instances of wealthy alumni providing funds to male residences for any repairs that may be required because of misconduct, for instance the kicking down and breaking of doors. This can have the effect of shielding the current students from the University's increased intolerance of this type of behaviour in residences. Another example of the alumni's involvement is their financing of litigation on behalf of the current students. This is precisely what transpired in 2020 when the University was on the brink of converting Huis Marais into a mixed residence.

[140] The evidence of this group of witnesses included this latter issue. According to this evidence, Huis Marais was one of the very problematic residences for some time preceding 2020. It was known as an exclusionary space that fostered a toxic culture, discriminatory practices and deplorable conduct by its residents. The CSC grappled with this problem for some time but the problems persisted, culminating in the CSC refusing to place any first year students in Huis Marais in 2019. Then, later in 2019, there was a fire in one of the female residences, Huis Ten Bosch, which damaged the building and resulted in the need to relocate those female residents. Huis Marais was identified as a suitable space to accommodate these students because of recent renovations that expanded its capacity and formed an appropriate space for another Community. Thus, while Huis Ten Bosch was being rebuilt, those students were housed in Huis Marais and, once again, no first year students were placed in Huis Marais in 2020.

[141] In the light of these events, the University saw an opportunity to solve the "Huis Marais problem" by converting it into a mixed gender residence. The idea was that doing so would reform the Community afresh, and the old traditions and harmful culture would die a natural death with the departure of the older students who were part

of the cohort that favoured that culture. An added benefit of this decision was that it would increase the number of residence places available to female students, thereby addressing the shortage of places for female students in residences at the University.

[142] However, before the University finalised its decision to convert Huis Marais into a mixed residence, legal representatives became involved on behalf of the Huis Marais students and alumni. According to the evidence, negotiations and legal correspondence ensued about various issues, including the processes by which the University took this decision. However, at the heart of the former and current Huis Marais students' complaint was the adamant belief that the residence must remain a solely male residence. According to the witnesses in this group, that was at all times the students' greatest priority.

[143] The negotiations between the University and the Huis Marais students came to a head when the latter essentially threatened the University with litigation if they were to see the decision through. This rested on two arguments. Firstly, the alleged procedural defects in the manner in which the University had gone about reaching this decision, and secondly because it was questionable whether the Rectorate had the power to take this decision in terms of the Statute of Stellenbosch University (Statute). The University sought legal advice about the best way forward and was warned that, should its decision be taken on review, there was a strong possibility that the review would succeed and the decision would be set aside.

[144] Furthermore, The University's legal advisors held the view that the University had fallen short of the procedural requirements of the Promotion of Administrative Justice Act (PAJA)²³ and that the Statute empowered the University's Council, but not the Rectorate, to make a decision of this nature. Upon receiving this advice, the Rectorate decided it would be in the University's best interests to avoid litigation which would be costly and incur reputational damage for the University. It accordingly did not proceed with the planned conversion of Huis Marais. The compromise involved the University entering into an agreement with Huis Marais' student leaders and alumni in November 2020. Amongst other things, this agreement obliged the University to preserve Huis Marais as a male residence, and required the

²³ 3 of 2000.

student leaders of Huis Marais to enact a plan of reform that would address the University's many concerns about the culture of that residence.

[145] The witnesses who gave evidence on the Huis Marais negotiations made three common observations. The first was that their impression was that, at the time, the student leaders of Huis Marais were genuinely committed to cooperating with the University and improving the culture of their residence. The second was that a major contributing factor to the Huis Marais problem was the profoundly strained relationship between the student leaders and the Residence Head, Dr Johan Groenewald. The witnesses expressed sympathy for Dr Groenewald and his genuine commitment to and belief in transformation, but emphasised that he lacks the ability to connect with, support and influence students. In frank terms, their evidence was that Dr Groenewald was unfit to be the Residence Head of Huis Marais and that this was part of the reason that the Huis Marais problem could not be solved. Their final observation was that the events that led to the University renegeing on its original decision were not widely known or understood by the University community. They accordingly held the view that many parties were angered by the end result and would undoubtedly point to the Huis Marais incident as evidence of why the University ought to have stuck to its guns, so to speak.

[146] This leads to another common issue that was identified by this group of witnesses: the fact that students often do not fully understand the operations and obligations of the University, and tend to be frustrated when their demands are not met. These witnesses are under the impression that this may contribute to why many students do not trust the system, and why the formal channels that are in place to deal with discrimination are underutilised. To expand on this point briefly, these witnesses were evidently aware of the fact that there are students and staff members who feel unwelcome and unhappy. However, this has not translated into formal complaints and the use of the designated channels, personnel and systems. One of the reasons for this that was suggested by the witnesses is that there exists a culture of secrecy both in relation to students in residences and staff members. Students in residences fear reporting issues that they experience, either because of a stifling code of silence that is part of the residence culture, or simply for fear of being unpopular and treated differently in their living environments. In the case of staff members, the impression is

that reporting issues might have prejudicial consequences for the complainant's career prospects. This is truly challenging for the Rectorate because the official reports of structures like the Equality Unit do not paint a true picture on which the Rectorate can rely to make the necessary decisions and changes.

[147] There are a few final points that bear mentioning from this group of witnesses' evidence. One is that the pervasive drinking culture and alcohol abuse at the University has the effect of exacerbating the problems in residences as well as race relations. This is not because alcohol converts someone into a racist, but rather because it strips them of their inhibitions and can unveil their nastiest, innermost thoughts and beliefs. In addition, the drinking culture in residences also alienates students whose religious beliefs and financial circumstances prevent them from partaking therein. Another point that recurred in the evidence was that students who are on bursaries tend to struggle the most with the culture in the residences. In the worst of cases, these students find the environment so challenging that, ultimately, they are unable to complete their studies and obtain their degrees.

[148] Interestingly, this is not as much the case in relation to postgraduate students, whose academic success rate is the highest in the country.²⁴ In addition, this Commission heard evidence to the effect that there tends to be greater harmony amongst postgraduate students. It was suggested that this is because they do not usually live in residences and have to cope with the residence cultures and practices. Furthermore, language was described as a non-issue in the context of postgraduate students because English is used by default because it is the language of most major journals and academic publications. The Commission also heard evidence regarding the immense and commendable efforts that have been taken to provide adequate support and infrastructure to enable postgraduate students to flourish and succeed at the University. It was stressed that one of the key factors is financial support to ensure that the students'

²⁴ At the request of this Commission, the academic success rates of the University were prepared and compared with the national success rates of students at all other universities. These rates were divided into racial groups. At the level of postgraduate studies, the University's success rates were the highest in the country. In 2020, the University's overall success rate for postgraduate students was 85,4%, compared to the national rate of 75,6%. By racial categories, the postgraduate success rates in 2020 were as follows: Black African: 77,5% at the University and 70,8% nationally; Coloured: 82% at the University and 79,1% nationally; Indian: 78,9% at the University and nationally; and White: 91,6% at the University and 87,2% nationally.

academic work is not derailed by financial stress, and funding to optimise and improve the academic resources offered by the University.

[149] This leads to another interesting point that emerged from this evidence, which was the role of resource constraints in furthering or limiting transformation. The witnesses in this group hold positions at the University that entail the management of and responsibility for the University's resources. On the one hand, many of them acknowledged that their power to make changes at the University is constrained by resources, and that the University is fortunate to benefit from the generosity of its alumni in this regard. On the other hand, none of them identified financial constraints as an existing impediment to transformation. On the contrary, one of the witnesses explicitly stated that it is not for want of funds that the University is struggling to achieve its transformation objectives, and rejected resource constraints as a legitimate excuse for a lack of progress.

[150] I have thus far described the negative observations of this group of witnesses. It is notable that many of them also referred to the fact that there is a lot of good that can be gained from the experience offered by the residences. Namely that they emphasise community building and provide additional opportunities that enable students to develop and gain an education in addition to their chosen fields of study. This is a valuable aspect of the "transformative student experience", which is what the University aims to provide according to this group of witnesses. The transformative student experience was described as "the journey that the student will take from coming into the institution to graduating at the institution. Their experiences not just within the classroom but also within the social and living spaces on the campus."

[151] It is accordingly envisaged that students will leave the University not only with their degree, but also having gained the necessary experience, insight and wisdom to become good citizens who are capable of contributing meaningfully to society. In pursuit of this goal, the University places great emphasis on its five values: excellence, compassion, accountability, respect and equity. It was perspicuous from the evidence that fidelity to these values and providing the transformative student experience are two of the central objectives of the University's top leaders.

[152] I conclude my synopsis of this group's evidence with an observation of my own. What can be gauged from this evidence is that there exist two dichotomous perceptions of the University. The one paints the University as the final bastion of Afrikaans pride and heritage, which must be protected at all costs to safeguard the legacies and rights of the White, Afrikaans community. The other perception is that the University is exactly the same place that it was during the apartheid era, and that it remains a hostile and unchanged environment for Black people. I shall return to my assessment of the truth of these perceptions when I make my findings.

The evidence of staff members responsible for transformation

[153] The witnesses in this group were from a range of positions at the University. The link between these witnesses is that they are agents of the University's transformation agenda. Some of them work within the offices and structures that have been charged with furthering transformation (for instance, the Transformation Office and Equality Unit), and others work in other departments and offices but are responsible for the implementation of the various policies relating to transformation that are described above. Many of them are involved in facilitating training and critical engagement sessions with students and staff members to build social cohesion and to address the various problem areas that they identify.

[154] This group echoed several points that arose in the evidence of the preceding group of witnesses. They, too, acknowledged that there have been dramatic changes to the University's policies and approach to transformation in recent years and particularly since the 2015 student protests. They also observed that the change to the Equality Unit's line of reporting has been improved through its escalation to the Deputy Vice Chancellor for Teaching and Learning directly. In addition, they had positive observations on the appointment of certain individuals at the University who are well-suited and highly adept at prioritising and working towards transformation. For instance, many witnesses praised the appointment of Dr Choice Makhetha as the Senior Director for the Division of Student Affairs, as well as the appointment of Dr Zethu Mkhize as the Head of the Transformation Office.

[155] They noted that, in the past, the University's transformation journey has been somewhat haphazard. For instance, it is only as recently as this year that the University is adopting an official transformation policy and plan.²⁵ It was explained to the Commission that these are largely geared towards enhancing accountability for transformation. It will do so by introducing clearly outlined deliverables, for instance annual targets and indicators aligned to specific persons. The witnesses explained that these are indications of positive progress, but emphasised that they ought to have happened a while ago, which is partly why the process of transformation has been so slow at the University.

[156] There has also been a vast shift in the demographics of the University, and the student body and staff are much more representative than they were in the past. Many of these witnesses recognised that it is only natural that there will be conflicts and clashes of interest while the University community adjusts to this new state of affairs. Notwithstanding this, they espoused a strongly held belief that, despite this progress in official terms, the Black members of the University community feel alienated and excluded, often as a consequence of their experiences in the town as well. The witnesses observed that there is no shared sense of responsibility when it comes to furthering the University's transformation objectives. Instead, the immense challenge of addressing these issues, transforming the University and holding it to its related policies has fallen squarely on the shoulders of this group of witnesses and their colleagues.

[157] Their evidence revealed that they feel that their efforts in this regard are frequently met with disinterest and, often, outright resistance. Their impression is that transformation and the work that they do is perceived as a pointless endeavour by many within the University community. Furthermore, they lamented the fact that so many people are so opposed to genuine and proactive critical engagement on racism and related issues, and many of these witnesses observed that it is always the same group of individuals who participate in the various transformation initiatives and conversations that they facilitate. Their observation was that it is White staff members and students in particular who are not coming to the table, and that they frequently get the sense that

²⁵ At the time of writing, the policy and plan were still in the process of being finalised.

they are “preaching to the converted”. Moreover, these witnesses were of the view that participation and involvement in the University’s transformation journey will never be widespread as long as it is optional.

[158] As was the case in the evidence of the preceding group, these witnesses also identified the “middle management” of the University as a great source of resistance to their work. They explained that the change that they work towards is often frustrated by these members of staff who have the power to prevent the escalation of issues as well as the influence of outsiders. For instance, if the Transformation Office is attempting to do transformation work in a particular faculty where there have been complaints, the Dean of that faculty has the power to ignore and override the recommendations and decisions of the Transformation Office. It is noteworthy that the Engineering Faculty and its Dean were mentioned by many witnesses as an example of the “middle management problem”.

[159] A further area in which the problems of middle management and the lack of buy-in from the University community arose was in the implementation of the University’s Code for Employment Equity and Diversity. Several witnesses explained that there are plainly preferential hiring practices that persist despite the Code and the reasonable equity targets²⁶ that have been set by the University’s Employment Equity Division. What tends to happen, according to these witnesses, is that several candidates will be shortlisted and approved as suited to the job requirements. However, the preferred candidate will often be White, even if there are Black candidates who have also been approved as meeting the requirements. This creates frustration because it is then left to certain staff members in the Human Resources and Employment Equity Divisions to intervene and question the decisions.

[160] When these staff members do question the decisions, apparently the common explanation is that there is a shortage of the specific skills required for the post in applicants from the designated groups. The witnesses who explained this were under the impression that this excuse is often disingenuous and that greater efforts can be

²⁶ It was explained to the Commission that the University sets its employment equity targets based on projections based on actual information, for instance the existing vacancies and anticipated retirements in the next five years. The end product is regarded as a more realistic approach to employment equity targets because it recognises that certain gaps exist which make it difficult to translate the demographics of the working population into the demographics of the University’s staff.

made before dismissing the possibility that there may exist suitable candidates from the designated groups. Moreover, the impression created by the witnesses who gave evidence on this was that these staff members ought to be working towards transformation in collaboration with the rest of the University but instead are forced to act as something akin to an employment equity watchdog.

[161] What emerged powerfully from this group of witnesses' evidence was that the offices and actors responsible for transformation feel that they do not possess the necessary authority, support and resources to achieve their objectives. Their evidence also revealed that there is a lack of cohesion between these offices and actors, an important example being the Transformation Office and Equality Unit. Although these offices are both key role players in the University's transformation apparatus, they do not appear to collaborate often and instead mostly work independently of each other.

[162] Moreover, this evidence painted an overall picture of many different entities working tirelessly but separately towards the same goal. It was also striking that the morale of many of these witnesses was very low. Many of them appeared tired, frustrated and even despondent about the impact of their work on the overall status of transformation and inclusivity at the University. The Commission was also informed by several witnesses that transformation work at the University is taxing on their mental health and that they do not feel adequately supported by the Rectorate or the University in this regard.

[163] Other commonalities between the evidence of this group of witnesses and the preceding group included the fact that there exists a culture of silence and a reluctance to report problems at the University. That the staff fear repercussions for their career prospects and that the students do not trust the University or its systems were repeated by this group of witnesses. They also observed that students are often unfamiliar with the complexities of the University's transformation apparatus, and unaware of the amount of work that goes into the University's transformation project.

[164] The witnesses of this group also emphasised that the University is perceived as a space and celebration of Afrikaans heritage. Groups in favour of this perception tend to perceive any efforts at transforming or changing the University as a threat, bound to damage the University. These ideas and their proponents are therefore

a strong source of resistance to transformation. Many of the witnesses in this group also identified the residences as a particularly contested space where this resistance to transformation manifests. They also made the observation that residence culture is perceived as separate and distinct to the University culture. These problems are perpetuated by the many alumni who strongly believe that their children must be able to experience life in residence, and at the University, just as they did. Many witnesses emphasised that students from different cultural, social and financial backgrounds arrive at the University with vastly different expectations of residence. In short, their view is that White, generally Afrikaans-speaking students, find the residence culture and traditions too palatable, and even enjoyable in some cases. On the other hand, their impression is that students from less privileged backgrounds, who often tend to be Black students, perceive these traditions as hostile, intimidating and intolerable.

[165] In addition, language exclusion came up as a recurring issue throughout these witnesses' evidence relating to students and to staff. Their impression is that there is a complete lack of sensitivity about the exclusionary impact of Afrikaans being treated as the default language albeit in informal settings, for instance during email exchanges. A related point that frequently arose was that the main source of racial tension and race-related problems at the University is not necessarily overt racism, but rather subtle and underhanded forms of racism and cultural exclusion that do not often translate into disciplinary steps or any kind of recourse for the person on the receiving end. The witnesses' evidence was that this, paired with the fact that the University's disciplinary processes are generally viewed in a negative light and perceived as being an unlikely pathway to justice, raises doubt about the University's values and progress in terms of transformation.

[166] In addition, despite the progress that the University has achieved in terms of its demographics, many witnesses in this group held the view that the fact that there remains a White majority makes it difficult for Black students to vocalise their grievances. It was suggested that one of the reasons for this was that these students do not feel as though their problems will be understood or addressed by White student leaders or staff members. They accordingly seek support and guidance from Black student leaders and staff members instead of making use of the University's official

structures that have been designated to deal with issues of discrimination and transformation. Several witnesses in this group accordingly concluded that the University may have opened its doors to a more diverse range of students, but that it has done so without providing the necessary support for these students whose lives and needs may vastly differ from the traditional “Stellenbosch student” in the past.

[167] For instance, the financial burden facing students from underprivileged backgrounds is not limited to expensive university fees. It includes the cost of transport, food and all other living expenses that a student will need to cover while attending the University. Naturally, students who struggle with this financial burden will not be able to afford to participate in the fun, social aspects of life at the University, unlike their more privileged classmates who often tend to be White. Thus, the economic divide between these students translates into a social divide as they experience their university years from very different perspectives. Another example of this is that the students who receive funding from NSFAS are always placed in residences later than others because of NSFAS’ processes that are beyond the University’s control. Aside from this being unsettling for these students, who miss parts of the Welcoming Programme and only move in after most of the other newcomers have settled in, it also makes it administratively challenging for the University to implement the Placement Policy.

[168] On that note, some of the witnesses in this group gave evidence on the implementation of the University’s Placement Policy and its Admissions Policy. This evidence revealed that the University has made strides in increasing diversity in all of the residences. In fact, the statistics presented to this Commission revealed that the percentage of White first year students in residence at the University has decreased from 55,9% in 2017 to 47,1% in 2022, while the percentage of Black students has risen from 17,7% in 2017 to 29,6% in 2022.²⁷ The witnesses directed the Commission’s attention to the fact that Huis Marais is one of the more diverse residences in respect of its first year students, with the White first years representing a minority of 43% of all first years in that residence. Although the witnesses could not provide any proof of a connection between this statistical phenomenon and the Huis Marais incident, they emphasised it as a point of interest.

²⁷ The remaining students are either Coloured, Indian or chose to withhold their race from their applications.

[169] In addition to the evidence that the Commission heard on the demographic progress being achieved through the Residence Placement and Admissions Policies, it was also emphasised to that there is a disproportionate number of residence places available to male as opposed to female students. Although this Inquiry is interested in matters relating to racism and not gender discrimination, I include this point merely because it was repeatedly mentioned as an impediment to the efficacy of this important policy, which undoubtedly affects student success and social cohesion at the University.

[170] The Commission also heard evidence on what happens when students request re-placements in residences. According to this evidence, the University does its best to accommodate students who request re-placements for legitimate reasons. Part of this evidence included past examples of students who requested re-placements because they were unhappy and uncomfortable with the culture of their residence. Many of these examples were Black students.

[171] Although this group of witnesses is not directly involved in the operations of the residences or the daily experiences of the residents themselves, they did make observations about transformation and discrimination in the residence spaces. Their evidence was that it is difficult for them, as the personnel responsible for transformation, to penetrate and do work in those residence spaces. This is because the residences are the responsibility of the CSC. The evidence of this group was accordingly that the Transformation Office and Equality Unit have very little to do with the residences and the students, except insofar as the Transformation Office interacts with certain student leaders to assist them with preparing critical engagement sessions for the Welcoming of newcomers. Notwithstanding this lack of involvement and contact, the witnesses did observe that both the Residence Head and the student leaders are central to the culture of the residences as well as the malleability of that culture. Thus, their impression is that the transformation work in the residences ultimately falls on the shoulders of the Residence Heads and the students themselves.

[172] Several witnesses expressed the view that all students, and student leaders in particular, are put under immense pressure to solve very complex problems. They accordingly emphasised that the students need to be given adequate support by the

University. Additionally, several witnesses in this group criticised the members of the Rectorate for failing to engage with the students closely and frequently. They argued that the students need to see that the Rectorate cares about their concerns and is willing to listen to and learn from the students. Some witnesses expressed the view that many members of the Rectorate are not equipped to deal with transformation effectively or appropriately, and described the Rectorate as demonstrating a vacuous commitment to change.

[173] A witness involved in the work of the Transformation Office also made the interesting observation that they, as an office, do not have a point of contact within the Rectorate to do transformation work in that space. They identified this as a gap because it would be unwise to assume that the work of the Transformation Office is irrelevant or unnecessary in the context of the Rectorate. The witness accordingly expressed discomfort at the idea that there is a space where the Transformation Office has minimal influence or power to assist with transformation-related issues that could arise at any moment.

[174] Another point that arose fairly often in the evidence of this group of witnesses was that there is an underlying culture of workplace bullying and intimidation which creates an unpleasant and exclusionary working environment at the University. This tends to be racialised in many parts of the University, and there is a perception that there is a glass ceiling facing Black members of staff. Many witnesses noted that this is exacerbated by the town being an unwelcoming environment with old and established networks that are very difficult for outsiders to access. This also arose in the context of the evidence on employment equity at the University. The witnesses explained that it can be very difficult to attract Black candidates to the available positions because the exclusionary reputation of the University and the town, as well as the high costs of living in the town, act as a fairly strong deterrent. Often, if Black candidates accept posts in spite of all of this, they struggle with the environment after they begin working at the University.

[175] An important component of the evidence of this group of witnesses was devoted to the problems around the Equality Unit. The Equality Unit was described by many witnesses from this group as being ill-equipped and under-capacitated to do the

work that it is meant to do. In addition, many witnesses also expressed the view that the Equality Unit generally fails to inspire confidence because it is not very visible or well-known by the broader University community. There is also a perception that the Equality Unit does not handle matters with the required efficiency, sensitivity and professionalism, and that most matters referred to the Equality Unit are dealt with through the recommendation of mediation. In short, many witnesses seemed to believe that the Equality Unit has a very poor reputation and that it is unfortunate that it is the compulsory port of call for all matters pertaining to discrimination at the University.

[176] The Commission also heard evidence from witnesses on behalf of the Equality Unit. They seemed to be of the view that the Equality Unit is very visible and well-known around the University, and that they have taken positive steps towards ensuring that students are familiar with their processes. They also expressed frustration at the misperception that they tend to recommend mediation as a suitable remedy in most matters and referred to their annual statistics to debunk this myth.²⁸ They did, however, identify various challenges that make it difficult for them to perform their work. Among these was the fact that they are under-capacitated and under-resourced, and that they are not equipped to conduct the kind of investigation that is necessary in instances where the appropriate outcome would be a referral to the Office of Student Discipline. This is because they do not necessarily have the appropriate skills, and also because they are actually mandated to function as a “softer landing” for matters of discrimination. In other words, the Equality Unit is envisaged as a space where complainants and alleged transgressors will be honest, comfortable and open-minded to finding a resolution. Their staff members and processes are accordingly very different to those of the Office of Student Discipline.

[177] The witnesses of the Equality Unit also explained that their work is often made difficult because of social media. This is particularly the case when a matter receives public attention and thus leads to public demands being made for swift justice. In circumstances like these, the use of social media often leads to inappropriate interference by external parties as well as the dissemination of false information. This

²⁸ These statistics revealed that the Equality Unit has not recommended mediation disproportionately to the other recommendations at its disposal.

can have the effect of discrediting the Equality Unit, and making their work considerably more difficult. Another challenge that these witnesses identified was that the list of prescribed recommendations at their disposal is too limited as the recommendations are very general in nature. This makes it difficult to ensure that a just outcome is reached in every matter because the Equality Unit cannot tailor-make recommendations to suit the circumstances.

[178] Finally, the witnesses of the Equality Unit also complained about their lack of authority within the University. They noted that it is strange that they report directly to the Deputy Vice-Chancellor, and yet the Head of the Equality Unit does not have the same status as a director, let alone a senior director. Apparently this has the unfortunate consequence of more senior staff members feeling entitled to use their rank to ask for favours from the Head of the Equality Unit. For instance, they might request that certain matters receive immediate attention.

[179] The witnesses explained to the Commission that the emphasis on hierarchy at the University makes this a real difficulty for the Equality Unit, because they feel compelled to respond to these requests for fear of intimidation. Interestingly enough, during the course of this Inquiry, this Commission actually heard evidence from an entirely different witness who, as a mere anecdote, referred to a situation in which they called upon the Head of the Equality Unit to use their influence to request that a particular investigation be sped up. That witness was explaining that the Equality Unit takes too long to conclude investigations, which is why this witness' influence was necessary, but it is an interesting point to contrast with the complaints of the Equality Unit.

[180] I shall tie up the evidence of this group by simply observing that the witnesses of the Equality Unit are on a very different page to the other witnesses. The Equality Unit does not appear to be fully aware of how it is regarded by the rest of the University community, and the rest of the University community does not appear to understand the purpose and work of the Equality Unit.

The evidence of staff members responsible for students and the student experience

[181] This group of witnesses included a range of individuals, mostly employed within the Division of Student Affairs and the various centres thereunder. These witnesses provided evidence on the work that they do which impacts the daily lives of students and student leaders. As will be apparent, certain trends from the evidence of the other groups of witnesses appeared in this group's evidence as well.

[182] There were many witnesses in this group who, like the preceding group, criticised the Rectorate for failing to display a genuine commitment to transformation. Several of the witnesses commented on the fact that there is in fact a void in the Rectorate because none of its members can relate to the problems that students and staff members experience at the University. To expand on this point, I must add that at the time that the Commission conducted its hearings,²⁹ there were no Black African members of the Rectorate.

[183] Additionally, the witnesses criticised the Rectorate for being distant and unavailable to students and for failing to provide proper support to the members of the University who have to manage the crises that arise as the University struggles through its transformation journey. They further argued that the Rectorate does not support and protect the “movers and the shakers” whose ideas and efforts are necessary if the University is going to change. The witnesses' impression is that the members of the Rectorate try to keep all parties happy and do not protect those who challenge the status quo from the intimidation that ensues from certain parts of the University community.

[184] It was frequently emphasised that the Rectorate is too reactive in its approach to transformation and that it has exhibited reticence towards implementing transformation in a stronger, more proactive fashion. Several witnesses believe that this reticence stems from a fear of making mistakes. This is irrational and unhelpful because mistakes are bound to happen while the University transitions through a period of major change. Furthermore, many witnesses explained that the Rectorate's existing approach

²⁹ After the Commission concluded its hearings, the Deputy Vice-Chancellor for Research, Innovation and Postgraduate Studies, Professor Eugene Cloete, retired. Professor Sibusiso Moyo has been appointed to that role and, at the time of writing is the only Black African member of the Rectorate.

inevitably leads to the Rectorate's main transformation efforts being visible only when there is a crisis to manage, at which point any decisions or conduct linked to transformation appears to be a disingenuous attempt at managing public relations. The witnesses explained that all of this suggests that the University is committed to bringing new people into the fold, but it is not necessarily committed to taking the necessary next steps to make these newcomers feel welcome.

[185] The witnesses explained that it is crucial for the University to be deliberate in its efforts to make its increasingly diverse community feel welcome. Without these deliberate efforts and interventions, the University will continue to retain some cultural characteristics of apartheid South Africa. As these witnesses have contact with the students, they noted that it is difficult to shift the University away from its institutional memory through the students, who are only at the University for a short period of time.

[186] These witnesses also observed that issues of discrimination at the University generally tend to manifest in subtle forms of underhanded racism or exclusionary practices. They also noted that discrimination in this guise is difficult to report and, therefore, tends to be dealt with inconsistently. In other words, since the racism pervades the attitudes of people and only shows itself through very minor incidents, it can be difficult to identify and even more difficult to prohibit and punish. Other aspects of the University's culture that these witnesses perceived as fostering exclusion and racial discord were: the fixation with hierarchy, exclusive networks of power within the University and the town, as well as a tolerance for bullying and intimidation in the workplace. Many of them also raised and emphasised the existence of language exclusion at the University, and noted that many Black students experience discrimination in the town as well.

[187] Several witnesses emphasised that despite these existing problems at the University, there is a culture of silence and reluctance to honestly vocalise these problems. For instance, these witnesses explained that although they are aware of how students and staff members are feeling excluded, this is rarely reflected in any official surveys or feedback to the University, or in the number of cases that are referred to the Equality Unit and Student Discipline. When asked why this might be the case, many

witnesses stated that the University's disciplinary processes are flawed as they do not provide adequate support to the victim, and there is a perception that they rarely lead to justice or a satisfactory outcome.

[188] The evidence of these witnesses was also striking as it revealed the asymmetry of information to which the witnesses in the other groups referred. This came to light as several witnesses involved in the Division of Student Affairs spoke disparagingly about the Rectorate's decision to renege on the choice to convert Huis Marais into a mixed residence in 2020. These witnesses quite evidently were not privy to the negotiations and the legal advice that ultimately informed the Rectorate's decision. The impression of these witnesses was that the Rectorate lost its courage in the end and bent to the influence and intimidation of Huis Marais' alumni. Moreover, they felt angered and undermined by their exclusion from the conversations that preceded the decision, and now doubt the Rectorate's commitment to change as well as its ability to facilitate that change.

[189] This group of witnesses also gave evidence on the residences and the role that they play in the University's transformation journey. One of them noted quite emphatically that the residence culture is highly determinative of the institutional culture at historically Afrikaans-speaking universities. In other words, it will be impossible to transform the University without addressing the exclusionary and problematic cultures and practices within the residences. These witnesses also identified the alumni as guardians of these long-standing traditions, even though they have the effect of making many students feel uncomfortable, intimidated, humiliated and even violated.

[190] In addition, it was emphasised that the Community leaders, being the HC members and the Prims, have a great deal of unchecked power in the residences. These witnesses acknowledged that the student leaders are endowed with a great deal of responsibility, power and independence to manage the residences, which creates room for abuse. This room for abuse is then widened by the code of silence that is common in the male residences in particular, where the students are extremely reluctant to speak about or report what happens to them in the residences, sometimes at the instance of the student leaders. The combined consequence of these various factors is that the

residences and the student leaders therein are, to some extent, able to operate outside of the University's rules and policies, including its transformation agenda. Some of the witnesses in this group even described these spaces and students as "untouchable".

[191] The matter of the NSFAS students arriving late in the Welcoming Period also came up in this group of witnesses' evidence. These witnesses also recognised that this places the NSFAS students on the back foot in terms of settling in and acclimatising to life in residence. This is regrettable since these are students who tend to be from disadvantaged and vulnerable backgrounds compared to many of their classmates. The witnesses in this group echoed the sentiment that there is insufficient support for all students, including vulnerable students and student leaders. One of the witnesses was of the view that part of this problem lies in the systemic reliance on hierarchy, as what ought to be channels of support are instead treated as channels of power. This is demonstrated by some of the student leaders in the residences who regard their positions as symbolising their power and status, rather than their duty to serve and support the other students in their residences. Once again, it was observed that excessive alcohol consumption aggravates these dynamics in the residences and leads to the worst instances of misconduct.

[192] The evidence of these witnesses also revealed the contrast between the ways in which the different student leaders are trained and managed by the University. The HC members and Prims receive their training separately from other student leaders, including the SRC, which receives its training and support from the CSLEEC. Thus, the approach to training and managing student leaders at the University was described as lacking cohesion. For instance, the Commission heard evidence on the many courses offered by the CSLEEC that are geared towards developing better student leaders, and ultimately better people. Yet, the impression created by the witnesses was that these offerings are being underutilised by the Community leaders.

[193] The evidence of these witnesses accordingly painted a picture of a disjointed approach to managing and addressing students' problems. It also emphasised that there is a desperate need to re-write and align the constitutions of all spaces at the University, especially the residences, and to ensure that these constitutions cohere with the University's values. The Commission was informed by several witnesses that this

process is underway, but that a formalised realignment of all constitutions has not yet taken place. Related to this is a point that several witnesses raised regarding the importance of including the relevant voices in conversations about change and transformation. This speaks to the point raised earlier about the void in the Rectorate, and the crux of it is that it is essential for the University leadership to listen to the voices of those who are negatively impacted by the current culture of the institution. Failure to do so will just lead to decisions that perpetuate the status quo.

[194] The witnesses of this group also expressed frustration at what they perceive to be a lack of shared responsibility for transformation, and the expectation that a relatively small group of people within the University carry the load for bringing about change. They also commented on the lack of participation in transformation initiatives, and the fact that transformation appears to be understood as an ideology rather than a worthy aspiration and legitimate, institutional objective. Several witnesses who attempt to prioritise transformation through their work commented on the fact that they frequently meet resistance from their colleagues in the University. They noted that resource constraints are often cited as an excuse to not implement changes and various initiatives geared towards transformation. This is in addition to a lack of political will from certain members of the University community. For instance, some of the witnesses who are involved in the work of CSLEEC argued that the Shared Humanities module could easily be customised for and adapted to different courses in each of the different faculties, but that this has not yet happened because the Deans of certain faculties strongly oppose it.

[195] Similar to the evidence of the previous group, these witnesses painted an overall picture of separate silos of activity, each geared towards similar ends but working on their own and occasionally butting heads over whose work is more important.

The evidence of staff members involved in residences

[196] This group of witnesses consisted of a variety of Residence Heads. They explained to the Commission that their role is to act as something akin to a “house mother” or “house father” to their designated residence. They are there to support and

guide the students, and are the first port of call if any conflicts or issues arise in the residence, or if a student experiences a problem of any kind. They live and work in extremely close proximity to the students in their residence and are well positioned to assist and engage with students on all matters concerning their university lives. These witnesses accordingly gave evidence on the residence spaces and all that they have learned through their interactions with the students.

[197] In general, this group of witnesses spoke positively about their interactions with students. It was evident that they think highly and are fond of the students in their residences. In fact, a point that all of them made rather emphatically was that students' abilities to solve problems and adapt to changes are often underestimated. The witnesses explained that their impression of students is that they have a great capacity to learn and deal with conflict – they just need to be given the opportunity and support. Furthermore, they also emphasised the importance of facilitating opportunities for students to engage meaningfully and build relationships with one another. This is essential to create a harmonious and inclusive space in the residences.

[198] Addressing the matter of transforming the residence spaces, the witnesses noted that it is extremely important for the HC to be a representative group. They explained that this can be challenging to achieve because it requires students from minority groups in the residences to be willing to step forward and run for a leadership position. This can accordingly be a slow and somewhat circular process, because it is often the case that the majority (or all) of the HC members in the residence are White. The witnesses explained that this creates the impression that the rest of the residence will only elect White student leaders, and so the Black students will be reluctant to put themselves forward and run for leadership positions, thereby only entrenching the problem. The witnesses in this group explained that they attempt to overcome this problem by working closely with the students and encouraging them to run for the HC and other leadership positions. Their impression is that this additional support and encouragement can boost students' confidence so that they feel able to claim the space as their own.

[199] A related point that arose in several of the witnesses' evidence was that they have observed that the students feel frustrated by the enormous pressure that is put on individuals who are seen as transformation agents. The witnesses have experienced students complaining about the fact that many of the White students in their residences do not participate in conversations about transformation, racism and related issues. This leads to the Black students feeling like the White students do not care about these problems. The Black students also feel that bringing about change is their burden to bear alone.

[200] This builds resentment and racial tension in the residences because there are two opposing forces at work. On the one side there is the Black students who want to change the spaces so that they feel included and comfortable in their residences, and on the other side there are White students who appear to be content with the status quo and do not see the need to change anything. Many of the witnesses in this group explained that, as the Residence Head, it often falls to them to mediate these problems and to encourage all students in their house to understand one another's perspectives and work together towards a better environment for all.

[201] In the course of this work, the witnesses of this group have identified several common complaints that are raised by Black students who feel unhappy and excluded in their residences. A seemingly innocuous issue which came up often is the music that is played at social events. The witnesses explained that although it seems trivial, it can be a great source of contention because the students feel that their cultural preferences ought to be accommodated at these functions, and that often leads to conflict and certain groups feeling excluded. Several witnesses mentioned that they have tried to address this problem in various ways but none claimed to have found a solution yet.

[202] In fact, social events in general seem to cause conflict in a variety of ways. Witnesses who are the Residence Heads of female residences mentioned that Black students in their residences have complained that they feel excluded at functions with male residences because the White men tend to ignore them and socialise only with the White women. This makes the Black women feel hurt and humiliated. There is also a general complaint from the students that most social traditions in the residences cater

only to White, Afrikaans cultural preferences. Some of the witnesses mentioned that they have attempted to address this concern by working with the student leaders to introduce more cultural diversity into residence events. The witnesses observed that alcohol is also a complicating variable. Firstly, it can lead to misconduct and conflict between the students when they consume it. Secondly, a drinking culture alienates certain minority groups in the residences, for instance those who do not drink for religious reasons and students who cannot afford to participate in this culture. While this is a problem to which the Residence Heads are very much alive, they unfortunately did not suggest solutions to the problem.

[203] Unsurprisingly, language was also raised as a common complaint that the witnesses hear from students. The use of Afrikaans is a minefield in these residences, because many of them were established as “Afrikaans spaces” with “Afrikaans traditions.” This appeals to Afrikaans-speaking students, who then often feel entitled to treat Afrikaans as the common language in the residence. This appears to upset Black students who do not speak Afrikaans, because they understand this to be an exclusionary and arrogant way of behaving.

[204] This relates to a broader source of conflict that the witnesses identified in the residences: the different expectations of students. They observed that many White, Afrikaans students are there because they want to experience a “residence life”. They are excited by the traditions and events on offer in the residences. However, for some other students, particularly Black students from less privileged backgrounds, residence is something more practical. It is a convenient place for them to eat, sleep and study while they are at University. The witnesses noted that these vastly different attitudes and expectations tend to result in racial segregation because they translate into socialisation and participation patterns in the residences.

[205] Several witnesses also mentioned that they have received complaints about the catering in the residences because only some of the residences cater for the Halaal dietary restrictions. The arrangement is that Muslim students will then eat in these specific residences, which may differ to their own residences. The witnesses in this group explained that this upsets the students because they are unable to bond with

the rest of their residence during meal times, and they accordingly feel excluded and alienated.

[206] In addition to these complaints, the witnesses in this group also referred to the particular problems in the male residences. Several witnesses repeated what was said by the witnesses in the other groups about the toxic practices that endure in the male residences. They explained that these practices are understood differently by different people. Some believe that they affirm masculinity, while others perceive them as vulgar and unacceptable. The witnesses noted that, either way, these practices do not entail conduct that should be condoned in a civilised environment.

[207] They also noted that it is strange that these practices, for instance kicking down and breaking doors, are commonplace in the male residences but would cause great upset in the female residences. One of the Residence Heads of a female residence noted that there are great inconsistencies between the rules in male residences and the rules in female residences. This particular witness suggested that less discretion and more consistency and certainty in the rules across all of the residences might be helpful in curbing some of the problems in the male residences. There was another witness, however, who believed that certain cultures are beyond redemption. They suggested that the only way to cure the most problematic male residences is to reform them as completely new environments, preferably mixed residences.

[208] In addition to the complaints that they have heard from students, these witnesses have also formed their own views on some of the difficulties experienced by Black in the residences. They explained that these students, particularly those from underprivileged backgrounds, face challenges that their White counterparts do not always understand, or even know about. Moreover, they emphasised that the cultural and financial background of a student is the main determinant of how that student will experience the residence and the University.

[209] For instance, one of the witnesses spoke at length about the fact that NSFAS students do not necessarily receive the required support and understanding to flourish at the University. This is because they are often the first members of their families to attend university, and accordingly lack familial support and guidance on

what to do if they are struggling academically. Without extra support and attention from the University, they can get lost in the system and fail.

[210] The witness also explained that the University's systems and policies are insensitive to these students' circumstances. For instance, the University's system does not permit students to view their year-end results if their fees have not been paid. Although this is not an unusual policy for a university, the witness emphasised that it is discriminatory and wrong that no provision is made for NSFAS students who have no control over when their fees are paid. These students are then prejudiced because they are unable to return home until they know that they have passed and need not re-write their examinations, but are at the mercy of NSFAS in the meantime. Thus, their experience of the University vastly differs from that of their wealthier classmates whose parents can pay their fees.

[211] Furthermore, these witnesses identified the residence credit system as a source of exclusion for students from disadvantaged backgrounds. This system requires students to achieve specific results in order to retain their place in the residence for the following year. Thus, students from disadvantaged backgrounds are more prone to academic exclusion from their residence because they tend to find it harder to adjust to the University and their studies than their classmates who arrive at university better equipped, resourced and supported.

[212] The divergent experiences of the students, which is often determined along racial lines, can heighten resentment and exacerbate racial tensions in the residences. One of the existing programmes intended to build social cohesion and facilitate engagement on discrimination in its varying guises, as well as some of the aforementioned issues, is the Res Ed programme. The evidence suggests that the Residence Heads are not as involved in the running of this programme as the HC, but the witnesses in this group nevertheless gave their views on the programme. On the whole, their feedback was mixed. Some felt that the programme is achieving great results in their residences, while others felt that the programme is not run or facilitated effectively and that it is not truly serving its purpose. What was evident, however, was that the implementation of the programme is unique to each specific residence.

[213] Aside from the Res Ed programme, the witnesses in this group spoke about engagement between students in general. All of them noted that students will be willing to speak frankly about their grievances if they are given an appropriate platform. They emphasised that it is extremely important to listen to the students with an open mind and to engage with them, and even challenge them. They explained that trust and mutual respect are the foundation of a successful relationship between the Residence Head and the students. In their experience, if that relationship is in place it is possible to learn from and teach students, and to work together with the students to implement positive changes.

[214] On the other hand, they also explained that it can be challenging to engage with students because students are often paranoid and distrusting of the University. This often stems from the issue of information asymmetry. Thus, it is sometimes necessary for the Residence Head to engage with the students so that they have a better understanding and grasp of how the University's policies and procedures work. This can build trust and reassure the students that the University is not as unjust as they think.

[215] The takeaway point from this evidence is that students are not given enough credit for their capabilities and ought to be heard, respected and involved in the University's decisions because they have a great deal to contribute. However, in the same breath, it is perspicuous that the students are still young and at a formative stage of their lives, and accordingly still need support and guidance. In the residences, that support and guidance must come from the Residence Head.

[216] Finally, before I proceed to the next group of witnesses, it is worth mentioning that a few points were raised echoing the evidence of other groups of witnesses. The first was the influence of the alumni. Although some of the Residence Heads said that their experiences with alumni tend to be positive and constructive, one witness in particular expressed very strong views on the destructive influence of certain interest groups within the Convocation. This witness stated that these groups obsessively push a political agenda at the University and use their power and wealth to make it difficult for the University to transform and change. According to the witness, they do this through litigation and other threatening legal processes, including PAIA requests relating to any decision, no matter how small, involving the use of Afrikaans

at the University. The witness emphasised that this forces the University to expend time and resources on dealing with these interest groups, rather than directing them towards the improvement of the University.

[217] Lastly, there was also a witness who emphasised that people who challenge and question the status quo at the University always tend to suffer consequences. This relates to what other witnesses said about the culture of silence at the University and the absence of protection for agents of change.

The evidence of student leaders

[218] The Commission heard evidence from a broad range of student leaders. These included members of the SRC, Prims and HC members from Communities and representatives of student leadership bodies of faculties. They gave evidence on the students' perspective of transformation at the University.

[219] Very few of the witnesses in this group said that the University has done enough to transform into an inclusive and welcoming environment that is totally free of racism. They acknowledged that the University has done a lot on paper, but their views were generally that these changes are superficial and that the University leadership tends to be reactive as opposed to proactive towards tackling matters of racism. They also argued that the University leadership prioritises the University's image over everything else. Despite the University's multitude of processes and structures in place to facilitate transformation, the students explained that they do not find it easy to vocalise their concerns and expressed distrust in the University's processes and systems. Their view was that greater transparency is needed about these processes, because they currently do not appear to be effective or reliable in the eyes of the students. They also believed that they, as student leaders, have a greater understanding of how these systems work than the rest of the student body. Thus, the rest of the student body is at a heightened disadvantage when dealing with these systems and trying to access the appropriate channels and structures.

[220] These witnesses emphasised that students are eager to be involved in the University's transformation journey and argued that their voices and perspectives should not be excluded from important conversations. They also said that it can be

demoralising for students who do try to be involved because they often feel as though they make valuable contributions and suggestions which are ignored by the University leadership. They also noted that students who speak out and challenge the system are often regarded as though they are pushing a political agenda as opposed to raising legitimate issues. Alternatively, their suggestions are often dismissed by members of staff who cite resource constraints as the inhibitor. Furthermore, the students' impression was that staff members with whom they have direct contact are often open to change, but this dissipates and is replaced with resistance as ideas progress upwards through the hierarchy. Here, several witnesses also referred to the "middle management problem" and mentioned that there are members of staff who are not capacitated for transformation, and that these individuals can frustrate their transformation efforts.

[221] The witnesses observed that the University is very hierarchical and that its many policies, systems and structures can be difficult to navigate. Thus, the efficacy and benefit of these policies, systems and structures are diminished by their lack of accessibility. In other words, change can get lost in the bureaucracy of the University. Several witnesses also explained that the annual turnover of student leaders breaks the continuity of their efforts and accordingly slows transformation to some extent.

[222] These witnesses also spoke about the existence and persistence of subtle, underhanded racism, as well as language and cultural exclusion at the University. Their view was that social events tend to cater mostly, if not only, for the cultural preferences of White, Afrikaans students. The example of the music that is played at events came up several times in this group's evidence. Several witnesses who happened to be Black student leaders explained that Black students feel that they do not belong at these events and accordingly tend to "self-exclude" by not attending them, rather than risking attending the events and feeling unwelcome, lonely and embarrassed. They also observed that participation in these events is often inaccessible to students from disadvantaged backgrounds. That being said, there were several witnesses from the HCs of residences that have systems in place to ensure that funds are made available to students who wish to attend residence events but may lack the means to do so.

[223] Many witnesses in this group complained that the onus of challenging and changing this system tends to fall on Black students. This creates the impression that

White students do not care that Black students feel unwelcome and excluded, particularly when the Black students' efforts are met with resistance. The witnesses explained that there is a discrepancy between the expectations of different students and that this can lead to conflict. This is exacerbated by the different backgrounds and circumstances of students.

[224] Expanding on this, the picture that was painted by the evidence of this group was that there are some White students who come to the University to study and have fun. They do not necessarily see how the complaints of Black students relate to or affect them. There are other White students, who are often Afrikaans, who are excited to be attending what they consider to be an Afrikaans university. They might actively resist transformation because they value the heritage and traditions of the University. There are also Black students who do not wish to assimilate into the existing culture and are fighting to feel included, welcome and relevant at the University. Then there are the most vulnerable Black students, who are first generation students from impoverished backgrounds. It is already challenging for them to adjust to university, often far away from their homes, and the cultural proclivities of the University only make them feel more alienated. These generalised and simplified descriptions naturally omit nuance and do not describe all of the students at the University, but they do highlight how a student's experiences and priorities are determined by their socioeconomic, cultural and racial background.

[225] A related point that was emphasised by many of these witnesses was that it can be very difficult to reform attitudes that students bring with them from school. This is especially difficult because participation in critical engagement sessions and other transformation initiatives is voluntary and not compulsory. The witnesses therefore complained that this generally results in a deficit of participation and engagement from the White students. Several witnesses noted that this is a great shame, because the conversation about transformation can only benefit from the inclusion of White voices, especially since it is often the White students at the University who have the power to change their behaviour and make the environment better and more inclusive.

[226] Furthermore, many witnesses emphasised that there is a need for the University to provide formalised support structures to vulnerable students who are likely to battle with the adjustment to the University. They complained that the University does not do enough in this regard and that it often falls to the SRC and other student leaders to step in and support students. For instance, in the past the SRC has organised transport for newcomers who arrive in the Western Cape at the beginning of their first year and need assistance with getting to the University. The witnesses were of the view that providing this kind of support should not fall solely on student leaders. It was also observed that Black students often experience problems at the University but do not know who to approach for support. Many witnesses said that this is particularly problematic when these students are in a residence where the student leaders are mostly White students who they perceive as being unlikely to understand their problems. These students sometimes approach members of the SRC for assistance, or they simply continue to struggle on their own.

[227] The toxic culture in the residences came up repeatedly in this group of witnesses' evidence. They explained that the traditions and emphasis on Afrikaans in these spaces are exclusionary and can cause quite a culture shock for many students who are not White and Afrikaans. On the whole, many of the witnesses simply said that they are aware that authoritarian and degrading practices still take place in many of the men's residences despite these practices being prohibited. Several witnesses also stated that the University's system of introducing monitors to ensure that no prohibited practices occur during Welcoming does not work, because the practices simply take place when the monitors leave. Despite knowing that these practices exist, most of the witnesses did not appear to know much more about them. The reason that was given for this was that there is immense pressure on the students in those residences to keep silent and not speak out or complain about what happens in their residences. They are indoctrinated to believe that they will be betraying the rest of the Community, and may fear retribution or being shunned.

[228] There was, however, one witness who was prepared to share his experiences in a male residence. He did emphasise that these experiences took place several years ago and that his residence has reformed a lot since then, but it still provides

relevant insight into what happens in some of the residences. A very basic synopsis is that the HC members in that residence adopted a militaristic leadership style, and that there was accordingly plenty of verbal abuse, shouting, and strange traditions that he described as being close to “cultish”. He and all of the other newcomers were forced to remove their clothes and do various physical activities. The student leaders also only spoke Afrikaans, and some explicitly favoured White, Afrikaans newcomers in their behaviour. Precise examples of this are omitted from this report to protect the witness’ identity. Finally, he also explained that the student leaders propagated an “us versus them” narrative, implying that this residence was distinct and superior to the rest of the University.

[229] The witnesses acknowledged that these types of practices are not necessarily widespread and that many of the residences have improved to some extent. However, none of them believed that these practices have disappeared entirely, they have just gone deeper underground than before. Most witnesses argued that even the reformed residences are far from being perfect, welcoming environments. They noted that racial segregation is a common feature in the residences, and acknowledged that the late arrival of the NSFAS students is undoubtedly a contributing factor to this. The witnesses also noted that the drinking culture in the residence exacerbates all of these problems, because it induces the worst behaviour and alienates students who do not drink.

[230] Furthermore, many of the Black student leaders explained that it is very difficult for Black students to feel that they can claim the space and relate to the University’s image and culture. They largely blamed this on the fact that Afrikaans culture appears to be interwoven with the University’s culture. They explained that, for Black students, Afrikaans heritage and culture means something that is too painful for them and that they simply cannot connect with a university culture that is so predicated on Afrikaner pride and legacy.

[231] When asked about how the cultural issues and misconduct in the residences can be addressed, several witnesses emphasised the role of the Residence Head. They noted that student leaders come and go, but the Residence Head is a constant variable in the residence and is therefore well positioned to assist the process of reform

in a Community. One of the witnesses also observed that the Residence Head is the main point of contact between the University leadership structures and the students in that Community. Thus, if the relationship between the students in a residence and their Residence Head is bad or neglected, this effectively increases the distance between the students and the University leaders. Having said this, these witnesses affirmed what was said by many other witnesses about the poor relationship between the Huis Marais students and their Residence Head.

[232] Several of the witnesses explained that there are plenty of opportunities for all students to engage with one another on matters related to transformation. However, these are unfortunately under-supported and underutilised. The only compulsory training and development that students receive is through Res Ed during Welcoming. The witnesses gave mixed reviews of Res Ed, but on the whole the sentiment was that it is not sufficient on its own without follow-up sessions throughout the year. Additionally, they observed that the efficacy of Res Ed lies very much in its implementation. Since it is left to the HC to implement and facilitate Res Ed in their Communities, the success of and engagement in the programme varies between Communities depending on how much each HC prioritises and buys into it.

[233] One of the major critiques of Res Ed is that the student leaders who run and facilitate the sessions are not actually sufficiently trained, supported or equipped to be facilitating discussions on heavy and sensitive issues, for instance sexual assault. This means that they may fail to facilitate a constructive conversation, and will be ill-equipped to deal with the consequences if the session goes awry. Since Res Ed ends after Welcoming, there is little opportunity for damage control. Moreover, if this happens it can have the unfortunate effect of deterring students from participating in critical engagement sessions in the future.

[234] In general, many of the witnesses commented on the fact that a lot of responsibility and independence is given to the student leaders without adequate training and support to equip them for these responsibilities. This means that their leadership contributions are largely influenced by their passions and interests, and whether they buy into the transformation objectives of the University. Several witnesses observed that the University's overemphasis on hierarchy has filtered into the attitudes

of student leaders as well. This means that some student leaders understand their position as giving them increased power and status as opposed to endowing them with a responsibility to serve the rest of the University.

[235] It was also emphasised that there is not a lot of oversight of the student leaders, and they do not necessarily have clear lines of reporting or support. For instance, HC members report to the Prim, the Prim will then report to the Prim Committee, the Prim Committee will report to the SRC, and the SRC must then escalate the problem to the Rectorate or choose a suitable alternative. Although there are Residence Heads and members of staff at the CSC who can assist the student leaders along the way, the students are left to their own devices to a great extent. This is particularly so in the case of student leaders in the PSOs because they do not have Residence Heads. Instead, the technical and administrative needs of all PSOs are managed by one staff member. In other words, the Prims of PSOs have no member of staff equivalent to a Residence Head who they can approach for support or guidance. The witnesses explained that this lack of support can be very difficult for them because their roles come with high expectations and large workloads and, after all, they are still students who have to balance their academic obligations against their leadership positions.

[236] The evidence of the different student leaders revealed that the Prims and the SRC both play important but distinct roles in the lives of the students. The Prims have a lot of influence over the everyday lives of the students in residences, but the SRC represents the entire student body and is the most direct line between the students and the Rectorate. Thus, several witnesses described the SRC and the Community leaders as working in “silos of leadership”. The witnesses also made some interesting comments on the dynamics of voting for student leaders. They explained that the SRC tends to be a more racially diverse group of leaders than the Prims and HCs, which are mostly White. Their view was that this is because there is a very low voter turnout for the SRC elections and that, often, it is the students who are unhappy with and feel excluded by the status quo who vote. The negative upshot of these trends, they explained, is that many students in the residences do not regard the SRC as the highest student leadership structure at the University and defer instead to the Community

leaders. These circumstances are ripe for a power struggle between the SRC and the Prims, especially if they do not share common objectives.

[237] It was also emphasised that the SRC and Community leaders receive separate training. The Community leaders receive training from the CSC, while the SRC receives its training from the CSLEEC. The witnesses explained that the HC receive training that is designed to assist them with their specific portfolios. For instance, the Treasurer of the HC will receive elementary training on how to operate systems and process payments, while the Critical Engagement representative will receive training and opportunities from the Transformation Office, for instance, this year they were given the opportunity to visit the Drakenstein Correctional Facility.³⁰ The Prims receive separate training and also participate the Prim Development Programme, which entails fortnightly training sessions that are run by the Prim Development Coordinator.

[238] The witnesses provided mixed opinions on whether the training provided to the Prims and the HC members is sufficient. Some of the witnesses felt that the training, particularly the Prim Development Programme, is very good and helpful in developing them as leaders. Others felt that the training is wholly inadequate and does little to prepare them for the challenges that they face as student leaders at the University. It is noteworthy, however, that none of the residence leader witnesses felt that their training adequately prepared them for the role that they must play in the University's transformation project and the difficulties that they encounter along the way.

[239] The SRC, on the other hand, receives its training at the beginning of its term from the CSLEEC. The witnesses' general impression of this training was that it is decent, but that it does not appear to be adapted and developed from year to year. One witness expressed disappointment at this, saying that the training should be updated each year to provide for lessons that were learned in the preceding year, and to be relevant to the new group of leaders. They also felt that the other courses offered by the CSLEEC throughout the year appear to be better and more beneficial than the SRC's compulsory training. In short, there does not appear to be a great deal of consistency

³⁰ Formerly the Victor Verster Prison, where former President Nelson Mandela completed his imprisonment.

and coherence between the training of the different student leaders, but none of them appear to be completely satisfied by the training that the University provides.

[240] The evidence of the witnesses was that there have been power struggles between the Prims and the SRC before, which is regrettable because cooperation and collaboration between these student leaders is crucial if the whole student body is going to buy into transformation at the University. The witnesses emphasised that a lack of cohesion between the leaders will only derail their contributions to change at the University. That being said, the witnesses noted that relations between the Prims and the SRC have been very positive and constructive over the past year, which seems largely attributable to the good working relationship and excellent line of communication between the Chair of the SRC and the Acting Chair of the Prim Committee. Coincidentally, or perhaps it was not so coincidental at all, many witnesses also said that the student protests that took place on Friday, 20 May 2022 following both incidents were an instance of exceptional unity between all of the student leaders.

[241] Another prominent point that was made by all of the witnesses in this group is that the students do not see the Equality Unit as a functional or effective structure at the University. Many of them said that most students are unfamiliar with the Equality Unit and the work that it does. Furthermore, some witnesses implied that the Equality Unit is too invisible to be a credible mechanism for dealing with discrimination. Thus, the poor reputation of the Equality Unit is another factor that discourages students from reporting and speaking out about their experiences of discrimination at the University.

[242] The evidence of the students is important and enlightening. They are, after all, the ones who are most affected by the culture, environment and policies of the University. Listening to their evidence confirmed that there is a division in the student body at the University. On the one side there are the students who feel very comfortable and happy in the current environment at the University, the impression of the witnesses was that these students tend to be White and Afrikaans. On the other side of the division there are the students calling for change to the status quo because they feel excluded and unwelcome. These are generally Black students.

[243] What was striking was that although the student body is polarised in this way, there was some overlap in their perceptions. For instance, a White, Afrikaans student leader spoke about how it feels as though there is constantly an agenda to eradicate Afrikaans from the University and that Afrikaans students feel besieged by the campus politics. In similar vein, a Black student spoke about the fact that there is an expectation on everyone at the University to accept the Afrikaans culture and assimilate. This student said that anyone who challenges this status quo will be shunned or face some form of negative consequences. Both of these students said that they feel as though they “have a target on their back”. Obviously they feel this way for different reasons, but it is quite remarkable that they used the exact same metaphor to describe how they feel.

[244] On the whole, the Commission was impressed by the evidence and demeanour of the student leaders. Most of them presented as earnest, articulate and helpful witnesses who are genuinely committed to helping the University transform and become a welcoming and inclusive environment.

The evidence of staff members with perspectives on discrimination

[245] In addition to various staff members who are involved in the University’s management, transformation and the experiences of students, the Commission heard evidence from staff members who provided their own perspective of transformation at the University. None of these staff members were White, and all of them have formed personal views on discrimination at the University based on their personal experiences. A lot of what they said is a repetition of points from other witnesses’ evidence, so I shall summarise it briefly.

[246] All of these witnesses were of the view that the University is not yet a transformed and inclusive environment where everyone is treated equally. They complained that they experience subtle and underhanded racism from both fellow staff members and students. A common example being that students and colleagues are visibly surprised when a Black person is an academic, let alone a professor. The witnesses’ view is that the consequence of these attitudes is that Black staff members have to work a lot harder to earn respect, and invariably encounter glass ceilings along

the way. A related complaint was that there is a systemic reluctance of many departments to hire Black academics because of the biases, conscious or subconscious, of many staff members who hold the power in hiring decisions. Furthermore, another exclusionary practice that they referred to was, once again, the treatment of Afrikaans as the common and preferred language.

[247] In addition, they complained that bullying and mistreatment of staff members is rife at the University, which contributes to a toxic work environment and a general lack of harmony. Despite experiencing these problems and being unhappy about the status quo at the University, the witnesses explained that it is extremely difficult for staff members to speak out about their problems. They feel that they will not be heard, taken seriously or supported. Furthermore, they also feel that there is a lack of transparency from the University leadership whose main focus is the public image of the University, and not necessarily the welfare of staff members and students.

[248] The perspective of these witnesses is that the University will never change as long as discrimination is only seen as the problem of those whom it affects. These witnesses expressed immense frustration at the fact that they, as the Black members of staff in their various departments, are expected to be the drivers of transformation for that environment. They feel that this is an unfair burden to expect them to carry, and are exhausted by the pressure, responsibility and lack of support. They noted that there are opportunities that exist to enable all members of staff to participate in transformation, but that these are usually only attended by Black staff members and a handful of White staff members who have bought into the transformation project. In other words, because none of these initiatives are compulsory, those who ought to attend them do not. An example of one of these under-utilised initiatives that was mentioned by the witnesses was the Siyakhula programme.

[249] The final point that is worth mentioning about the evidence of this group of witnesses is that it is abundantly evident that the article on the cognitive abilities of Coloured women³¹ has left lasting scars on the Black members of staff at the University.

³¹ The article, titled “Age- and education-related effects on cognitive functioning in Coloured South African women” was authored by a group of White, female academics at the University. It was published in a scientific journal called “Aging, Neuropsychology and Cognition” in March 2019, but was retracted by the University following a public outcry about the research topic, methodology and findings of the article. The easiest way to surmise the hurt and offence perpetuated by this

The evidence of this group of witnesses was that the publication of this article constituted a serious breach of trust, and was very damaging to the already precarious racial relations at the University. From the perspective of these witnesses, the publication of the article exposed the truth about how they are perceived and looked down upon by their White colleagues. Even though the University retracted the article and issued an apology, these witnesses did not appear to be wholly satisfied by the University's actions, because there were no consequences for the authors of the article. In short, the evidence of this group of witnesses revealed that many Black staff members felt betrayed by the publication of that article, and are still carrying the hurt that they felt at the time. In other words, that article left deep wounds on the staff of the University, and those wounds are a long way from healing.

The evidence of parties related to the Huis Marais incident

[250] The Commission heard evidence from a group of witnesses who were closely involved in the Huis Marais incident and the events surrounding it. At the outset I must acknowledge that the Terms of Reference promise confidentiality to all witnesses, but that this is particularly difficult in the case of the incidental witnesses. For this reason, the evidence is described in imprecise terms to ensure that the salient points are captured without disclosing too much that could compromise the Commission's commitment to the witnesses. This applies with equal force to the next section, which surmises the evidence of the parties related to the Law Dance incident.

[251] On the whole, the Commission heard conflicting views of what ultimately led to the Huis Marais incident. On the one side, there is the view that the student leaders in Huis Marais are absolutely unaccepting of the University's transformation agenda. Despite the concerted efforts of the Residence Head, the student leaders cling to the old culture and traditions of Huis Marais and refuse to cooperate with the Residence Head to build a transformed and inclusive community within Huis Marais. Instead, they disrespect him and resist change at every turn, thereby allowing unacceptable behaviour

article is by quoting its abstract, which states as follows: "Coloured women in South Africa have an increased risk for low cognitive functioning, as they present with low education levels and unhealthy lifestyle behaviours."

to endure in the residence, including the use of discriminatory language and alcohol abuse.

[252] On the other side, the view of the student leaders in Huis Marais is that it is impossible to build a relationship of trust and respect with the Residence Head. Their perspective is that he does not listen to them or offer them any guidance or support, and yet expects them to buy into his transformation agenda even when they disagree with him. Furthermore, the student leaders feel that they have made strides at improving the culture in Huis Marais since the agreement was signed with the University in 2020, but feel that their efforts are ignored and unacknowledged by the Residence Head and the University. Moreover, the student leaders feel that they are constantly blamed and criticised by the Residence Head and the University for everything that they do, and they do not believe that the CSC provides them with the necessary support to meet the expectations of the University. They also suggested that their Residence Head, Dr Groenewald, is unfit to be in his current position and is being protected by the Director for the CSC, Mr Pieter Kloppers.

[253] Around the incident itself, similar incongruities emerged in the evidence. On the one hand, the student leaders were criticised for only informing the Residence Head about the incident in the afternoon, many hours after it had taken place. They were also criticised for failing to appreciate the seriousness of the incident and for failing to take responsibility as leaders of Huis Marais, especially when students protested outside Huis Marais the next day and none of the HC members went outside to listen to or engage with the protesters.

[254] On the other hand, the student leaders felt abandoned by the University and their Residence Head. They said that they were entirely unprepared and ill-equipped to deal with the aftermath of the incident, and felt let down by the University and the CSC which offered no guidance on how the students ought to handle the incident. Their view was that the only support that they received came from other student leaders. The witnesses' evidence also indicated that the publicity that the incident received and the involvement of the media led to the dissemination of misinformation around the incident and confusion about what really happened. It also heightened the pressure on Huis Marais to react appropriately.

[255] Amidst these contradictions, two striking points emerge. The first is that the Huis Marais community is very divided and far from becoming a harmonious space where students from different backgrounds can come together and find common ground in their humanity. The other is that there is an absolute dearth of trust and understanding between the Residence Head and the student leaders in Huis Marais.

[256] I shall address other relevant points that arose in the evidence of these witnesses later in this report, when I surmise the Commission's findings.

The evidence of parties related to the Law Dance incident

[257] The Commission heard the evidence of a variety of witnesses who were able to provide perspectives around the Law Dance incident. This included a fair amount of contextual evidence on the status of transformation in the law faculty. The evidence of several witnesses went into detail about the conscious efforts that the faculty has made to create a transformed and inclusive space. A large component of this is focused on building an environment where students will internalise the values of the Constitution, and ultimately grow into lawyers who will contribute to a better society for all. These efforts also include visual redress, renewal of the academic programme with a focus on transformation, and increased diversity and representation amongst faculty members of staff. The witnesses explained that the latter is in large part achieved by the faculty's policy of "growing its own timber", which ultimately involves identifying and supporting students in continuing their studies and eventually becoming lecturers in the faculty.

[258] Despite these efforts, the evidence of the witnesses revealed that problems remain in the system. Once again, the University's language policy was raised as a source of contention. Some of the witnesses explained that the policy creates particular challenges for improving representation in the faculty, because many Black academics are unable to examine in Afrikaans and accordingly require the assistance of translators. This adds to their workload and just makes it slightly more difficult for them to do their jobs. In addition to the language policy, several witnesses explained that Black students in the law faculty experience underhanded and subtle racism. An example provided by several students was that their impression is that some of their White lecturers only

make the effort to learn the names of the White students and thus tend to engage with those students more than the Black students.

[259] The evidence of this group of witnesses uncovered several other sources of students' discontent in the law faculty. Representation, both in the staff and the students of the faculty, was one of them. It was argued that despite the improvements in recent years, the current levels of representation are still insufficient to make Black students feel welcome and comfortable enough to vocalise their experiences of discrimination. Furthermore, several witnesses explained that the existing demographics of the faculty, which are an unrealistic reflection of the country, make White students who harbour bigoted views feel comfortable and free to express these views without fear of consequence. It was also expressed by staff members and students that there is not yet faculty-wide support for transformation. This manifests not only in the previous examples of student and staff conduct which is antithetical to transformation, but also in a lack of participation in the events and initiatives that are organised by the Juridical Society to encourage critical engagement.

[260] The faculty's transformation committee was also given mixed reviews by the witnesses. The members of staff had positive views of the committee's work, but student leaders in the faculty questioned the committee's efficacy and lack of support for and visibility at student initiatives geared towards transformation. A related complaint of student leaders in the faculty was that the students are desperate to be heard by the faculty and the University, but that their impression is that the University and faculty leaders care only about the University's reputation and are not interested in listening to and helping students. A contrasting perspective, offered by staff members in the faculty, was that it can be difficult to engage and reason with students at times because they often expect unequivocal support for their demands and ideas. This witness explained that it is important to listen to students, but it is also necessary for the students to learn that those who disagree with them are not necessarily their enemies, and that an opposing idea might have an element of truth in it.

[261] The evidence of the witnesses also suggested that a lot of conflict in the Law Faculty is linked to social media. Students spoke about the fact that offensive comments are often made, and fights often break out in large WhatsApp groups, of

which many students in the class are members. Staff members also spoke about the fact that there have been instances of students bullying staff members on social media by posting content designed to criticise or humiliate lecturers. This is particularly problematic when the targeted staff member is a younger, Black academic, as has been the case in certain instances. This has the dual effect of escalating racial tensions in the faculty and damaging the self-confidence of these less experienced staff members, which is tremendously unfortunate in the light of the faculty's efforts to support and develop these academics as part of the faculty's transformation plan.

[262] The witnesses who were academics within the faculty gave mixed responses to the notion of introducing a compulsory, core curriculum module for all first year students. Some thought it was a good idea that would further the transformation efforts of the faculty and the University, while others raised doubts about how effective this would be in overcoming 18 years of experiences, beliefs and prejudices. Thus, although the witnesses generally agreed that the compulsory course makes sense from a pedagogical perspective, there were some who believed that as a standalone module it could never truly transform the minds and attitudes of students who are likely to treat it as an inconvenient box-ticking exercise. One witness suggested that the course would only be effective if all academic programmes find ways to build on its contents in the subsequent years of each student's degree.

[263] It was against this backdrop that the Commission heard evidence on the Law Dance incident. The witnesses explained that the Law Dance was organised by the Juridical Society. It was a large event that was attended by approximately 400 people. Despite this, several witnesses observed that the majority of attendees were White students and that it was not perceived as a very inclusive space. This latter point was made in reference to the music that was playing throughout the night. Apparently, despite the Juridical Society's best efforts at obtaining song requests beforehand and providing a list to the DJ, the playlist mostly reflected Afrikaans cultural preferences. The witnesses also observed that many of the students were consuming a lot of alcohol at the event.

[264] This was the context in which the incident took place. As I have already explained, the incident essentially involved a verbal altercation between a White,

Afrikaans-speaking student, Student 1, and an Indian student, Student 2. Both students have different versions of what transpired between them, which I shall briefly explain.

[265] Student 2's version is that they approached the DJ table to request an Indian song towards the end of the evening. Upon arriving at the table, they encountered Student 1 who also wanted to request a song. Although Student 2 does not recall the specific details about how the engagement started, their version is that an argument commenced about the fact that many Afrikaans songs had already played and that there was a need for more inclusive music. Student 2 was aggrieved by Student 1's attitude and tried to explain to Student 1 why it was important for an Indian song to be played at the event. Student 2 alleged that Student 1 responded with various disparaging remarks. These included something to the effect of "no one wants to hear that music", referring to Indian music, as well as something along the lines of "this is the not the space for it and we do not need that kind of thing here. Cultural representation is not important right now." According to Student 2, the argument ended with Student 2 saying "fuck you [Student 1]", and Student 1 responding with "fuck you and fuck your culture".

[266] Student 2's version is that these events left them feeling felt humiliated, hurt and rejected. Student 2 began crying and was consoled by some of their friends, after which they went home. After talking to Student 2, some of their friends confronted Student 1, which only appeared to exacerbate the situation and end in further exchanges of unkind words.

[267] Student 2 was deeply hurt by the incident. They accordingly reached out to the Faculty of Law's Vice Dean for Learning and Teaching for support, and he directed Student 2 to the Equality Unit, where they reported the case. Student 2 also received support from the Juridical Society and the rest of the faculty throughout the process. Before proceeding to explain the events that occurred thereafter, I must briefly backtrack to outline Student 1's version of events.

[268] Student 1 put forward a vastly different version of the altercation and argues that it was all a misunderstanding that was the product of the loud music and the alcohol that both students had consumed. Student 1's version is that they thought that they were being attacked by Student 2 for requesting an Afrikaans song, and Student 1

denies making any disparaging comments that related to culture. Their version is that the altercation ended with Student 1 responding to Student 2 with the words “well fuck you too then.” Student 1 denies saying “fuck your culture”.

[269] After Student 2 reported the incident to the Equality Unit, it investigated the incident and recommended mediation. This recommendation was rejected by Student 2 because they felt that it would be inappropriate and pointless, because they believed that Student 1 deserved to be punished for their actions. After Student 2 rejected mediation, the Equality Unit activated an advisory panel to make an alternative recommendation. The panel’s recommendation was that the matter “be referred to the disciplinary committee for further and thorough investigation by panellists with a legal background to ensure that justice is done to the complainant based on the issue of overt and subtle racism.” This recommendation was issued on 22 July 2022, over two months after the incident was reported.

[270] Since the Equality Unit dealt with this incident over an extended period of time, a great deal of evidence was provided by the witnesses on the competence of the Equality Unit and its processes. Bearing in mind that all of these witnesses were either lawyers or law students, they were particularly critical and observant of the Equality Unit’s processes. Firstly, many of them noted that the University’s dispute resolution mechanisms are bureaucratic, cumbersome, confusing, lengthy and rarely lead to closure for the complainants. Following on from this, they observed that the Law Dance incident brought to light how few people at the University know about the Equality Unit and understand its processes and systems.

[271] The witnesses had further comments and criticisms of the Equality Unit following its involvement in this matter. They expressed considerable disappointment at how long it took the Equality Unit to reach a final outcome. This is worsened by the fact that this outcome has merely led to a further, separate investigation by Student Discipline. The witnesses complained that this system has thoroughly unpleasant consequences for the complainant, who is forced to repeatedly explain themselves and their complaint without seeing progress or an end in sight.

[272] The witnesses also questioned the competence and professionalism of the Equality Unit and its processes. For instance, the final report issued by the advisory

panel made various findings about transformation in the Law Faculty, and yet no members of staff from the faculty were consulted or invited to make submissions before this finding was made. Other obvious missteps in the Equality Unit's processes were that it allowed the witness who was supposed to corroborate Student 1's version to sit in the room while Student 1 was being interviewed by the Equality Unit without advising Student 1 that this might compromise the would-be corroborating witness' evidence.

[273] Another complaint about the Equality Unit was that its processes and timelines were unclear, and that it left a great deal of its investigatory work to the complainant. For instance, it fell to Student 2 to contact and coordinate their friends so that they could give evidence on the incident, and Student 2 was not supported or assisted by the Equality Unit in this respect. The witnesses also explained that the Equality Unit did not communicate consistently throughout the process. On the whole, the evidence of these witnesses painted the Equality Unit in a very poor and uninspiring light. Not one single witness from the group had anything commendable to say about the Equality Unit. Many of them even implied that it is regrettable that all matters of discrimination have no option but to begin at the Equality Unit, and that the incompetence of this office is bound to have a chilling effect on curbing racism and discrimination at the University.

[274] In closing, one final point that bears mentioning is that many of the witnesses praised the Law Faculty's response to the incident. According to several witnesses, the Faculty was good about supporting Student 2, and its response signalled that the Law Faculty takes allegations of discrimination seriously. Several witnesses suggested that had this incident occurred between students at a different faculty's event, there is a chance that nothing would have come of it. In other words, the involvement of the members of staff was crucial to the Law Dance incident being reported and addressed through the University's official channels.

[275] Before proceeding, I pause briefly to observe that many of the students who were involved in the Law Dance incident, including Student 1, had been drinking alcohol on the night of the incident. This is an interesting fact to compare with the

evidence of the many other witnesses on the influence of alcohol on race relations at the University.

Concluding remarks

[276] The *viva voce* evidence of all of the witnesses described above was tremendously helpful in providing an overall picture of the University as it is experienced from the perspectives of the many different members of its community. With the benefit of these perspectives, it is helpful to turn now to the expert evidence to gain a deeper understanding of what lies behind these perspectives, and what work must be done to truly overcome these obstacles to transformation.

(c) *Expert evidence*

Overview

[277] This Commission was fortunate enough to have benefitted from the evidence of five witnesses with expertise on various issues relating to racism, transformation, social justice and higher education. Of these five witnesses, four have consented to being identified by name in this report, thereby waiving the confidentiality offered by the Commission. It is useful to waive confidentiality in relation to the experts because their identities lend credence to their evidence. Thus, each expert who consented to being identified will be mentioned by name below.

[278] It has been well established that it is the role of an expert witness to offer evidence objectively in order to assist only the court, or in this instance the Commission, and no other party who may have an interest in the matter.³² Of the five experts, four of them are currently in the employ of the University.

[279] This is not a court of law and the rules of evidence are more flexible for the purpose of this Inquiry. In addition, as members of the University community these experts were of tremendous value to the Commission as they were able to provide their expert testimony within the unique context of the University. For these reasons, the evidence of these experts is still of assistance to the Commission despite their connection to the University.

³² See *Jacobs v Transnet Ltd t/a Metrorail* [2014] ZASCA 113; 2015 (1) SA 139 (SCA) at para 15.

[280] Nevertheless, the Commission also sought the testimony of an independent expert witness in order to safeguard the integrity of the evidence to which it attributes the increased weight of expertise. This had the added benefit of enabling the Commission to understand the issues of racism in higher education in a general sense, and not solely through the lens of the University's experiences.

[281] These witnesses and their relevant expertise are as follows:

a. Professor Jonathan Jansen:

- i. Professor Jansen currently holds the position of Distinguished Professor of Education at the University, which he was awarded in 2017.
- ii. Prior to that, he was the Vice Chancellor of the University of the Free State (UFS) from 2009 to 2016. During that period he led a programme of reform and transformation at the UFS, which included the development of a core curriculum for all first year students which addressed various issues, including matters of racial relations and transformation. He has also held various other posts in higher education at different institutions.
- iii. Professor Jansen's expertise include education and curriculum development, and he holds a PhD from Stanford University's Graduate School of Education in International Development Education and Political Science. He has spoken, written and published extensively on South African universities and the challenges relating to race, class and the many structural and social barriers that affect South Africans in broader society and at institutes of higher education. He has also been the recipient of many honours and awards for his academic, research and professional contributions to his field.
- iv. Professor Jansen was called as an expert witness before the Commission specifically for his expertise on curriculum development and on how students learn racism and the impact that this has on their relationships and experiences at the University.

- b. Professor Thulisile Madonsela:
- i. Prof Madonsela is a Professor in the University's Faculty of Law, where she holds the Social Justice Research Chair. She teaches Constitutional, Administrative, and Social Justice Law, while pursuing social justice and democracy strengthening research at the University.
 - ii. Professor Madonsela is an advocate of the High Court of South Africa, and was the Public Protector of South Africa from 2009 to 2016. She has a strong background in governance, ethics, human rights and the rule of law, and is the founder of the Thuli Madonsela (Thuma) Foundation for democracy leadership and literacy. She is also the founder of the Musa Plan (M-PLan) For Social Justice, a social justice research and social capital mobilization interdisciplinary initiative aimed at accelerating the eradication of poverty and visibility of structural inequality by 2030.
 - iii. Professor Madonsela is a former trade unionist, public servant and lifelong social justice activist, and has been the recipient of numerous honours and awards for her work, including the Tallberg Global Leadership Prize.
 - iv. Professor Madonsela's expertise are relevant to the work of the Commission as she is a seasoned administrative investigator, social justice expert and policy specialist with over three decades of post legal qualification experience.
- c. Professor Pumla Gobodo-Madikizela:
- i. Professor Gobodo-Madikizela is a Professor and the Director for the Centre for the Study of the Afterlife of Violence and the Reparative Quest at Stellenbosch University, where she also holds the Research Chair in Violent Histories and Transgenerational Trauma.

- ii. She completed her PhD in psychology at the University of Cape Town, and the title of her thesis was “Legacies of Violence: In-depth Analysis of Interviews with Perpetrators of “Necklace” Murders (Crowd Violence) and Interview with Eugene de Kock, Perpetrators of Apartheid Atrocities”.
 - iii. Prior to her current position at Stellenbosch University, Professor Gobodo-Madikizela has held various appointments across other institutions of higher education in South Africa and the United States of America.
 - iv. She played an instrumental role in South Africa’s Truth and Reconciliation Commission, as she was the Chair of the Human Rights Violation Committee, Cape Town Office.
 - v. Professor Gobodo-Madikizela has presented, taught, supervised postgraduate students and published widely on her work. She has also received international recognition and has been appointed to various international review panels. She has received numerous honours and fellowships for her contributions to her field, including the Harry Oppenheimer Fellowship award, among several honorary doctorates and other honorary appointments from various institutions around the world.
 - vi. Professor Gobodo-Madikizela was called before the Commission as an expert on the after-effects of colonialism and the apartheid regime and its lingering impact on racial relations in South Africa and higher education.
- d. Expert 4:
- i. This expert elected not to be identified by name. Since their identity must accordingly remain confidential, a limited description of their expertise and experience is provided here.
 - ii. Expert 4 is a Professor at the University with extensive academic expertise in the area of sociology of education. They have researched and written on higher education policy and practice and

have authored, co-authored, edited or co-edited nine books and over 120 academic articles and book chapters. Expert 4 is involved in the transformation work of the University at various levels.

- iii. Expert 4 is called as an expert witness before this Commission because of their work and expertise on higher education policy and practice.
- e. Professor Rozena Maart:
 - i. Professor Maart is a Professor in the department of Social Science in the Humanities Faculty at the University of Kwa-Zulu Natal. She is also the former director of the Centre for Critical Research on Race and Identity at the University of Kwa-Zulu Natal.
 - ii. Professor Maart attained her PhD from the University of Birmingham, and the topic of her research was as follows: “The Politics of Consciousness: The Consciousness of Politics. When Black Consciousness Meets White Consciousness”.
 - iii. In addition, Professor Maart has a multitude of qualifications and an expansive list of work experience to her name, which she has obtained from institutions all around the world. She has also received many accolades and awards for her work, including a lifetime achievement award for literature and philosophy that was recently awarded to her by the Caribbean Philosophical Association.
 - iv. In very broad terms, the focus of Professor Maart’s work is race, anti-racism, gender studies, and the policies and educational practices that relate to these areas. She has published, presented and consulted extensively on these topics.
 - v. Professor Maart was called as an independent expert witness before the Commission for the insight that she has gained into issues of race, racial relations and racism through her extensive and highly lauded career.

[282] Although each expert gave a distinct view, informed by their unique qualifications and experience, there was some degree of overlap in their evidence. I shall now outline the key points from their evidence.

The evidence of Professor Jansen

[283] A large part of Professor Jansen's evidence was focused on the use of a core curriculum to promote social cohesion in higher education. Considering that his expertise include education and curriculum development, and that he has practical experience with the implementation of a core curriculum at an institution of higher education, he was well placed to speak on these issues.

[284] Professor Jansen identified one of the primary causes of the conflicts that arise on campuses of higher education as being the beliefs and worldviews held by the students. Like many other witnesses, Professor Jansen observed that students arrive at universities having spent their entire lives internalising the culture, beliefs and in some instances bigotry of their families, peers and communities. Thus, tensions and opportunities for hostile interactions are heightened when students find themselves in an environment where they must interact, as equals, across the lines of race, culture and language. It is therefore a mistake to attempt to treat the pervasive problem of racism as isolated and exceptional issues. Moreover, rather than adopting a case-by-cases, reactionary approach, a proactive and holistic response must be targeted at the system and environment where the core problems fester beneath the surface.

[285] This is particularly so in the case of historically White, Afrikaans institutions where the fundamental problem is what Professor Jansen termed a "knowledge problem", meaning that it is necessary to change the ways in which young people think of themselves and others, about the past and the future, and about race.

[286] Professor Jansen accordingly argues that a knowledge problem can be addressed through teaching. In other words, he argued that it is necessary to interrupt and challenge students' entrenched worldviews, beliefs and preferences, and that the appropriate way to do this is through a compulsory module for all first year students. To be successful, this would require a formidable curriculum that would allow all students, regardless of their chosen field of study, to critically engage with important

societal issues in order to learn how to interact, work with and respect other people, particularly those from different backgrounds.

[287] Professor Jansen argued that the University's implementation of a core curriculum has, thus far, been wholly inadequate. This is because the Shared Humanities course was introduced as a pilot course, and has remained an elective pilot module for five years. Professor Jansen fervently argued that the course can only succeed in achieving its objectives if it is prioritised as something greater than a mere pilot, and is made compulsory for all first year students. He noted that this latter suggestion is widely opposed by other academic staff members at the University on the basis of its implications on the rest of the carefully composed curricula for all university degrees. However, Professor Jansen emphatically rejects this argument because no curriculum is ever set in stone, and there is always scope to develop and modify a curriculum over time. Rather than it being an issue of insufficient time in a programme, as is always argued by opponents of the compulsory core curriculum, it is a simple matter of priority.

[288] In amplification of this point, Professor Jansen made an important observation that bears emphasis. There is never sufficient time in any programme to teach students everything. For instance, it is simply impossible to construct an LLB programme that encompasses every aspect of the law that a student is likely to encounter in practice one day. Institutions like the University accordingly must select what they consider to be most important and relevant. Thus, political choices inevitably influence what is taught at institutions of higher education. Professor Jansen refers to this phenomenon as "the politics of knowledge".

[289] In the light of his experiences at the University of the Free State, Professor Jansen helpfully shared his views on how a core curriculum can be successfully implemented. He emphasised that the purpose of this type of course is not to present material in an accusatory manor that might make some students or groups feel attacked, but rather to present important and relevant issues in an interesting way that can formally open up difficult conversations. He also noted that it is necessary to include professors from the various different disciplines so that there will be shared sense of buy-in from the different academic leaders of the institution.

[290] Furthermore, this must be facilitated in a manner that targets both sides of the coin. White students must be taught that a university is a public asset, and that everybody belongs. Similarly, yet on the opposite side, Black students must be taught to understand that they have a right to be at a university and expect equal treatment.

[291] The objectives of the core curriculum can only be achieved through a combination of large classes, smaller tutorials and experiential learning. These have to be designed and facilitated by a large, fully equipped and well-resourced team to ensure that everything runs effectively and that students are engaged and interested in the subject matter. In Professor Jansen's view, this is a costly exercise which is well worth the effort. When asked whether it would be possible to assemble a team that could successfully design and implement this kind of course, Professor Jansen's response was that he could achieve this within six months if given the mandate.

[292] However, despite his belief in the importance of the core curriculum, Professor Jansen noted that other steps must also be taken to address racism at the University. In particular, he emphasised that outside the formal curriculum that is taught to the students there is an informal curriculum through which students learn what is accepted and tolerated at the University. Thus, it is critical that the leaders of the University deliberately send the message to the University community that racism and exclusionary beliefs and practices will not be condoned or tolerated. It was Professor Jansen's view that this is lacking at the University, and that the Rectorate needs to be more intentional about emphasising where the University stands on issues of race and transformation. In this regard, Professor Jansen noted that representation amongst the University leadership is critically important.

[293] On a related note, it emerged that Professor Jansen is the head of the Future Professors' Programme, which targets young, talented academics to teach and assist them with becoming professors. Professor Jansen noted that the majority of this programme's participants are Black South African lecturers, and that these academics are available and ready to be appointed by the University. Thus, he argues, it is not true that it is impossible to find a suitable Black candidate when appointments are being made by the University.

[294] Another issue identified by Professor Jansen is that certain forms of racism are easier to address than others. The crass, explicit forms of racism, as visible symptoms, are easier to treat than underlying problematic racial beliefs that can be built into systems. In justification of this point, he referred to his academic publications that purport to expose the racist beliefs that are woven into the seemingly neutral disciplines of human anatomy and genetics. Thus, Professor Jansen's view is that it is also necessary to uncover the many ways in which layers of racialised thinking are built into the University. Similarly, it is important to pay attention to the cultural architecture of the University to ensure that it is inclusive and representative of the University's values and transformation objectives.

[295] Professor Jansen also identified residences as being a major source of tensions at universities. This is because of the different cultural understandings of residences, which results in certain students preferring and perpetuating residence practices that make other students feel unwelcome, intimidated, and even abused. Professor Jansen accordingly noted that it is necessary to work with students in the residences to open their minds and expose them to different worldviews. Further, it is important to change the organisational structure of the residences by eliminating harmful and destructive residence practices and traditions and replacing them with something positive instead.

[296] Another problem related to the residences is the students' consumption of alcohol. Professor Jansen emphasised that, in his experience, the worst incidents of racism tend to correlate with alcohol consumption. Therefore, Professor Jansen argues that it is necessary to prohibit students from drinking in residences and university spaces to reduce the likelihood of these incidents occurring.

[297] Finally, an important point that was emphasised by Professor Jansen is that if the University wishes to truly transform as an institution, it must learn to do the hard work during peace time, and not wait for crisis to unfold before it responds.

The evidence of Professor Madonsela

[298] In her evidence, Professor Madonsela shared observations on the University's culture and progress in terms of transformation. She has formed these

observations during the course of the five years that she has been in the employ of the University. Her vast experience in social justice work permeated much of this evidence.

[299] Professor Madonsela prefaced her evidence with the observation that the University had expressed an uncategorical commitment to social justice and that the University's vision of social justice includes transformation both within the University as well as within the broader society in which it is positioned. To this end, she observed that visible efforts have been made by the University to transform as an institution. She also expressed the view that the Vice-Chancellor and Rectorate are genuinely committed to institutional transformation and the University's restitution statement.

[300] Notwithstanding these positive impressions of the University's progress in recent years, Professor Madonsela also observed that there is a lingering apathy within the system that is hindering the University's ability to realise its transformation goals. She described this not as an indication of "negative attitudes", but rather being "about keeping things the same and expecting things to change". In particular, she noted that the University lacks an appreciation of the fact that visual redress is insufficient on its own and that it is very important to critically examine the contents of what is taught at the University as well as the manner in which members of the University community interact with one another. Her impression that this lack of appreciation and understanding is not a consequence of malice, but rather the "alchemy of normalcy" which misleads people to believing that what is normal to them is the immutable norm. Professor Madonsela emphasised that transformation requires all members of the University to grow to understand that "normal" has to become divergent.

[301] Professor Madonsela provided an example of how she has observed this problem manifest through her experiences at the Social Justice Research Chair. She explained that it is difficult to attract postdoctoral fellows from previously disadvantaged backgrounds because the remuneration attached to these posts is insufficient to meet the needs of candidates who have limited access to wealth and resources, especially in the light of the costs involved with relocating to and living in Stellenbosch. Thus, although it is not the University's intention to exclude or create barriers for these candidates, this demonstrates that seemingly neutral policies may be impeding the University's transformation efforts. That being said, she also

acknowledged that the University has gone to great lengths to provide financial support to students who require it.

[302] Thus, according to Professor Madonsela, the University does not lack the political will to transform, but rather the diagnostic tools required to identify weaknesses in the system. It is not the intentions of the University's leaders that must be re-examined, but their leadership styles. She emphasised that a key issue with leadership during times of crisis is that crises evoke fear. Furthermore, fear-driven leadership and decisions are unlikely to yield favourable results and effective change at the University.

[303] Professor Madonsela's view is that the only way that the University will realise its transformation aspirations is by addressing the issue of implicit biases. She noted that all people naturally over-empathise with those with whom they most closely associate and resemble. Thus, while the political will to change may exist at the University, the true problem is that many leaders and members of the University community unconsciously attach higher value to certain groups of people. Professor Madonsela emphasised that the "most insidious challenge when it comes to racism, sexism, and bigotry is not open racism, it is not openly declared bigotry. It is when the carrier of bigotry does not even know they are bigoted."

[304] Professor Madonsela accordingly believes that it is necessary for leaders to learn to understand and identify their own implicit associations and disassociations. It is equally important to equip leaders and people to become comfortable with others who are different to them, and to learn to identify points of affinity beyond race and gender.

[305] On the point of leadership, Professor Madonsela distinguished between leadership and co-leadership, and argued that a greater emphasis needs to be placed on co-leadership at the University. Co-leadership prevents leaders from leveraging their power and requires them to embrace the humanity and the leadership of others, regardless of seniority and hierarchy. This style of leadership is a skill that does not come easily to many. It requires leaders to develop a deep sense of self-awareness so that they learn to treat others not just with kindness, but as equals. It requires leaders to constantly be aware of themselves and their impact on fellow human beings.

[306] Based on her experience, Professor Madonsela advised that the best way to train people to develop this sense of self-awareness and a deeper sense of empathy is through immersive education. This form of training is not geared towards shaming or accusing people. Instead, its purpose is to facilitate self-reflection that enables people to understand why they see the world as they do and to acknowledge the hierarchy of society. Referring to her own experiences and research, Professor Madonsela shared with the Commission several examples of what she considers to have been successful immersive education. I shall not state each example here. It suffices to note that each one entailed subjecting the participants to experiences geared towards enabling them to understand and empathise with the experiences of other people. The aim is to teach the participants that inequality hurts, “destroys unity, but also undermines true excellence”.

[307] The examples shared by Professor Madonsela indicate that it is not necessary to employ sophisticated or elaborate means of educating people about social justice and inequality. Many involved fairly simple, ordinary games that are modified to emulate certain elements of the structure of society. For instance, a race between participants where some are given a head-start, or a game of monopoly where certain participants are deliberately given more money at the beginning or other advantages throughout the game.

[308] Furthermore, Professor Madonsela recommends that it is necessary for this immersive education to have two focal points: shared humanity or Ubuntu and restorative justice. She explained that Ubuntu is two things: understanding that no-one’s humanity is greater than another’s, and that everyone bears rights and freedoms by sheer virtue of being human. According to Ubuntu, this is the starting point for the way in which we socialise and interact. Restorative justice is a form of justice that focuses not only on punishing the wrongdoer, but on restoring and healing the one who was harmed.

[309] Addressing the importance of restitutive justice, Professor Madonsela observed that there tends to be a disjuncture between what the justice system offers to society and people’s expectations of the system. Noting that, by default, South Africa’s justice system is one of retributive justice,³³ she argued that the problem with the

³³ The ultimate objective of retributive justice is to punish offenders. Justice is thus achieved by subjecting wrongdoers to punishment that is proportional to the harm that they have inflicted on others and society. By contrast, restorative justice

existing approach is that victims, being only witnesses and not at the heart of the proceedings, simply become cogs in a system geared towards repairing the harm done to society or, in instances like the Huis Marais incident, the harm done to an institution. The advantage of restorative justice, on the other hand, is that it entails balancing the need for retribution and punishing the party who caused harm with the need to heal those affected by that party. This is achieved by involving all of these parties in the process of finding an outcome that will provide restitution to the victim and minimise the chance of further harms being committed in the future.

[310] Professor Madonsela emphasised that Ubuntu and restorative justice go hand in hand, because Ubuntu entails balancing the individual and the group to ensure that both survive and flourish. Restorative justice involves victims and perpetrators so that the victims will heal and the perpetrators will understand why their actions were wrong. During her time as the Public Protector, Professor Madonsela observed the benefits of this approach many times. She spoke of times when she saw wrongdoers, after engaging with the victims of their actions, understanding the impact of their actions and realising that they never meant to cause the harm that they had inflicted on those victims. Her view is accordingly that, in the context of the Huis Marais incident, it was a grave pity that Mr Ndwayana was so uninvolved in Mr du Toit's disciplinary hearing.

[311] Turning to the Huis Marais incident, Professor Madonsela had several other observations. Her view is that the incident indicates that the University needs to invest in ways of diagnosing what people are bringing into the system that undermines others' humanity as well as the deliberate efforts being made by the University to transform. She emphasised that it is essential that the University finds an educational solution to this that, crucially, does not attempt to shame people into changing. Professor Madonsela stated that, in her experience, shaming people cannot transform them and only sends people underground to avoid being caught. The solution accordingly lies not in blame and shame, but in teaching people to discover the "right way of coexistence".

involves the victim/s and those affected by the actions of the wrongdoer in the process and its primary objective is to repair the harm done to these parties and the community.

[312] Professor Madonsela also observed that the Huis Marais incident is a reflection of the commonplace culture of toxic masculinity that exists in that residence. This means that the work being done by the University to achieve equality needs to be intensified because notwithstanding the awareness that has been raised by the University on equality, this toxic culture prevails. She also noted that transformation cannot take place if there is impunity for those who commit transgressions, and emphasised that sometimes transformation requires significant and difficult decisions to be made in order to disrupt the status quo. Professor Madonsela accordingly argued that the solution to the toxic culture in Huis Marais is to reconstitute its membership by converting it into a female or mixed residence. She stated that this disruption is necessary to break the continuity in Huis Marais, because continuity fosters exclusion. This exclusion is unintentional, as it is a consequence of certain people being able to mine social capital from past exclusions. Hence, this cycle of exclusion must be broken.

[313] Furthermore, Professor Madonsela's view is that the University ought to treat instances like the Huis Marais incident as opportunities to take actions that will impact not just the victim and wrongdoer, but the whole ecosystem of the University. That being said, she noted that students have been expelled from the University in the past for more minor infractions than Mr du Toit's conduct. Thus, since consistency is also vital to a functional justice system, Professor Madonsela accepted that it would have been difficult, or even impossible, for the University to have altered its disciplinary approach without appearing to be affording Mr du Toit special treatment. Nevertheless, she believes that the Huis Marais incident has created an important opportunity for the University to craft a policy, not specific to the Huis Marais incident, geared towards educating and redirecting people who cause the kind of hurt caused by Mr du Toit. This is because incidents like the Huis Marais incident are so hurtful that, at the time, it is difficult to see them as teachable moments. It is accordingly better to craft policies in advance.

[314] Moreover, Professor Madonsela advised that a policy should be crafted to deal with any case where a student or lecturer violates the University's policies and rules related to transformation and equality. She advised that this policy should provide "a possibility for restoring the victim, correcting the offender, but using that as a . . .

moment to teach others”. Furthermore, Professor Madonsela likened “sending people to jail” to amputating a leg that is cancerous without having checked the rest of the body to address the root cause. She said that the result of this is that the leg is lost, but the cancer continues to spread and eventually more parts of the body must be removed. In her words, “maybe if you had looked at the root cause you could have healed the cancer without chopping [off] your leg.”

[315] Professor Madonsela’s final advice was that the University ought to draft a social justice charter. Doing so will have two benefits. Firstly, it will facilitate a process whereby everyone at the University will engage on what it means to be a good person. Secondly, it will incite conversations about the future of the University and the actions that all members of the University need to take to reach that future.

[316] Finally, Professor Madonsela advised that destigmatising certain groups and human characteristics is essential to creating an equal society. The conversations that are likely to be sparked by a social justice charter will play a role in this necessary process of de-stigmatisation, and will make it clear that there is no one offending group. Professor Madonsela emphasised that all people offend in some way when it comes to matters of social justice, and that we must all work on ourselves to eradicate biases and stigmas that we attach to difference.

[317] In closing, I quote Professor Madonsela’s advice directly: “you need, then, the younger generation to understand that restitutive justice, social justice is about creating a world that affirms the humanity of everyone. You need not feel ashamed or guilty about what happened in the past, but you need to be aware of the consequences of the past, and how, no matter how good a human being you are, it impacts on your own paradigm. And it impacts on all of us.”

The evidence of Professor Gobodo-Madikizela

[318] Professor Gobodo-Madikizela also gave evidence on her impressions of the differences between the intent of the University and the impact of its transformation initiatives. She observed that the University has demonstrated commendable commitment to institutional transformation. This is evident in its Restitution Statement and in the structures it has created to implement transformation, for instance, the

Transformation Office. Her view is that the structures and support for transformation at the highest level are present at the University.

[319] On the other hand, Professor Gobodo-Madikizela noted that there is a tension between the official intentions of the University and the experiences of students and staff members on the ground. It is her impression that from their perspective the University is an exclusionary and unwelcoming place where racism endures. She has observed various factors that contribute to the feelings of marginalisation experienced by Black members of the University.

[320] The first factor she discussed was the institutional culture of the University. She explained this as an unchanging historical structure that affects the human environment and relationships at the University. This is a separate issue to the physical environment of the University, which is another factor that affects these experiences. Professor Gobodo-Madikizela explained that this is a part of the University that is not actually doing anything to exclude or evoke feelings of unwelcomeness. However, as an historically White institution established by White people, the University presents as a “White institution”. This invites the memory of a past that people project on the space. In other words, there is an interplay between the physical structure itself and the feelings of insecurity borne by certain people who enter the space. Professor Gobodo-Madikizela explained that they often expect to feel unwelcome, and their feelings are reinforced by the physical space.

[321] Professor Gobodo-Madikizela acknowledged that some may understand this situation as being a function of “internalised racism”, which is partly accurate. However, she emphasised the need to understand what it is about the space itself that evokes such strong feelings of exclusion. A related issue that she identified is that there are undoubtedly White members of the University who are struggling with the University’s transformation journey, and they too will be projecting their feelings into the space and thus reinforcing the feelings of marginalisation experienced by Black students and staff members. On this note in particular, Professor Gobodo-Madikizela observed that the University has not been candid about engaging with White staff members who are struggling with the process of transformation. Her view is that this

could be partly because there is no clear method of how to solve this type of problem and partly because there is limited language to deal with it.

[322] Professor Gobodo-Madikizela identified the true challenge as being how to address the subtle racist tendencies that emerge during interactions between White and Black people without the White people consciously realising that what they are saying or doing is racist. The difficulty lies in bringing these sentiments to the fore so that White people are aware of how they are engaging with people of colour.

[323] In addition to the aforementioned points, one of the key aspects of Professor Gobodo-Madikizela's was what she termed "the problem of proximity". This phenomenon occurs when Black students and White students meet in places like the University, as well as other institutions of higher education where Professor Gobodo-Madikizela worked in the past.

[324] To understand the problem of proximity, it is necessary to first understand the context in which Black students arrive to study at the University. Professor Gobodo-Madikizela explained that these are students who have worked very hard and are excited to have earned a place at the University. They tend to come from impoverished backgrounds and receive funding for their achievements in school. They are proud to be attending an institution that was historically reserved for White students, and are hopeful about the opportunities and success that higher education is bound to present to them. Notwithstanding this optimistic start, these students then arrive at the University and continuously encounter the pronounced differences between their own socio-economic status and that of their White peers. For instance, many of them are unable to afford living conveniently close to the University and are unable to afford to do the fun, but expensive, activities offered in and around Stellenbosch. Many of the White students, by comparison, come from wealthy families and are able to enjoy their university years without financial worries. Although the Black students were under no misconception about their poverty beforehand, the unavoidable comparisons to their White counterparts make them realise just how much they have missed out on because of the unjust history of South Africa. Professor Gobodo-Madikizela's view is that this is the beginning of the problem of the "tensions between Blackness and Whiteness".

She observed that this phenomenon was likely one of the causes of the nation-wide #RhodesMustFall and #FeesMustFall student protests of 2015 and 2016.

[325] In Professor Gobodo-Madikizela's words, these dynamics critically affect racial relations on campuses because they create—

“an atmosphere of ‘I and them’ of ‘us and them’ because they are privileged, we are not privileged. So already, that atmosphere becomes a breeding ground for racist or racialised ways of engaging with one another because already, the perception is that ‘you are better than me because you have had a better life.’”

[326] As an expert in transgenerational trauma, Professor Gobodo-Madikizela explained that this cycle amounts to Black students experiencing the University through the prism of the memory of apartheid and colonialism. Even though they had no personal experiences of either system, they have to live with the consequences and transgenerational effects of these systems. The flipside of the same coin is that many White students have benefitted from enormous privilege facilitated by these systems.

[327] Professor Gobodo-Madikizela explained that an exacerbating factor is that many White students, in addition to coming from privileged backgrounds, have also never encountered Black people as equals. Instead, they have mostly experienced relationships of servitude with Black people, and for the first time in their lives find themselves in a space where they must coexist as equals. It is Professor Gobodo-Madikizela's view that these students struggle with the reality that they may be equal to, or even less intellectually talented than, Black students, because they have grown up with the understanding that being White makes them superior. Some of these students deal with this disruption to their identities by projecting their own beliefs of inferiority on Black people, even though the evidence before them does not support their perceptions of racialised difference. In simplified terms, these White students who struggle with their own sense of racial identity and self-worth attempt to build themselves up by breaking Black students down through racist behaviour, for instance using the “k-word”.

[328] Thus, the problem of proximity ultimately amounts to the following. The lived experience and perception of Black students at the University is informed by a history that has disadvantaged them. In close proximity to the privileged, White students, their perception and experience of this history becomes more pronounced.

This is intensified by White students seeking to affirm their sense of superiority by treating Black students as inferior to them. Residences in particular are spaces where the problem of proximity manifests, especially owing to the existing, often archaic, cultures in the residences. For better or for worse, these cultures are perpetuated by White students seeking to preserve the legacies of their parents and grandparents who were in the residences before them.

[329] Professor Gobodo-Madikizela's description of the problem of proximity paints the picture of a powder keg, bound to erupt at any moment. She further explained that when racist incidents do receive publicity, Black people tend to react very strongly and *en masse*. This is because the experience of one evokes memories of the experiences that others have had but never been able to talk about.

[330] Against this backdrop, Professor Gobodo-Madikizela commented briefly on the Huis Marais incident and noted that there is something deeply symbolic about urinating on somebody or their belongings. Moreover, she explained that it is important to take note that by urinating on Mr Ndwayana's books and laptops, Mr du Toit was urinating on the tools that would lead this Black student to a better life.

[331] Professor Gobodo-Madikizela proffered this evidence based on her expertise and the extensive work that she has done on racial relations and experiences. However, she also shared a personal experience with this Commission that bears repetition. She explained that while walking on Ryneveld Street after leading a public dialogue event, she experienced a man attempting to harass her by repeatedly calling her the "k-word". Her view is that this was an example of a White person being unsettled by a confident Black person and seeking a sense of self-empowerment by attempting to disrupt her confidence through unscrupulous racist behaviour.

[332] After identifying and explaining these problems, Professor Gobodo-Madikizela emphasised that it is critical for institutions like the University to explore ways of building confidence among Black students. Her view is that there is often an overemphasis on the triumph of improved representation and integration, without the required attention being given to equipping students to coexist and thrive in these environments.

[333] Professor Gobodo-Madikizela's view is that one of the most important ways of equipping students to overcome the problem of proximity is to build a sense of confidence in Black students so that they are able to "embrace themselves, embrace their personhood, their Blackness". They must learn that they do not need to be like a White person in order to succeed at the University, and that they can claim a sense of pride in who they are and what they have to offer.

[334] In amplification of this point, Professor Gobodo-Madikizela shared an example of a residence where Black students were refusing to run for leadership positions. When the warden of the residence asked them why, their response was that it would be pointless because nobody would vote for them. Professor Gobodo-Madikizela noted that this demonstrates her earlier point about the fact that Black students feel rejected, even before they have been rejected. It is therefore necessary to create systems of mentorship and support for Black students in residences to assist and empower them to reclaim the space and understand that they belong there just as much as White students.

[335] Professor Gobodo-Madikizela lamented the lack of these mentorship programmes at institutions like the University, and observed that instead of students reclaiming their rights at these institutions there is a tendency to focus on their experiences of marginalisation. In her words, the problem with this is that it employs a language "that reinforces victimhood even when the person has the power to shed off the victimhood". She observed that resorting to "protest mode" helps students experience a sense of power, but does not solve the problem of their feeling excluded. Her view is that the only way for this problem to be solved is for Black students to take their rightful place at the centre of these institutions, and declare in earnest that "this is my space, as much as it is yours."

[336] Professor Gobodo-Madikizela's view is that students need to be mentored and taught methods of addressing racist encounter head-on by dealing with the offending party directly. This is preferable to and more empowering than the current trend of students recording and broadcasting these experiences on social media to provoke a public response. While it may be true that students are experiencing

victimisation and marginalisation, focusing on these experiences should not be the priority.

[337] Furthermore, Professor Gobodo-Madikizela stressed the importance of the way in which conversations about racism are framed. In particular, she said that there is a need to introduce personhood into discussions about racism. What she meant by this is that describing a racist act as merely “racist” only allows for superficial engagement with the problem because it leaves room for denial. This is because people do not want to be labelled as “racists” and will deny any conduct that might attract the label. However, if an act is labelled as barbaric and degrading to another it forces the actor to feel the shame and impact of what they have done. This is preferable because it engages with the ethical responsibilities that all people bear towards others, and moves away from questions about whether someone intended to commit a racist act.

[338] She referred to the Huis Marais incident as an example and noted that no one could deny that Mr du Toit’s conduct was barbaric and degrading, not only towards Mr Ndwayana, but also towards himself. However, since the issue is about racism as opposed to barbarism, the focus of the matter became whether it could be proven that Mr du Toit bore racist intentions. The upshot of Professor Gobodo-Madikizela’s evidence is that this demonstrates how the current language around racism leaves room for moral evasion and misses the true problem.

[339] Professor Gobodo-Madikizela also emphasised that White students must be mentored so that they can learn to engage with Blackness and be supported in making sense of their own identities. She mentioned that her Centre is in the process of designing intensive programmes and workshops that will bring Black and White students together in a meaningful way. At the time of Professor Gobodo-Madikizela’s hearing, these programmes were about to enter the pilot phase. She explained that they were initially being offered to leaders at the University in middle-level management positions, and that over time it was envisaged that the programme would be extended to more people at the University, including students. This programme is also being used by her Centre for conducting research on racism, in particular the impact of racist incidents and the institutional response to them.

[340] Professor Gobodo-Madikizela spoke further about the Centre and advised that it can play a role in the University's transformation project by generating relevant knowledge and research that can be used to develop programmes that will further transformation. She also expressed the hope that Centres like hers will become learning sites where "zones of empathy" can be created. She explained that these are spaces that enable "students and people and staff, to regard one another in the spirit of the mission and values of the University with care and compassion, not along racial lines." If this is to be achieved, it is critical that these kinds of centres are adequately resourced to do this work and develop these programmes.

[341] One of the final points made by Professor Gobodo-Madikizela is that student leaders are not receiving adequate training to lead in an environment as complex and challenging as the University. Her Centre is accordingly interested in remedying this shortcoming by working with the student leaders to better equip them for their responsibilities and to engage with one another meaningfully and respectfully. This is particularly important because many students come from families and homes where their parents have never interacted across racial lines as equals. These students accordingly cannot rely on their families to teach them how to deal with the interactions they are bound to encounter at the University.

[342] Professor Gobodo-Madikizela's concluded her evidence by expressing doubt about the prospects of the Shared Humanities module. She based this doubt on her experiences with the compulsory course that was introduced at the University of the Free State while she was there. Her view is that it is very difficult to secure genuine engagement from students who are partaking in a course out of sheer obligation. She believes that the students attend classes out of force and have no desire to be there because none of the material relates to their chosen field of study. She accordingly advised that a better approach is for all degrees offered by all faculties at the University to incorporate an ethics component. This could address these issues in a way that is relevant to each programme, and accordingly more relatable to the students. She prefers this idea to the notion of a compulsory, standalone course. Her closing remark was that although there are strong proponents of a compulsory core curriculum module, she did not experience it as being successful at the University of the Free State. Furthermore,

there were still violent racial altercations at that university despite the existence of the course.

The evidence of Expert 4

[343] Expert 4 commenced their evidence with an overview of the historical context of the University. Expert 4's view is that this context is central to understanding the University's transformation journey that has led to the present moment. They surmised this history as follows.

[344] The University was established as an English college through British colonialism. It later developed into an Afrikaans university which was seen as central to the social and educational development of the Afrikaans community. The first movement towards de-racialisation at the University was in the 1970s when a small selection of Coloured people were allowed into the University on special application. However, the most significant moment for the University's move towards de-racialisation and democracy was in 1994. At that moment the University was confronted with the national transformation agenda but, according to Expert 4, hesitated to change as an institution.

[345] Instead, the University emphasised its academic and international reputation. Expert 4 explained that there existed a group of White, male Afrikaners who were interested in moving the University away from its apartheid and colonial past. However, this group was in the minority and was merely tolerated by the more powerful and influential members of the University, which Expert 4 likened to the Afrikaner-Broederbond.³⁴ It was only towards the end of the 1990s that this less popular, more liberal-minded group began to gain prominence and push the "democratising agenda" at the University. This culminated in the University adopting its first strategic framework for transformation in 2000.

[346] Since then, the University's transformation journey has been led by several different Vice-Chancellors who had to deal with resistance from different interest groups. One of these groups consists of powerful and wealthy alumni who hold

³⁴ In short, the Afrikaner-Broederbond was established early in the 20th Century as a secret society for White, Afrikaans men. Its objectives were to unite Afrikaners and further Afrikaans interests, particularly in the midst of British Colonial rule and the aftermath of the Anglo-Boer War.

influential positions in different parts of the country, the economy, and even Stellenbosch town. Another group exists within the University and consists of people holding positions in the middle to top management of the University. These are individuals who never participated in the anti-apartheid struggle, who are settled in their careers and positions and uninterested in supporting transformation. Pursuant to their positions and the power that they hold within the University, this group is able to push back against the transformation plans introduced by the leaders at the top. The role of these interest groups have visibly manifested in the conflicts around language at the University.

[347] Expert 4 noted two further points. First, that the University has experienced vacillating progress throughout its transformation journey. Second, that the 2015 student protests gave transformation an impetus that led to the institutionalisation of transformation. This included the establishment of various committees and documents that deal with transformation. In Expert 4's words, this "led to relatively concerted, yet uneven transformational activities in certain parts of the University, not unevenly – there were still forces pushing, pushing back in the shadows".

[348] Against this backdrop, Expert 4 described the University as being adversarial as opposed to conversational around questions of race and transformation. They explained that there is no easy way for conversations about transformation to take place at the University, and that any attempts at holding these conversations are often met with silence, micro-aggressions and antagonistic responses. Moreover, Expert 4 lamented that "there is no concerted, consensual open conversation about questions of transformation at the University." This has made the environment challenging for academics and members of staff who have joined the University in recent years with the hope and intention of contributing to transformation at the University. Expert 4 recounted having experiences of raising issues around transformation, often as the only Black person in the room, and being met with stony silence or deflection of the issues. As more people of colour have joined the University there has been louder and stronger lobbying for change. Expert 4's impression is that the response to this has been an "antagonistic silence."

[349] Commenting on this point further, Expert 4 gave two opinions on why it is that many people remain silent and do not join conversations about transformation. The first is that the University provides an elitist space wherein many academics feel entitled to remain silent and focus on their academic careers, in the process acquiescing in a problematic culture that ultimately does not affect them. Expert 4's second opinion is that conversations about transformation evoke a sense of "us versus them", which naturally makes them uneven and exclusionary. Expert 4 believes that it is important to find ways to overcome these challenges and draw more people into consensual conversations. Failure to do so will prevent the University from moving forward with transformation instead of running in circles, repeatedly moving from incident to incident without ever developing the institutional culture so that these incidents may be properly resolved.

[350] Expert 4 explained that language has also played a fundamental role in hindering transformation at the University. This is because Afrikaans is spoken and used in ways that exclude non-Afrikaans speaking members of the University from conversations and, in effect, participating in important decision-making at the University. They observed that the official policy on language has changed and become much more progressive recently, but at the informal level there remains a genuflection towards Afrikaans. This leads to recourse to Afrikaans informal but not necessarily insignificant interactions and conversations between members of the University, which in turn leads to seemingly innocuous, but not necessarily insignificant exclusion of non-Afrikaans speakers. This fosters a sense of rejection and unwelcomeness among those who cannot participate fully in these conversations. Expert 4's concluded this aspect of their evidence by stating that, often, informal interactions are more powerful than formal conversations.

[351] In addition to these points, a large part of Expert 4's evidence was devoted to the idea of deepening transformation, and how this can be achieved at the University. As canvassed above, Expert 4 considers it vital to discover ways of facilitating inclusive and non-threatening dialogues in order to deepen transformation. Their opinion is that this needs to happen in all spaces where the University's institutional culture is

constituted, including the classroom, research space, faculties, departments and residences.

[352] Another aspect of deepening transformation at the University is visual redress. Expert 4 argued that the University still presents a Eurocentric aesthetic and atmosphere, and this creates the impression that it is not an African university. Expert 4 argued that it is necessary to find ways to decentre the Eurocentric architecture and visual culture of the University, which is a very hard task because of its enormity. Expert 4's opinion is that although there is a portfolio committee devoted to visual redress, there is still a great deal of work to be done in this area.

[353] Expert 4 also observed that members of the University's middle management are playing a role in inhibiting the deepening of transformation. These parties are positioned in various parts of the institution, for instance faculties, departments, working units and residences. Although they are not at the top of the hierarchy, they have the power to make small changes and to stymie transformation in pernicious ways. Transformation will only be deepened if these members of middle management are held accountable to the University's transformation objectives.

[354] A related point made by Expert 4 is that transformation is a "side objective" of the University's and that it needs to be mainstreamed to be taken seriously and made more effective. This would involve transformation becoming the "framing objective" of all aspects of the University's operations. Transformation would not just be the focused work of certain offices and members of the University, it would be a responsibility and project shared by all. This also entails the adoption of increasingly bold transformation targets and working on the University's recruitment processes.

[355] Furthermore, when asked their views on the Equality Unit, the current central player in the University's transformation project, Expert 4 described the work done by the Equality Unit as "marginal" and "heroic". Expert 4 explained that structures like the Equality Unit are burdened with marginalised work, yet are hardly provided with the necessary resources and budget to do this work. The Equality Unit, among other structures at the University, accordingly tend to become "holding facilities for controversy or for dealing with disciplinary matters". In other words, Expert 4 holds the view that the Equality Unit has been given a Sisyphean task, and that it cannot hope to

perform this task satisfactorily with the inadequate tools and support provided by the University.

[356] In the light of this evidence and their expertise on education, Expert 4 was asked to express their views on the Shared Humanities module. Their response was that the problem with the current module is that it is voluntary and that students do not take it seriously. Expert 4 then explained that it is necessary to introduce compulsory conversations that grapple with issues of transformation into the degrees of all students. However, their view is that these conversations or courses should not take the format of a universal, blanket course that is taken by all students. Rather, they should be tailored to each different degree so that students can learn about and engage with these issues in a way that is relevant and makes sense to them.

[357] The other advantage of this approach is that the module will be adapted to each specific environment, and the unique problems therein. Expert 4 emphasised that it is very important to pay attention to who is chosen to teach this curriculum. They emphatically argued that it should not just be the responsibility of Black staff as this would undermine the entire project. However, it is equally important to ensure that whoever is teaching the curriculum is sufficiently equipped and committed. The ideal outcome, according to Expert 4, is that all faculties and departments will develop a sense of co-ownership of the curriculum, and it will not simply be seen as the work of a specialised transformation agent.

[358] Expert 4 also believes that the University needs to find more ways to prepare and capacitate both future and current students for their studies. They suggested that it is the University's transformational responsibility to partner with schools in surrounding communities in order to assist those schools in producing better matriculants who will then have better prospects of getting into and succeeding at university. Expert 4 believes that this is a policy objective that the University presently lacks. Concerning the current students, Expert 4 emphasised that the University needs to recognise its students beyond their skin colour, and implement measures to support first generation Black students whose cultural and socioeconomic needs will differ to those of the students who have historically attended the University. In other words,

Expert 4 believes that the University needs to expand its reach beyond the elite, and find ways to increase its accessibility to students from less privileged backgrounds.

[359] Expert 4 made two final observations about what is required in order to improve the University's culture. The first is that language and multilingualism ought to be used as a way of promoting humanity. This means that the University community needs to find ways of transcending the associations of discrimination and Afrikaans, and move towards using language as a resource to connect people. Finally, Expert 4 concluded their evidence by noting that it is important to examine and address the culture of the University when dealing with incidents like the Huis Marais incident. However, it is equally important to introduce mechanisms to hold people accountable so that there is an understanding that certain transgressions cannot be tolerated. In other words, the University needs to carve out what is acceptable behaviour. Once that is understood, the cultural orientation will follow.

The evidence of Professor Maart

[360] Professor Maart was the only expert witness who is neither employed by nor professionally affiliated with the University. She accordingly played the crucial role of providing expert testimony on issues relating to racism and transformation from an independent viewpoint. She has gained vast experience at various other institutions of higher education and was therefore well positioned to advise this Commission as an experienced but neutral party, with no vested interests in the University and the choices it might make pursuant to this Commission's findings.

[361] Professor Maart commenced her evidence by explaining that her experiences and interests in racism began at a very young age when she was effectively involuntarily politicised as she and her family were forcibly removed from District Six. She explained that these experiences resulted in her entering school and university with the need to pursue an understanding of the history of her ancestors and of enslavement, which she has done through various projects and academic pursuits.

[362] At the outset, Professor Maart emphasised that addressing the issue of racism at historically white institutions of higher education in South Africa is a complex matter. She noted that when talking about institutions of higher education it is necessary

to talk about the people who form that institution and perpetuate racism. This is because universities are simply a microcosm of broader society, which is affected by how people are raised and socialised in their homes, bearing in mind that for several centuries this took place under the influence of overtly racist laws. This means that there are White people in South Africa who have been racialised through structural, systemic, legalised and institutionalised components of racism as these were all essential strategic components of the operation of apartheid.

[363] Professor Maart stated that the problem of racism in higher education thus stems not only from the problematic legacy of these institutions, but also from the manner in which young, White students enter these institutions. They do so after years of learning not that they are racists, but that they exist in the world in a specific way which establishes a sense of entitlement. She also noted that dismantling the apartheid regime did not change the fact that the South African university system has been affected and shaped by White men and women always being in control. Moreover, Professor Maart stated that she is widely known for espousing the view that “we can legislate for and against anything and everything but we cannot legislate attitude”. As far as she is concerned, this is one of the greatest challenges because, in her own words, there will be people who will “[pledge] their allegiance against apartheid and against racism, but still enact racism because they have not been schooled and held accountable for their attitudes. Attitudes are not something that we can make punishable. We can only make an act punishable.”

[364] Professor Maart observed that, consequently, attitudes of entitlement are frequently observed in institutions of higher education. In amplification of this, she explained that it is common for White people to display attitudes of entitlement in the context of higher education. She explained that this takes the form of White people exuding attitudes of being in control and of “doing Black people a favour” by letting them in. It is her view that there is a sense that these White people own these institutions and are “allowing” Black people to enter the spaces, and that there is a consequent expectation that the Black people must abide by their rules. This often takes place in the face of progressive transformation documents and commitments. While it may be commendable that these documents exist, it is Professor Maart’s impression that it is

evident that they do not always translate into real shifts in attitudes. Her view is that this is partly due to the lack of engagement and conversations around these issues, and because there is little possibility of holding people accountable to upholding the aspirations of transformation documents.

[365] Turning to the necessary measures and changes that must be adopted to address these problems and to eradicate discrimination from university spaces in South Africa, Professor Maart shared several opinions. Firstly, she explained that there tends to be an absence of White consciousness, meaning that young White children tend not to be socialised in a way that makes them understand their history and how they have benefitted from colonialism. Furthermore, that this history has informed the way that they still believe and uphold a particular type of superiority. This contrasts sharply with the experiences of young Black people who, often from a very early age, know where they come from and how unjust systems have shaped and affected their circumstances.

[366] Professor Maart explained that it is accordingly necessary to concentrate efforts on addressing the agency of White people to support them in coming to terms with the idea that the identity of a White person does not depend on the oppression of Black people or any other racial group. In other words, it is necessary to alter the socialised behaviour of White people to encourage them to break the cycle of the abovementioned attitudes repeating themselves. This needs to happen before attitudes will align with the objectives of the transformation documents.

[367] Professor Maart also emphasised that teaching to facilitate these important attitude shifts must take place at a young age, and that it is challenging to achieve this with young people who have already been socialised and established their beliefs and behavioural patterns over 18 years. However, when it was put to her that the Commission's Terms of Reference constrain it to dealing with these issues at the level of universities, she recommended that a foundational course be introduced to "gear students into particular thinking". She noted that foundational and introductory courses of varying lengths are not uncommon at various institutions and organisations as the purpose of these courses is to equip their participants so that they know what is expected, required, encouraged and prohibited in the new space in which they find themselves.

[368] Professor Maart noted that there is an expectation that students learn various new things when they arrive at university, and that it accordingly makes sense to introduce a course that teaches the fundamentals of the history of racism and apartheid. Moreover, she emphasised that there are many different scholars and thinkers in South Africa whose work could assist with forming the basis of this course and providing a critical framework to understand racial relationships and power dynamics. Therefore, it cannot be said that there is no adequate language that can be utilised and taught in a foundational course at universities. Ultimately, the purpose of this course is to equip students with tools of analysis that can help them understand their own lived experience. Professor Maart's view is that this will "[open] up the possibility to raise and recreate and reproduce better adults". This is necessary, for "an unexamined life is not worth living."³⁵

[369] Professor Maart explained that these fundamental courses ought to be designed with two primary objectives in mind. First, they must familiarise students with the values, constitutions and transformation goals of the relevant institution. Second, they must teach the students self-interrogation and self-examination. They must equip the students with the critical tools for understanding their own identities and histories. Professor Maart shared the experiences that she has had with students when engaging them on these issues and noted that there are simple ways to encourage inner reflection about the way in which different people have grown up and been socialised. Her view is that equipping people to understand their place in society creates a possibility of dismantling the legacy of apartheid. In essence, this all comes down to "saying this is the way that you have been racialised. Now let us talk about ways in which you do not have to use racialisation to feel human."

[370] In sum, therefore, Professor Maart's view is that these types of foundational courses are a necessary intervention at universities. Furthermore, she noted that engagement, in small groups if possible, is needed. She added that this course and these engagement sessions would not only address racism, but that there is a vast range of different issues that would warrant inclusion. These include xenophobia and

³⁵ Professor Maart referred to the famous expression supposedly uttered by Socrates when he was tried for impiety and corrupting the youth, after which he was sentenced to death.

ethnocentrism. Professor Maart advised that this foundational course ought to be offered and taken by staff members as well as students at universities.

[371] When asked for her views on how a foundational course can be created in an effective way and not simply regarded as a compulsory irritation by the participants, Professor Maart emphasised the importance of way in which the course is framed. For instance, she noted how commonplace and reasonable it is to expect newcomers in any environment to undergo some form of initial training. Her view is that this principle applies equally to students at a university who are new, not only to higher education, but to higher education at an institution that is attempting to break away from the past. She once again emphasised that it is unrealistic to expect transformation documents to successfully change behaviour. This is because “people do not follow things because they are written in paper. People follow things because of their consciousness.” It is therefore essential that raising the consciousness of students and staff members at universities is seen as strategic and important, and could even be introduced as an initiation programme.

[372] It is apt to close Professor Maart’s evidence on the relevance and importance of the foundational course by quoting her directly:

“we expected that transformation documents would take care of the problem of racism. They do not. The problem lies with social interaction, interpretation of lived experience with consciousness, with attitude and we need to change that mindset as much as we can by offering the best possible solution and that is through consciousness raising and education.”

[373] Turning then to ways of addressing subtle, underhanded racism in particular, Professor Maart provided a three-tiered response. Firstly, she observed that a great source of problems at universities is that the institutions fail to recognise the different ideological positions on campus. Secondly, she said that there is a need to understand the contents of those different positions. Finally, she criticised the fact that universities still function on the basis of “who likes who”.

[374] Addressing the first two tiers of her argument, Professor Maart explained that students arrive at universities seeking an understanding of the lives that they live in the aftermath of apartheid. For example, they want to understand different economic theories that can make sense of why they may be battling financial hardship while others

enjoy financial prosperity. In some instances, lecturers and academics at universities may be unfamiliar with their students' positions because they have not experienced similar hardships. This often results in these students finding their way to organisations that offer alternative answers and solutions, like the Economic Freedom Front.

[375] In other words, if institutions do not function as hubs of knowledge that cater to the different ideological leanings in society, students' needs and priorities may go unmet and the institutions risk remaining Eurocentric. Professor Maart emphasised that these ideological differences are what fuelled the liberation struggle in South Africa and that nobody is going to simply abandon these forms of understanding the world. The problem is not that they exist, it is that they are absent in universities. Professor Maart observed that universities have failed to understand how these ideologies played a role in igniting the student protests that took place in 2015 and 2016. She argued that it is vital that universities and academics "understand that the very ideological knowledge that drove the national liberation struggle cannot be abandoned. It has to be integrated in our learning systems, into our curriculum."

[376] Dealing with the third tier of her response, Professor Maart observed that many universities maintain hiring practices that involve appointing people who will be agreeable and who will not be overly critical of that institution or the status quo. She also observed that critics of the status quo and the existing systems in South Africa often provoke feelings of guilt in White leaders at universities, which also influences these hiring practices. Professor Maart emphasised the shortcomings of this approach because it fails to ask the most important question: "who is going to bring the best knowledge to our university system?"

[377] Professor Maart tied off her evidence on university hiring practices by offering the following advice: "it is about the contribution we make and the contribution we make should be fundamental. It should be our ethical and moral responsibility to make sure that the future of our young learners will be better than the past we had."

[378] The final aspect of Professor Maart's evidence focused on the issue of language and the role it plays in matters of racism. She acknowledged that language is a contentious issue, but holds the view that language does not on its own perform and

reproduce racism. Rather, “it is the voice of the person within the language that does it.”

[379] She explained that language means different things to different groups. For instance, English and Afrikaans were languages that were forcibly imposed on Black South Africans through the education system. Whereas, for many White Afrikaners, Afrikaans is a way to distinguish themselves from English South Africans. The history between the Afrikaans and the English in South Africa is highly relevant here because of the brutal mistreatment and subjugation of Afrikaans communities that was committed by the English, including the internment of Afrikaners in concentration camps. Professor Maart explained that this history has led to many Afrikaans South Africans seeing the coloniser not as themselves, but as English South Africans. They accordingly regard the retention of the Afrikaans language as crucial to their identity as a distinct, small group of people that overcame the colonisers.

[380] Professor Maart explained that language creates division because of attitudes of superiority that certain groups adopt towards others when they speak a language. She emphasised that “what we are saying is that when the social and racialised implications of a particular language cause division, it is not the language that does it, it is the speaker of the language. The speaker who entrenches racialisation in the language.” For instance, English on its own is not racialised. However, the language becomes racialised when White people mock or patronise Black people for their pronunciation of English words.

[381] Furthermore, I once again quote Professor Maart directly:

“The biggest language problem we have is not that Black people do not speak English or do not speak Afrikaans. It is the identities within those languages that still have the history of colonisation to the young Black person coming into university for whom language is a history of forced speech, forced writing.”

[382] In closing, Professor Maart shared the following advice with this Commission:

“language is always a political issue, but we must not lose sight of the fact that language on its own, just as something that we see as written, does not happen without the attitudes, the history of racialisation and the behaviours of the person who speaks it and that is what we have to deal with.”

(d) *Concluding remarks*

[383] The Commission is indebted to the many witnesses and individuals who sacrificed their time and energy to assist the Commission with its investigation. As a private commission of inquiry with no powers of subpoena, the Commission had to rely entirely on the willingness of members of the University community (as well as some external parties) to avail themselves and voluntarily give evidence. Some of this evidence was of a sensitive nature, and sharing it with the Commission visibly took a heavy toll on certain witnesses. I accordingly must extend profound gratitude on behalf of the Commission to all witnesses who bravely and candidly shared their knowledge and experiences with the Commission. Thanks to them, the Inquiry uncovered relevant, helpful and significant information.

[384] Thus, after reflecting on this information, the Commission must now make its findings.

IV Part 4: Findings

(a) *The Commission's mandate*

[385] During the course of this Inquiry, more than one witness remarked on the fact that this Commission is not the party to investigate racism and discrimination at the University. That is indeed true. Some witnesses suggested that this Commission is unlikely to uncover any novel information that could help the University understand and solve its problems. I hope that is not true. I am also cautiously optimistic that, although much of what this Commission has learned and reported on may not be completely new or surprising to those who have been doing transformation work at the University for some time, this Commission is the first of its kind and has the potential to add value.

[386] I should add that the Commission was an entirely independent body that had no interests in or connections to the University. Sometimes, when we are in the thick of a situation, emotions can skew reason and it can be difficult to tell the wood from the trees. That is when it can be helpful to listen to someone who is above the trees and can see the situation for what it truly is. The findings of this Commission are intended to provide that perspective.

[387] It bears repetition that the Terms of Reference require this Commission to make findings on the following:

- a. Incidents of racism at the University, with reference to the recent occurrences at Huis Marais and the Faculty of Law's Law Dance;
- b. The current state of diversity, equity, and inclusion within the University campus culture, with specific reference to racism;
- c. Given the University's stance of zero tolerance towards racism, whether the current structures of the University and its material university policies, rules and processes, are sufficient and most effective to address the lived experience of students and staff with regard to racism in all its guises; and
- d. Related issues and concerns that may arise in the course of the inquiry, including the need for further investigation or consideration of related issues.

[388] In other words, the Commission was mandated to make findings on a very broad range of issues. The Terms of Reference also afforded the Commission a degree of discretion to make findings on related matters that arose during the course of the Inquiry.

[389] One of the key questions under investigation was whether the University's transformation apparatus is succeeding and translating into an inclusive culture at the University. The findings are accordingly divided into the those relating to the status of the University's transformation on paper, and the status of its transformation in practice. The Commission's findings on the Huis Marais incident and the Law Dance incident follow thereafter.

[390] Before proceeding, however, I reiterate that it is worth bearing in mind the findings of the Report of the Panel on Student and Residence Culture that were emphasised earlier in this report.³⁶ I emphasise this because they bear a striking resemblance to several of the findings made by this Commission.

(b) *Transformation on paper*

The history and context of the University

[391] While progress is rarely made by those who spend too long dwelling on the past, looking backwards is sometimes necessary in order to move forward. In the context of the University, that is precisely the case.

[392] The evidence before this Commission overwhelmingly pointed to the conclusion that the history of the University is at the heart of the transformation project. On the one hand, it is the University's history that compels it to transform and change as an institution, to break away from its exclusionary, inegalitarian past. On the other, the history of the institution is one of the fundamental impediments to its transformation project. The evidence exposed multifaceted reasons for this. Firstly, it is never easy to unscramble the egg in the context of an old and well-established institution like the University, which has grown accustomed to operating in terms of systems and structures that appear immutable, especially to those who are comfortable and happy with the status quo.

³⁶ See [113].

[393] Secondly, as the argument put forward by many of the experts goes, those who have benefitted from and been empowered by a system are likely to be reluctant to support the dismantling of that system. Some will even resist any changes that they fear may disadvantage them. This phenomenon is not unique to the University. Indeed, the experts and the academic resources that were provided to this Commission indicate that it is a natural part of processes of change in countries and institutions around the world.

[394] However, my view is that it would be oversimplifying matters to say that the interest groups who are opposing transformation at the University are doing so simply because they risk losing power. While that may be partly true, there is more nuance to this situation.

[395] The evidence before the Commission indicated that the University means very different things to different groups. To Black South Africans, the University cannot be separated from the apartheid regime, after all, Hendrik Verwoerd³⁷ was a Professor at the University. Additionally, it was designed to cater primarily to White, Afrikaans South Africans, and maintained its place as an “Afrikaans university” even beyond the fall of the apartheid regime. To many Black South Africans, without radical change, the University remains a symbol of an oppressive regime that deliberately and systematically excluded them from higher education and society in general.

[396] However, the University means something entirely different to White, Afrikaans South Africans. In extreme cases, the University represents the proud heritage of the Afrikaans community who was able to resist and eventually overthrow British colonial rule, and for many it evokes proud memories. Most importantly, though, it is a space where, in the past, the Afrikaans culture and language dominated, and where Afrikaans families could send their children to receive a high quality education in their home language. The evidence before this Commission revealed that this is, at least to some extent, still the case. Many White, Afrikaans South Africans do not see the University as reminiscent of apartheid, but rather as a place where they can practise and celebrate their culture.

³⁷ Hendrik Verwoerd was the Prime Minister of South Africa from 1958 until he was assassinated in 1966. He is often attributed the title of the “architect of apartheid”.

[397] With this in mind, it cannot be said that maintaining the status quo at the University just about White, Afrikaners clinging to their power. It is also largely about cultural relevance, and even the desire to preserve the University as a space where future generations can enjoy an “Afrikaans university experience”.

[398] The resounding message from all of the evidence before the Commission was that it is absolutely crucial to understand this history, context, and the different positions that play a role in influencing transformation at the University.

[399] It must also be understood that these different perceptions of the University, based on its history, both pose major challenges to the University’s ability to break away from its past. A circular series of challenges emerge because the White, Afrikaners try to retain the traditions and culture that they understand as rightfully being part of the University. They receive little opposition to this because they constitute the majority, albeit a gradually decreasing majority, at the University. On the other side, Black students are less inclined to attend the University because of what it represents in their eyes. Thus, the White majority persists at the University and it remains difficult to change the status quo which, in turn, makes it harder for the University to attract Black students. In other words, the University is stuck in an “anti-transformation” cycle. The question is what it can do to break that cycle?

[400] The evidence before the Commission reveals that it would be unfair and inaccurate to conclude that the University has taken no steps or efforts to attempt to break this cycle and transform as an institution. Although it may have commenced its decisive transformation journey relatively recently, its journey is certainly underway.

The transformation project

[401] A consideration of all of the evidence before the Commission reveals that the University’s transformation project only truly gained traction from around 2015 onwards. This coincided with two notable changes: the commencement of the term of office the current Rector and Vice-Chancellor, Professor Wim de Villiers; and, nationwide student protests that broke out in 2015. These incidents led to transformation being perceived as a legitimate imperative, and thus galvanised the transformation project at the University.

[402] The evidence exposed that, prior to 2015, the efforts to transform the University did not receive sufficient support or prioritisation. However, national pressure mounted on the University, along with all other institutions of higher education, through the change in narrative brought about by the student protests. Furthermore, Professor de Villiers appears to have been the appropriate choice to lead the University on its transformation journey as he has managed to maintain positive relations with the Council and the Convocation, while also striving towards his vision of the University becoming a national asset, open and accessible to students of all races and cultures. Although the evidence showed that some members of the University community believe that Professor de Villiers could do more to show his commitment to transformation, the overall consensus is that he has done a lot to diplomatically drive and support the University's transformation project.

[403] A pivotal moment in the University's transformation project was in the issuing of the Restitution Statement in commemoration of the University's centenary year in 2018. This statement marks the University's official recognition of its role in a hurtful and unequal past, and its commitment to "the ideal of an inclusive world-class university in and for Africa". That is the ideal that underlies the official steps that the University has taken in pursuit of its transformation project.

[404] The transformation project at the University is geared towards the following objectives:

- a. Transforming the institution: this includes: digitising the workplace and creating a digital campus; focusing on financing the growth of the University's brand and market share as well as its estate; and working on the University's sustainability and environmental impact;
- b. Transforming talent: this includes: faculty recruitment and career development with a focus on equality, diversity and inclusion; efforts to improve workplace well-being and mental health; protecting academic freedom; and combining research with teaching;
- c. Transforming internationalisation: this includes: improving international student mobility; transnational education; global partnerships and

- alliances; global knowledge circulation and collaboration; and further accreditation;
- d. Transforming teaching and learning: this includes focusing on: interdisciplinarity; digital education and remote learning; assessment; fostering lifelong learning; and alternative training providers and micro-credentials;
 - e. Transforming the student experience: this includes focusing on: student recruitment and access; student well-being and mental health; student assessment; graduate skills and employability; and understanding student success;
 - f. Transforming impact: this entails focusing on: measuring and demonstrating impact; higher education and civic engagement; higher education and the sustainable development goals; university reputation; directing innovation; and the socio-economic and political impact of research;
 - g. Transforming research: this is focused on the following areas: responsible research metrics; the impact and value of rankings; research funding; the value of fundamental research; industry collaboration; and national excellence programmes; and
 - h. Transforming leadership: this involves: acknowledging the University's heritage, planning for the future; the leader as a diplomat; ensuring knowledge security; crisis management; fundraising and philanthropy; leadership pathways; promoting and protecting diversity in leadership; and assessing leadership performance.

[405] In order to achieve these broad and lofty objectives, the University has adopted a multi-layered approach. This has involved the adoption and implementation of various policies, plans and documents, as well as the creation of various structures and offices that are mandated to transform the University. These constitute the University's "transformation apparatus".

The transformation apparatus

[406] Much of the evidence before the Commission involved explanations of the University's transformation apparatus. These include the following:

Key policies

[407] The University has adopted and implemented strategic documents to manage the following: admissions, residence placements, unfair discrimination and harassment, employment equity, visual redress, the code of conduct and disciplinary process, language and the transformation plan. It is also in the process of drafting and adopting a holistic transformation policy.

Structures

[408] From a structural perspective, the University has put in place numerous offices and personnel intended to act as agents and drivers of change at the University. These include the following: the Deputy Vice-Chancellor for Social Impact, Transformation and Personnel, the Senior Director for Social Impact and Transformation, the Transformation Office, the Equality Unit, the Director for Employment Equity and the CSLEEC. There are also transformation committees in the different faculties, as well as various leaders spread throughout the University whose portfolios include transformation.

[409] In addition, the University has put in place academic structures that contribute to transformation in terms of research and knowledge, including the Research Chair for Social Justice and the Centre for the Study of the Afterlife of Violence and the Reparative Quest. After examining the evidence, I am convinced that there is certainly no shortfall of official bodies at the University mandated to facilitate transformation.

The Shared Humanities Pilot Module

[410] Another component of the University's transformation apparatus is the Shared Humanities Pilot Module. This module is run by the CSLEEC and is targeted at students who are at least in their second year of study with the intention of familiarising them with and engaging them on critical and relevant issues across a broad range of

areas. For instance, this year the module was split into seven sessions based on the following subject areas: anthropology; science and technology; economics; medicine; visual arts; law; and sociology.

[411] These sessions were run by various experts in each field, and the intended outcome of the course is “to develop graduates with an understanding of their responsibility as citizen-leaders, as custodians of an invaluable democracy”. In other words, the course uses experiential learning to equip students to think critically about the world in which they live as well as their places in that world. It idealistically envisages that they will contribute towards making that world better.

[412] The module is not credit-bearing and is not compulsory for any students at the University. Based on the evidence, this module is highly regarded by those who are involved in its facilitation and those who have taken the course. However, the majority of students at the University do not voluntarily take it. Instead, the existing course attracts students with a predisposition towards and interest in transformation, equality and justice.

[413] The obvious conclusion is that the module is an idealistic and impressive offering that the University has included in its transformation apparatus. However, it does not actually appear to be achieving its desired ends of challenging, and hopefully reforming, discriminatory worldviews and attitudes that students bring with them to the University. That it has been an optional pilot module for five years also casts doubt on whether the University leadership believes in the potential of the module to bring about transformation.

Concluding remarks

[414] The University certainly cannot be accused of failing to take steps towards furthering transformation. Although the evidence showed that there is still much to be done, in official terms the University has accomplished a fair amount in a relatively short space of time. My only criticism of the University is that it is fairly evident that the formation of its transformation apparatus has occurred in a piecemeal and disjointed fashion. The upshot of this is that the transformation apparatus is actually quite complex, and it can take some time to understand how to navigate the various

policies and structures. This was evidenced by many students who confirmed that the majority of students are entirely unfamiliar with the University's important policies and offices, particularly the Equality Unit. I shall add to this that the existing Policy on Unfair Discrimination and Harassment is long and cumbersome, which probably explains why its objectives are not transcending the page into practice.

[415] The problem with the University's approach of adopting a multitude of complicated policies and structures is that there is bound to be overlap, which can lead to confusion, omissions, a lack of accountability and a duplication of efforts. Moreover, the fact that the University is only adopting an official transformation policy this year explains why the transformation apparatus lacks cohesion.

[416] Nevertheless, the University's official commitment to transformation is commendable. Thus, the main problems that are preventing the realisation of the University's transformation objectives do not appear to lie on the paper, but rather in practice. This is because, notwithstanding the University's official commitment, there are multifaceted challenges emerging from the history of the University and society at large that make it difficult to move from transformation on paper to practice.

(c) *Transformation in practice*

Bureaucracy and hierarchy

[417] As I have just concluded, the University has made laudable strides by creating policies and systems to facilitate its transformation. Commendable as this may be, the evidence before this Commission revealed that the functionality of the transformation apparatus is being hampered by bureaucracy and hierarchy.

[418] This Commission was fortunate enough to be assisted with documentary evidence and the oral testimony of witnesses to assist it with gaining an understanding of the systems at the University. Even with that assistance, I must confess that it was no small task to gain a firm grasp and understanding of the transformation apparatus. It came as no surprise, then, that very few witnesses share this understanding, and those who do were generally those who are close to the top of the University leadership structures.

[419] In addition to their lack of understanding of the transformation apparatus, many witnesses even commented on the fact that the University tends to become bogged down in bureaucracy. I must say that I completely agree with them. The way events unfolded after the Law Dance incident demonstrates this precise point. After all, several lengthy and convoluted processes took place before the incident was finally referred to student discipline, after which the Office of Student Discipline had to conduct its own investigation. The incident took place in May, and at the time of writing, there is yet to be a final outcome.

[420] Long-winded and needlessly complicated dispute resolution procedures benefit nobody at the University. They delay closure and justice, which in turn casts doubt on how seriously the University treats reports of unfair discrimination. In fact, I cannot blame the many members of the University community who believe that the University does not prioritise the resolution of matters of unfair discrimination. My conclusion is not that the University does not take these matters seriously, but that there is needless bureaucracy in its systems which creates the wrong impression of its commitment to transformation. My advice to the University is that there is beauty and benefit in simplicity.

[421] A related problem that emerged frequently in the evidence was the University's obsession with hierarchy. This manifests in a lack of collaboration between different parties within the University, which is undoubtedly one of the reasons that transformation at the University is slow and disjointed. This was articulated very helpfully by one of the witnesses, whose testimony I shall borrow because I agree with it completely:

“The challenge at a number of organisations, including Stellenbosch University, is that when you have academic hierarchical organisations that are conservative in their way of thinking, they like to maintain their hierarchy meaning that they don't want people to work across silos. The way they would want to see people work across silos, is by actually going all the way to the head of the Responsibility Centre (RC) or the silo and then instructions coming down the other RC or the silo. So instead of actually working laterally, they want a functioning of actually moving up to the head of the organisation and then instructions coming down to the other leg of the organisation which becomes really problematic and it makes it really ineffective for the organisation to function and I think that's the challenge that we're also facing within the organisation, because of an entrenched hierarchy and a culture of hierarchy, administrative hierarchy within the organisation, it's very difficult to break the silos and for the organisation to function effectively as a matrix. And if you look at the way certain units and centres are

positioned within the institution, for things to function effectively, for example, in terms of transformation, you would want the Transformation Office, you would want the Equality Unit, you would want Human Resources, you would want Student Affairs, all to function in an integrated fashion and that's difficult to do in a non-matrix functioning organisation. So either you put them all together and then you can still function in a silo in the hierarchy, or you build a culture of a matrix organisation.”

[422] This evidence also explains the “middle management problem”, which was raised by the majority of the witnesses. The evidence revealed quite sharply that resistance to transformation is not coming from any of the personnel within the transformation apparatus. Rather, it is coming from members of staff who are high enough in the system to exercise their power to stall any initiatives or proposals that might change the status quo, but not high enough to be held accountable for the University's transformation.

[423] The Commission heard countless examples of this happening in different environments within the University. I shall reference only one environment, because it came up several times in multiple different contexts: the Engineering Faculty. The allegations in the evidence against the faculty leaders in the Engineering Faculty included the following: they oppose any modifications to the curriculum geared towards transformation; there have been incidents where they have prevented the Transformation Office from carrying out its recommended interventions in the faculty; they resist making diverse appointments and promotions on the basis that there are no suitable candidates; and, that they frequently cite their prioritisation of excellence as a justification for their low intake of Black students.

[424] It would be unfair of me to neglect to say that this Commission did not hear evidence from any of the Engineering Faculty leaders, so this should not be misunderstood as an adverse finding against that faculty. Rather, it is an example of the many complaints that this Commission heard about how members of the University's middle management are able to oppose transformation by simply exercising their control and power over their environments. Moreover, it is a demonstration of how the University's Policy on Unfair Discrimination and Harassment is not translating into

practice, because there is evidently a deficit of commitment to the policy from many leaders within the University.³⁸

[425] My finding in this regard is that the University's overemphasis on hierarchy in its organisation makes it easy for staff members within the system to avoid collaborating with the transformation apparatus. They do so on the basis that they must instead focus on their own responsibilities and work, which exclude transformation. What is happening at the University was once again described most adeptly by one of the witnesses before this Commission:

“What tends to happen in a hierarchical structure is that there tends to be a little bit of empire building. So people look after their own empires and want to build their own empires and do not necessarily look at what is best for the organisation overall.”

[426] Therefore, the only reasonable conclusion that the Commission can draw from the evidence is that there is resistance to transformation that comes from the middle management of the University, which is largely linked to the bureaucratic and hierarchical fashion in which the University is organised. Instead of working together, holistically and harmoniously, towards the future of the University, many leaders are focused on building their own empires. This leaves the personnel of the transformation apparatus to toil tirelessly towards the greater picture, only to be met with resistance from some who see it only from one angle.

Efficacy of key role players

[427] Much of the Inquiry focused on the efficacy of the transformation apparatus, including the key structures and bodies that are responsible for transformation. I shall accordingly now make my findings on the functionality of these role players.

³⁸ See [65]. In particular, article 7.1.4 of the Policy on Unfair Discrimination and Harassment provides as follows:

“All line managers are obliged to take all reasonable measures to accomplish the following:

- a) Promote staff empowerment by means of race, diversity, transformation and social justice training as described at 7.1.3 above.
- b) Monitor the working environment to ensure that it is free from all forms of unfair discrimination and to take appropriate remedial action in accordance with this policy should unfair discrimination or the threat thereof occur in their environment.
- c) Ensure that their own behaviour is appropriate and that they do not engage in conduct which may contravene the policy and procedures set out herein, which includes refraining from any form of victimisation of staff or students.
- d) Ensure that all persons to whom this policy applies and who resorts under their line management understand the policy and procedures set out herein.”

The Equality Unit

[428] The Equality Unit is one of the most crucial structures within the University's transformation apparatus, because any complaint of discrimination must first be reported to the Equality Unit before anything can be done about it. The Commission accordingly heard a great deal of evidence about the Equality Unit and whether it is fulfilling its purpose.

[429] Regrettably, the overwhelming view that emerged from the evidence was that the Equality Unit has a very poor reputation amongst most members of the University community, especially the students. Its processes and purpose are not well understood by many, and it even seems to be the case that many people do not know how to access the Equality Unit's services. In other words, it is abundantly obvious that very few members of the University community are familiar with the terms of the Policy on Unfair Discrimination and Harassment. Although witnesses who work within the Equality Unit were under the impression that they have taken sufficient measures to make the Equality Unit visible and accessible to all, this opinion was not widely shared. Furthermore, there is a perception that approaching the Equality Unit will never lead to a satisfactory outcome for the complainant.

[430] This is partly because the vast majority of students and staff doubt the Equality Unit's ability to competently and efficiently investigate matters and make suitable recommendations. It is also partly because of a widespread lack of faith in the remedies offered by the Equality Unit. As discussed earlier, the University has taken a deliberate policy choice to prefer dispute resolution methods aimed at reconciliation. This includes mediation, conversation, education and other pathways likely to lead to a mutually agreeable outcome for all parties. The Equality Unit accordingly cannot be blamed for this. However, this policy choice is not translating into desired outcomes as it is resulting in a belief that there is rarely justice for wrongdoers at the University. This suggests that the officers of the Equality Unit are failing to identify and adequately explain the appropriate and available remedies to complainants. It also suggests that the Equality Unit needs to pay greater attention to complainants' preferred methods of resolution from the outset of cases, as is expressly required by the Policy on Unfair Discrimination and Harassment.

[431] I understand that the University's intention was for the Equality Unit to operate as a "soft landing" for sensitive matters relating to discrimination, because immediate recourse to the office of Student Discipline may not always be appropriate, and could intimidate potential complainants. However, it unfortunately seems to be the case that this plan has not worked as well as the University would have hoped. The Equality Unit is not widely regarded as a welcoming and safe environment where any person who has experienced discrimination can find support. Instead, potential complainants are deterred by its poor reputation and inability to penalise wrongdoers.

[432] On the whole, the evidence of many witnesses was that the Equality Unit is incompetent and ineffective. Aside from these opinions, the Commission also had to take note of the Equality Unit's involvement in the Law Dance incident. It is simply unacceptable that it took over two months to reach a final outcome. While I recognise that delays may have been occasioned by the timing of the examination period followed by the University holidays, this is still an unreasonable period of time. I agree wholeheartedly with the notion that "justice delayed is justice denied", and consider it to be a major flaw in the system that the Equality Unit does not deal with every matter expeditiously.

[433] In addition to the timing of the Equality Unit's investigation, I was also disturbed by the evidence on the Equality Unit's behaviour throughout its investigation of the Law Dance incident. The evidence made it abundantly clear that the Equality Unit does not have adequate systems in place, nor does it possess the knowledge and expertise required to carry out certain aspects of its work. For instance, it is perplexing that the Equality Unit did not advise Student 1 that their corroborating witness should not be present while they were being interviewed. It was also unprofessional of the Equality Unit to rely so heavily on Student 2, the complainant, to assist it with the coordination of its investigation, especially considering that this took place while Student 2 was preparing to write examinations.

[434] It is also problematic for the Equality Unit that senior leaders within the University feel entitled and comfortable to interfere with the work of the Equality Unit by exerting pressure on it to prioritise certain matters. This is indicative of the University's overemphasis on hierarchy, but it also demonstrates that the Equality Unit

is not taken seriously or respected as an office within the University that is capable of independently carrying out its work. Moreover, the Equality Unit performs a critical function in the University's transformation project, and its integrity and independence ought to be unquestionable. It is therefore a serious cause for concern that the Equality Unit is subjected to these external influences.

[435] The Equality Unit is also constrained by a list of recommendations that it can make. The evidence suggested that this list is overly prescriptive and does not necessarily cater for every possible scenario. It is also questionable whether it makes sense for the Equality Unit to have no powers of sanction when it is the only avenue for every matter involving discrimination, many of which are bound to demand some form of sanction. Although there was a deliberate policy choice that separated the function of the Equality Unit from that of the Office of Student Discipline, the consequence is a delayed, frustrating and convoluted process for the complainant and the alleged perpetrator. This was demonstrated by the Law Dance incident.

[436] I must once again emphasise that I understand the purpose behind the structure of the Equality Unit, but do not believe that it is working. Moreover, it is evidently under-resourced and under-capacitated to deal with the problems that are reported to it.

The Transformation Office

[437] The evidence on the Transformation Office was overwhelmingly positive. The consensus was that they are tirelessly doing impressive work. The only problems that emerged from the evidence were that it is under-resourced and that its staff are very worn down from carrying the burden of transformation with little support from the entire institution.

[438] Furthermore, the greatest impediment to the effectiveness of the Transformation Office is the lack of buy-in and engagement from the rest of the University community. For instance, the Transformation Office's initiatives, programmes and critical engagement sessions are mostly supported by the same people, and accordingly do not have any impact on those individuals within the University whose views and attitudes are impeding transformation.

[439] Additionally, the Transformation Office frequently encounters the “middle-management problem”, and their abilities to do their work effectively in different environments is severely constrained in that regard. The fact that they can only do work in an environment by invitation and with the support of the relevant leader in that environment is accordingly a limitation on their work. With this in mind, it is also worrying that the Transformation Office does not have a point of contact with the Rectorate, meaning that it is unclear how it would enter that space, should the need arise.

The Centre for Student Leadership, Experiential Education and Citizenship

[440] On the whole, the CSLEEC appeared in a positive light in the evidence. I accordingly have only two brief findings. The first is that the CSLEEC has an impressive offering of courses and opportunities for students, but that it is being under-utilised, particularly in relation to Community leaders. Which leads to my second finding: the lack of collaboration between the CSLEEC and the CSC amounts to a regrettable waste of opportunity. It defies logic that the University has a specialised centre devoted to developing leaders capable of contributing positively to South African society, but that one of the University’s most influential group of leaders receives no training from that centre.

The Centre for Student Communities

[441] I shall deal specifically with my findings on the Communities below, but I also wish to make several findings on the CSC itself. The first is that I was entirely unsatisfied with the evidence on the training that the CSC provides to the HC members. It appears as though there is great emphasis on the pragmatic requirements of the HC positions, but very little deliberate effort to train the HC members to be leaders who will lead in furtherance of the University’s values and in a way that will facilitate, and not undermine the transformation project. I must accordingly reiterate that the lack of collaboration between the CSC and the CSLEEC in respect of training and development for student leaders is incomprehensible to me.

[442] Additionally, the evidence of the HC members and Prims indicated that they are not receiving enough support to cope with what their positions demand of them, particularly given their involvement in transformation and the inevitable conflicts and challenges that arise during their leadership terms. I can only conclude that the CSC is the most obvious structure at the University that ought to be providing support to the HC members and Prims, but that it is failing to do so at present.

Efficacy of key policies

[443] Other than the problems that came to light in respect of the operation of some of the key role players of the University's transformation apparatus, the evidence also exposed significant challenges in the implementation of some of the University's key policies.

[444] My first concerns lie with the implementation of the University's Code for Employment Equity and Diversity. By all accounts, the Director for Employment Equity is dedicated to his work and to a large extent has to carry the responsibility of implementing the Code without much support. The problems accordingly seem to lie in the fact that Human Resources at the University is in short supply of experienced practitioners who are capable of holding senior staff members accountable to the objectives of the Code when appointment decisions are being made. This challenging task seems to fall primarily to the Director, which is an untenable state of affairs as he cannot possibly be expected to be the principal driver of employment equity at the University.

[445] However, the scarcity of resources in Human Resources at the University is not the only impediment to the successful implementation of the University's Code for Employment Equity and Diversity. Indeed, the middle management problem and lack of responsibility that many individuals within the University feel towards transformation are also relevant factors. The evidence revealed that there are faculty leaders and other senior members of staff within the University who make little to no effort to follow the Code, and appear to consider it an inconvenience rather than a legitimate policy document. Therefore, there is evidently a need to incentivise widespread commitment to the Code and its objectives.

[446] Moving on from employment equity, I have some observations on the implementation of the University's Admissions and Placement Policy. The evidence before the Commission did not unveil any *prima facie* problems with either of these policies, nor does it appear that there are any role players within the University who are working against the successful implementation of these policies. What is evident, however, is that the main challenges in the implementation of these policies are occasioned by variables beyond the University's control.

[447] For instance, the evidence revealed ample political will on the part of the University to increase its intake of Black applicants in all courses on offer and in the residences. However, South Africa's schooling system simply fails to produce enough matriculants who meet the University's admission requirements, particularly for programmes that require a higher level of competency in mathematics or physical science. I am not for a moment suggesting that the University ought to alter its admission requirements, because doing so would not address the root cause of the problem. It is, however, worth contemplating what creative efforts could be made by the University to partner with high schools to overcome this problem and to increase the talent pool of Black applicants.

[448] One variable that affects the successful implementation of the Placement Policy which is within the University's control is the exclusionary residence culture that makes many Black students feel uncomfortable and unwelcome. My findings on the residence culture are outlined below, but it bears mentioning that problems with the culture in certain residences can derail the objectives of the Placement Policy which are geared towards transforming all of the residences into diverse and representative spaces.

[449] The evidence showed that the University has to facilitate re-placements of Black students who cannot cope with the culture of certain male residences, and that the mere reputations of some of the male residences discourage applicants from preferring those residences in their applications. Once again, this creates an anti-transformation cycle as it is hard to reform the culture of a residence by altering the majority, because the culture of that residence deters Black students whose involvement in the residence could shift its culture.

[450] In addition, the evidence indicated that the late arrival of NSFAS students also poses complications to the successful implementation of the Placement Policy. This is because the University is only able to confirm the places and finalise the necessary administrative arrangements for these students at the very last minute. It also has the practical consequence of making it harder for these students to settle into their respective residences because they arrive later than the other first year students. This, in turn, could lead to a racially segregated residence culture in which Black students feel uncomfortable and consequently may be inclined to request a re-placement. In short, the late of arrival of the NSFAS students sets off a chain of unfortunate consequences that work against the fundamental objectives of the Placement Policy.

[451] Finally, it would be remiss of me to exclude the fact that this Inquiry exposed grave concerns about the implementation of the University's language policy. However, given the complexities and controversy around language at the University, I shall deal with it as a standalone issue below.

The Shared Humanities Module

[452] I now turn to yet another component of the University's transformation apparatus that evokes much debate, the Shared Humanities Pilot Module. The only conclusion that can be drawn from the evidence is that this module is understood very differently by different parts of the University community. To some it is a fundamental pathway to transforming the University by engaging the minds of its students. To others, it is little more than a fanciful aspiration, doomed to never work in practice. The consequence of these opposing views is that a middle-ground route has been taken by offering the module as an optional, pilot module. One might say that this is the classic type of compromise where nobody has won.

[453] I have already explained the main problems with this module, being that it is voluntary and that there is little incentive for students to enrol in it unless they are already interested in engaging on critical issues. It is therefore impossible to see how, in its current format, the Shared Humanities module can ever hope to have any influence on the attitudes of the students whose worldviews might perpetuate discrimination and exclusion at the University. Thus, although the module is on offer at the University, it

really cannot be said that it is doing much to move the University towards its aspiration of becoming an inclusive and racially harmonious environment.

[454] My conclusion is that by offering the Shared Humanities module as an optional, pilot module, the University has ultimately signalled a lack of political will and belief in it. This is somewhat confusing though, when considered against the evidence before this Commission. Although there were certainly diverging views on whether the module is a workable solution, most of the leaders in critical positions at the University expressed their admiration and support for the module. Many of them even agreed that making the module compulsory for all students to take would be a positive development. It is also relevant that the University has at its disposal the academic prowess of many leading experts, including Professor Jansen, Professor Madonsela and Professor Gobodo-Madikizela, who are well placed to design and position the module for success.

[455] I agree with the many witnesses who observed that it is regrettable, and antithetical to the University's transformation objectives, that most students will graduate without ever having engaged with issues that are central to an informed and self-reflective understanding of society. While I recognise that the implementation of the Shared Humanities module as a compulsory course would not be welcomed by all, I agree with the compelling views of Professor Jansen and Professor Maart, both of whom advocated for a compulsory course in fairly strong terms. I therefore conclude that the University's transformation project would benefit from the introduction of a compulsory module for all first year students that would teach them how to engage critically on issues related to discrimination.

[456] However, I do not make this finding without reservations. While the evidence revealed the pedagogical justification for the introduction of a compulsory course, it also highlighted some of the risks. I must accordingly add that the introduction of this course, on its own, cannot function as the golden bullet for eradicating the University's cultural problems. It can, however, function as a starting point where a platform is given to important and relevant conversations, and where students are taught to engage with one another respectfully and to examine their worldviews. In this way, it will at least prevent racist attitudes learned prior to arrival at the University from

enduring, unquestioned. It will also send a clear message to all students about the University's expectations of the way they engage with one another.

[457] However, if these benefits are to be realised, it is absolutely critical that the course is designed in a manner that will captivate and interest all students, and not simply be seen as a brainwashing exercise that promotes a specific ideology. I agree completely with the expert witnesses that this course should not be intended to teach students what to think, but how to think. The evidence indicated that it is very important that these objectives will be best facilitated through the use of experiential learning methods and through teaching in smaller groups. Moreover, the goal ought to be the absolute avoidance of teaching students in ways that make them feel alienated or ashamed, as this will have no positive effect on these students and they are likely to simply complete the course as required and then move on with their lives. Rather, successfully implemented, this course will provide a thought-provoking and engaging experience for all students.

[458] I do not for a moment suggest that getting this right will be easy or straight-forward. However, it bears emphasis that the University is greatly advantaged by experts in the field of curriculum development, social justice, and a broad range of matters that relate to discrimination and racism in its many guises. If ever there were a team equipped to successfully implement a compulsory course of this kind, it would be found at the University.

Perspectives and experiences of staff members

[459] The Commission heard a great deal of evidence from staff members of the University. They provided a range of perspectives, not only on the systems and policies of the University, but also on their own experiences of discrimination and exclusion at the University.

[460] The overwhelming evidence before the Commission indicated that the University is not an inclusive and welcoming environment for Black members of staff. There was not a single witness who did not comment on the fact that they have experienced subtle, underhanded racism and prejudices in the course of their work at the University, both from staff members and students. In addition, there is a widespread

belief that the career trajectories of Black members of staff face additional limitations because of these underlying prejudices. It is also perspicuous that the majority of staff members do not feel able to vocalise their complaints and negative experiences for fear of repercussions and intimidation.

[461] I must also add that the empirical evidence cannot be ignored. If there are Black members of staff who have experienced blatant and vile racist acts in the town, this cannot be regarded as exceptional. The fact of the matter is that the environment at the University and in the town is not conducive to making Black members of staff feel welcome, included and respected.

[462] Finally, there is evidently scope to improve the working environment and working relations at the University through development programmes, like the Siyakhula programme. The evidence showed that the feedback on this programme was generally positive, and that the main problem lies in the lack of participation and attendance at sessions offered by programmes like Siyakhula. This is a lost opportunity to facilitate learning as well as constructive engagement between staff members at the University.

[463] I agree wholeheartedly with the evidence of Professor Maart, who explained that it is not unreasonable to expect all employees to undergo compulsory training on matters that are important to the optimal functioning of an organisation. Since transformation has been identified in this light for the University, it is evident that the University needs to either find better ways to incentivise or possibly even require all members of staff, and particularly those in leadership positions, to undergo training that will equip them to play a positive role in the University's transformation journey. In any event, this is already required by the University's Policy on Unfair Discrimination and Harassment.³⁹ Since the Siyakhula programme is already established and praised by those who have participated in it, there is no reason that it should not be used as a starting point or foundation for this training.

³⁹ Article 7.1.4 of the Policy on Unfair Discrimination and Harassment provides as follows:

“Annual training opportunities for staff: As part of their induction at SU, all employees are required to undergo training as regards race, diversity, transformation and social justice within a year of them being appointed, as well as at other times while they are in SU's employ, to enhance their understanding and compliance with this policy. Awareness training about the Employment Equity Act and the Six Codes of Good Practice must be included as per the Employment Equity Plan (prescribed by the Employment Equity Act and the Six Codes of Good Practice).”

Perspectives and experiences of students

[464] The perspectives and experiences of students were at the heart of this Inquiry. Their learning and development is, after all, one of the primary reasons for the University's existence. I accordingly have several findings to make in relation to the student experience at the University.

[465] Firstly, the evidence exposed several flaws in the Welcoming Programme. Many students expressed the view that the programme is overly focused on the social aspect of University life, and neglects the need to practically equip students for the large adjustment to university life. This is particularly so for first generation students who are often from disadvantaged backgrounds. In addition, many students were of the view that the Welcoming Programme could include more sessions and activities geared towards instilling inclusivity and social cohesion between the first year students and in the residences.

[466] This leads to my second finding, which is that the Res Ed programme could be vastly improved. The evidence indicates that the programme is currently performing inconsistently because its successful implementation depends entirely on the HC of each Community. It is also perspicuous that the facilitation of the Res Ed sessions is often left to student leaders who are not adequately trained, equipped or supported to run these sessions effectively or appropriately.

[467] Furthermore, the evidence also leads me to the conclusion that it is unlikely that the Res Ed programme will achieve its desired ends purely through its inclusion in Welcoming. It seems that the current system leads to the laying of a foundation for a house that is never properly built. The logical conclusion is that it would be a more effective programme if it were to include additional compulsory sessions that would take place in the Communities throughout the year.

[468] This is particularly important in the light of the evidence that indicated the lack of participation and engagement in transformation initiatives and critical engagement sessions in the Communities. It is imperative that more students join the conversation on transformation at the University. With that in mind, I must emphasise that requiring participation in these events will only yield returns if these sessions

facilitate learning in a fashion that does not blame or shame. While I do not advocate for the coddling of racist or discriminatory belief systems, I agree completely with Professor Madonsela's assertion that shaming people does not reform them, but only encourages them to disengage entirely. It will accordingly serve no purpose to require engagement and then induce disengagement.

[469] I cannot dismiss the evidence that indicated that there have been cultural improvements in many of the Communities in recent decades. However, that being said, the overwhelming message from the evidence of the students was that many of the residences are racially segregated and experienced as places where Black students feel excluded and unwelcome. This is in large part due to the fact that some of the residences tend to disproportionately favour Afrikaans cultural practices, and because there is a perceived⁴⁰ lack of representation and diversity amidst HC members and the Prims.

[470] Racial segregation in the residences appears to occur as a consequence of many factors. Some that arose in the evidence included the different expectations, resources and priorities of different groups of students, as well as their cultural preferences. To illustrate this point, it is unsurprising that White, Afrikaans students are more likely to attend and socialise together at events that cater to their cultural preferences. Black students, on the other hand, may be less inclined to attend these events, which means that socialisation across the racial divide is less likely to take place. This is exacerbated by the disparity between students' financial constraints, which tends to be racialised as well.

[471] Moreover, a related cause of segregation is the late arrival of the NSFAS students during Welcoming. These students arrive on the backfoot. Not only do many of them have to navigate the move to the University with less support than their peers, but they also have to deal with the added stresses and bureaucracy created by NSFAS. Thus, it is hugely problematic that they miss out on a significant period during which they could bond with the rest of their Community and adjust to life at the University. There is thus a natural divide between them and the rest of the Community, which is only worsened in residences where the NSFAS students end up sharing rooms with one

⁴⁰ I describe this as perception as opposed to fact, because the Commission was not furnished with the demographic profiles of all HC members. That being said, the overwhelming consensus of the witnesses was that the majority of HC members tend to be White.

another. Although this may be a practical consequence of the circumstances, it also contributes to racial segregation within the residences.

[472] The salient point that arose from the evidence was that these multifaceted problems in the residences require strong leadership, and a Residence Head who is able to connect with students and student leaders. The evidence showed that the residences where progress has been made in transforming the community into an inclusive space tend to have Residence Heads who have very good relationships with the students, and who are willing to listen to and learn from the students. The exact opposite was evidently the case in Huis Marais, where the Residence Head and student leaders do not appear capable of working together.

[473] The evidence regarding students' experiences in the different faculties was largely inconclusive. In general, some students felt that some of their White lecturers tend to favour White, Afrikaans students. In addition, several students complained about experiences of lecturers refusing to teach in English, and only lecturing in Afrikaans. There was also a perception that many lecturers are unsympathetic towards students who support the University's transformation journey. While these perceptions and complaints give pause for thought, they were not adequately supported to warrant a finding by this Commission. My only observation would be that it would be wise of the University to ensure that its Deans and other faculty leaders are alive to these complaints and allegations and to take measures to guard against the occurrence of these types of problems.

[474] The overwhelming evidence of the witnesses also indicated that the University's culture is generally considered to be inclusive of only those who are willing to assimilate into its existing Afrikaans culture and traditions. One witness explained that it feels impossible to distinguish the University's culture from the Afrikaans culture, and that this makes it difficult for Black students to feel that they belong and be proud to be labelled as a "matie".⁴¹ The only possible conclusion to be drawn from the evidence is that much work is needed before the University's culture can be considered culturally diverse and inclusive.

⁴¹ "Matie" is a colloquial term used to refer to students of the University, often used in the context of sports.

[475] After considering the evidence of the various student leaders, I have several observations. The first is that it is in the University's best interests if the SRC and the Prims and HC members are able to work together during their terms of leadership. I accordingly cannot agree that the existing system which draws hard lines between them is conducive to a cohesive and collaborative student leadership structure. The immediate problem that springs to mind is that these leaders are overseen and trained entirely separately to one another by different centres within the University. While there may be practical differences between what their roles require of them, it is still important that there be a golden thread, tying them together for the common good of the University. This golden thread is currently missing from the system, as the SRC and Community leaders work separately within their silos of leadership.

[476] Another finding that I must make is that the evidence revealed severe shortcomings in the training and support provided to student leaders, both in the SRC and in the Communities. Almost every single student leader expressed the view that their training had not equipped them for their role. The evidence also provided disappointingly ambiguous answers as to what the University is doing to equip its student leaders for the role that they must play in transformation at the University. This was particularly so in the case of the Community leaders, as there does not appear to be a decisive and systematic approach to providing this kind of training to all of the HC members. It is wholly inadequate to expect only one portfolio holder from each HC to receive training from the Transformation Office, and this system entrenches the belief that transformation can be relegated to the concerns and responsibilities of a select few.

[477] In short, the training that is currently provided to the student leaders is not conducive to facilitating the transformation objectives of the University, and it is particularly ill-suited to improving social cohesion in the residences. I can only conclude that the CSLEEC and other offices that are equipped to train student leaders are being terribly underutilised in this regard.

[478] A final comment that I shall add on the training for student leaders is that it is relevant and noteworthy that the University's Policy on Unfair Discrimination and Harassment requires the University to ensure that all student leaders receive training on

the policy, at least.⁴² Thus, this is an example of one of the University's policies failing to translate into practice.

[479] The other pertinent conclusion to be drawn from the evidence is that many student leaders feel overburdened by the pressure and expectations of their roles. This is particularly so in the case of leaders involved in transformation, including the Critical Engagement portfolio holders in the HCs, because their efforts are often met with resistance and disinterest from their fellow HC members. Many student leaders felt that they do not have anyone to approach for support or guidance. I must emphasise that this is particularly relevant for the HC members and Prims of PSOs because of the lack of a Residence Head in their Communities. This evidence supports two possible conclusions. Either there is a shortage of staff members designated to provide support and guidance to the student leaders, or the staff members who are meant to be performing this function are failing at it.

[480] I am compelled to add one final point relating to student leaders. A very strong sentiment emerged from the evidence that the members of the Rectorate, and the Vice-Chancellor in particular, ought to engage more frequently and visibly with the students on an ongoing basis. In the same breath, the evidence indicated that there is a positive and functional working relationship between the Vice-Chancellor and the SRC, who naturally act as representatives of the entire student body. This is a sensible system because it would be unrealistic to expect the Vice-Chancellor to engage with all of the students in addition to the many other demands of his position. That being said, the Vice-Chancellor and other members of the Rectorate may wish to contemplate this matter further and consider ways in which it might make the students feel more recognised and heard by the leadership of the University.

[481] Before I proceed, I must provide a brief comment on student success rates. Earlier in this report it was revealed that the Commission considered statistics reflecting the success rates of students according to race. These success rates were relatively lower

⁴² See [64]. In particular, article 7.1.4 (d) provides that—

“Heads of residences and coordinators of private student organisations (PSOs), in collaboration with the Centre for Student Communities (CSC), must ensure that all students understand the policy and procedures set out herein. Annual training for student leaders (including house committee members, mentors, committee members of associations and Student Representative Council members) should be facilitated to ensure that students are informed of the policy and its content.”

than the national rate for undergraduate students of all groups, and particularly Black African students. Although these statistics may appear provocative at first blush, I must clarify that the Commission did not hear any further evidence that enables it to make a finding relating to these success rates. They must simply be understood as providing context to the status of transformation at the University.

The language policy

[482] Based on the evidence I have detailed in this report, my finding on the University's language policy should come as no surprise. Although the University's commitment to multilingualism cannot be faulted in theory, the reality is that the historical preference for Afrikaans endures at the University despite the language policy's inclusion of English and isiXhosa. Moreover, complaints of racialised exclusion through the Afrikaans language came up repeatedly.

[483] Students and members of staff complained that there is a cultural preference for the speaking of Afrikaans, and that this makes many Black members of the University community feel unwelcome and excluded. It also divides communication and socialising along racial lines.

[484] The language policy also disproportionately prejudices members of staff who do not speak Afrikaans, who often tend to be Black, because they have to rely on the assistance of translators for setting and marking assessments. The evidence also indicated that the language policy deters Black people from applying to and accepting posts at the University. In this regard, it is also impeding the University's employment equity objectives. However, it should also be noted that even White, Afrikaans academics and members of staff at the University have complained that the language policy adds substantially to their workload without compensatory benefit.

[485] In short, the language policy is causing the University to incur a great deal of its resources in time and money, simply to appease one group at the University. I am very familiar with the constitutional imperative to not deprive Afrikaans-speaking students of their existing enjoyment of the right to be educated in their language of

choice without appropriate justification.⁴³ However, I am dubious as to whether the current language policy is benefitting the University as a whole. It seems to me that what is framed as a commitment to multilingualism has mostly just resulted in the University having to expend a disproportionate amount of resources on the Afrikaans language.

[486] I understand why this is a contentious issue at the University. After all, “[i]f you talk to a man in a language he understands, that goes to his head. If you talk to him in his own language, that goes to his heart.”⁴⁴ It is therefore understandable that there is resistance to any reduction in the University’s provision of an Afrikaans learning environment. However, there needs to be a shift in understanding of why there is a move towards the use of English. It is not to discourage the celebration of any group’s heritage, nor is it to prefer or glorify English as the better choice. It is simply a matter of pragmatism, and of ensuring that everyone is included in the conversation.

External influences

[487] It is perspicuous that the University’s transformation project has been affected by external influences, including the alumni and various political interest groups.

[488] While a fair amount of evidence indicated that the alumni make positive and generous contributions to the University in terms of their time and financial resources, there was also a lot of evidence about the inappropriate and intrusive role that the alumni play at the University.

[489] My observations are that there have been plenty of instances of the alumni becoming involved in policy decisions at the University. This seems to happen most frequently in the male residences, an example of which was when the alumni became involved to prevent the Rectorate from converting Huis Marais into a mixed residence. However, many other examples were provided too. The trend appears to be that the

⁴³ See *Chairperson of the Council of UNISA v AfriForum NPC* [2021] ZACC 32; 2022 (2) SA 1 (CC); 2022 (3) BCLR 291 (CC) at para 77.

⁴⁴ This quote is frequently attributed to former President Nelson Mandela. However, it is actually a misquote. Interestingly, it is a modification of his original quote, which was the following:

“Because when you speak a language, English, well many people understand you, including Afrikaners, but when you speak Afrikaans, you know you go straight to their hearts.”

alumni tend to involve attorneys, which can be a successful and intimidating tactic, as was the case when the Huis Marais Agreement was signed.

[490] On the whole, my impression is not that the alumni play the most direct role in derailing transformation and change at the University. However, it certainly seems to be the case that the University must constantly watch its step as it attempts to implement changes, as there is a constant threat of litigation from the alumni, should the University expose itself to any form of legal challenge in the process.

[491] It is also the case that the alumni and external political groups influence the public image of the University. While this does not directly affect the University's daily business, it fuels tension by feeding the narrative that the University is attempting to cleanse itself of Afrikaans people. It also publicises the idea that the University must remain a herald of Afrikaans culture and pride, which could deter applications from prospective students and staff members who feel that they would be unwelcome in this environment.

(d) *Incidental findings*

The Law Dance incident

[492] At the time of writing, the University's internal disciplinary processes are still underway, and no final outcome has been determined. It would accordingly be inappropriate and helpful for the Commission to make any findings on this incident. I shall, however, make two findings that relate to ancillary issues.

[493] Firstly, this incident was demonstrative of the importance and impact of the environment when it comes to matters of transformation at the University. All of the witnesses indicated that in the aftermath of the incident, the Law Faculty and its leaders were helpful, supportive, and signalled a firm commitment to taking matters of discrimination seriously. It was evident that this made a reassuring impression on the student witnesses, which is noteworthy in the light of the recurring theme that students struggle to trust the system and believe that the University does not genuinely care about their concerns.

[494] Secondly, I have already addressed my primary concerns about the lack of professionalism, competence and efficiency shown by the Equality Unit in its

investigation of this matter. I shall not repeat myself in any great detail, save to say that the Equality Unit's work on this matter left much to be desired, and undoubtedly compounded the distress experienced by all parties involved in the incident.

The Huis Marais incident

[495] Nothing in the evidence before this Commission would lead me to disagree with the CDC's finding that Mr du Toit acted in a racist manner.⁴⁵ However, at the time of writing, the CDC's finding is in the process of being appealed by Mr du Toit. It would therefore be inappropriate of this Commission to make any findings on the Huis Marais incident. I shall, however, merely comment on several significant points that arose from the evidence that was before this Commission.

[496] It was also striking that the transformation project has been lost on the student leaders of Huis Marais. They repeatedly expressed frustration at the fact that they are expected to work towards solving national problems that they did not create. They evidently have not understood or internalised how existing systems and their behaviour might be perpetuating those problems.

[497] For example, these student leaders held the view that Mr du Toit's conduct was in no way racially motivated, but was solely a consequence of alcohol abuse. Even when it was put to them that the CDC had found that the incident did involve racist conduct, they persisted with the stance that no racism was involved.

[498] Another observation that I must make is that it is astonishing that the Residence Head has remained in that position, despite his terrible relationship with the students and all of the problems that have occurred in Huis Marais under his watch. All of the evidence highlighted the fact that the Residence Head plays an instrumental role in shaping the culture and behaviour in a residence, it accordingly flies in the face of all rationality that the University has allowed him to remain in that position despite all of the signs that he was failing miserably at dealing with that challenging and problematic environment. As Professor Maart astutely observed, institutions should not make

⁴⁵ To be precise, the CDC made the following finding:

"In terms of the Statement Charge, Mr. Du Toit is found guilty of acting in a racist manner in saying a variation of "it's a white boy thing", and by doing so, contravening:
a. Clause 9.3 of the Disciplinary Code for Students of SU 2021."

decisions based on likeability, but rather on who is best suited to the job. I am afraid to say that Dr Groenewald is evidently not suited to that job.

[499] After all that has happened, many witnesses suggested that the University seriously erred in backtracking on its decision to convert Huis Marais into a mixed residence. I am inclined to agree. Although the University's decision in this regard was guided by a legal opinion at the time, it was made evident to the Commission that the problems identified in that legal opinion have subsequently been addressed. This has been achieved through the Rectorate obtaining the necessary delegation of power from the Council, and because the University naturally has the opportunity to reinstitute the decision-making process, this time with an emphasis on the procedural fairness required by PAJA. In other words, the impediments identified by the legal opinion were removed by the University and it is open to it to revisit its decision to convert Huis Marais into a mixed residence.

[500] As Professor Madonsela, and several other witnesses, explained, sometimes the only way to cleanse a very toxic environment is with radical change. Perhaps that conversion would have been the radical change that Huis Marais so desperately needed. And perhaps, had the University gone through with its decision, I would never have written this report.

“Precedent is a poor reason for decisions. It calcifies the status quo without a compelling rationale. It doesn’t matter how long a tradition has stood. If the old way is wrong, it should be challenged and changed. Progress lies in improving the future, not defending the past.” – Adam Grant.

V Part 5: Recommendations

[501] Before I make my recommendations, I emphasise the above words. It may be mystifying to see a retired Judge discouraging reliance on precedent. After all, our legal system relies heavily on the doctrine of *stare decisis*.⁴⁶ However, the value of precedent in the context of the law is quite distinct to its value in the context of the University which is still struggling to break decisively from its history. As Professor Maart observed, it is not possible to legislate attitudes. The University has done a fairly thorough job of changing the official, policy-based remnants of its exclusionary past. What remains now is to change attitudes, and convince the University community at large that the old way of doing things can no longer be sustained in the new South Africa, and that it is time to move on from the past.

(a) *Structural improvements*

The Equality Unit

[502] I have emphasised the various problems that the evidence exposed about the Equality Unit, and have several recommendations in this regard.

[503] Firstly, there needs to be a thorough and deliberate effort to position the Equality Unit as a visible and important component of the University’s transformation apparatus. Furthermore, the Equality Unit’s processes and systems need to be widely publicised and made visible to all members of the University community.

[504] Secondly, it would be beneficial if the Equality Unit were to provide transparent guidelines on what a complainant and alleged wrongdoer can expect from a procedural and timing perspective. These ought to be given to a complainant at the outset of the reporting stage, and made widely available to the University community.

⁴⁶ This means “to stand by things decided” and in the simplest possible terms is the principle that binds courts by earlier decisions.

[505] Thirdly, strategic choices need to be made to upskill the Equality Unit so that they are able to perform their investigative functions competently and efficiently. This could include legal training, or the employment of legal practitioners.

[506] Fourthly, I recommend that the University reviews the list of prescribed recommendations available to the Equality Unit and consider expanding that list to provide for a more comprehensive variety of recommendations that could fit a wider range of circumstances.

[507] Fifthly, the Equality Unit's existing processes must be examined with a view to improving the professionalism and efficiency of the services provided by the Equality Unit. Ultimately, these processes should avoid overburdening complainants and ought to inspire confidence in the Equality Unit. They must also place emphasis on the need for the Equality Unit to pay attention to the preferences of complainants when recommending an appropriate method of resolution.

[508] Finally, I recommend that the Equality Unit's role in disciplinary matters be seriously reconsidered. It makes little sense and leads to wasted resources that the Office of Student Discipline must conduct its own investigation after the Equality Unit has referred the matter to that office. It also leads to delays and frustrations for the parties involved, as was the case in the Law Dance incident. I would recommend the introduction of a procedure whereby an expedited preliminary investigation may be conducted by the Equality Unit in matters of alleged misconduct. This will ensure that disciplinary matters are handed over to the Office of Student Discipline and dealt with as expeditiously as possible.

The Transformation Office

[509] I recommend that the University seriously deliberates on allocating greater resources and support to the Transformation Office. This ought to include specific provision for psychological support and possibly counselling to the members of staff.

[510] Finally, the Rectorate and Transformation Office need to clarify and ensure that there are processes in place to enable the Transformation Office to conduct

its work with the Rectorate itself, should the need arise. This is to ensure that there are no environments at the University beyond the reach of the Transformation Office.

(b) *Educational interventions*

Training for students and accessibility of information

[511] I cannot emphasise how strongly I recommend that in-depth training is provided to all students on the University's transformation apparatus. This ought to take place during Welcoming to ensure that every student is familiar with these important structures and documents.

[512] In addition, to ensure accessibility of information, I recommend that the University take concerted efforts to place visible reminders of its transformation apparatus around the campus, and especially in common areas in residences and faculties. Any additional electronic means of increasing awareness of and access to the University's transformation apparatus ought to be taken as well.

The introduction of a compulsory, core curriculum module

[513] I recommend that the University seriously consider implementing a compulsory module for all first year students. This module may be based on the existing Shared Humanities module, but modified to optimise its efficacy when taught to a larger group of students.

[514] The University has ample academic and human resources at its disposal to design and optimise this course. I recommend that it utilises these resources to the best of its ability. These experts are best placed to advise the University as to whether this course ought to be credit bearing.

Training for members of staff

[515] I recommend that training on matters relating to discrimination and transformation must be made compulsory for all members of staff at the University. The University may consider utilising and upscaling the Siyakhula Programme for this purpose. While this is my recommendation, I emphasise that it is in fact an existing requirement in the University's Policy on Unfair Discrimination and Harassment.⁴⁷

⁴⁷ See n 39.

[516] In order to ensure that all members of staff participate in this training, the University ought to consider including this participation as a component of all staff members' performance evaluation.

Collaboration between key role players

[517] Greater emphasis ought to be placed on collaboration between the Transformation Office and the Equality Unit. Ultimately, their work is inextricably linked. The Equality Unit operates as a reporting unit, whereas the Transformation Office focuses on designing solutions for problematic environments. Thus, it is difficult to understand how either can perform its function optimally without the partnership of the other. I accordingly recommend that the Transformation Office and Equality Unit focus on improving their communication and cooperation.

[518] In addition, I strongly recommend that the CSLEEC and CSC strengthen their partnership and collaborate more in order to provide an improved training experience to all student leaders. This partnership should also be geared towards breaking down the divide between the SRC and the Community leaders to build a body of student leaders who are able to cooperate and work together for the common good of the University.

The adoption of a Transformation Charter

[519] I recommend that the various key stakeholders across the University community be assembled to draft and create a Transformation Charter to be adopted by the University.

[520] This Charter ought to clarify what the University stands for and what measures are in place to hold it to its values. The process of creating the Charter should be leveraged to spark University-wide discourse.

(c) *The student experience*

[521] I must briefly pause to express my gratitude to the student leaders who furnished the Commission with a memorandum titled "Addressing Social Injustices at Stellenbosch University". This memorandum was handed over to the Rectorate on 12 August 2022. It contains various recommendations that have been crafted through

the collaboration of all student leaders at the University. I commend the student leaders on their commitment to fighting for positive change at the University, and must acknowledge that I agree wholeheartedly with many of their recommendations. I have accordingly taken the liberty of referring directly to those that I consider most apposite.

Welcoming and Res Ed

[522] My first recommendation is that the Division of Student Affairs plays a greater role in designing the Welcoming Programme to ensure that it meets the needs of all incoming students, with careful attention being given to students who are most likely to struggle with the adjustment to university life. In amplification of this recommendation, I refer directly to a recommendation made by the student leaders, with which I completely agree:

“There must be a review of the welcoming programme that focuses less on community building and more on actual practical tools needed to be orientated in a new environment, specifically an institute of higher education. The structure of the programme should take into consideration the socio-economic and related issues that students face. It should thereby also allocate time for mentors to take newcomers to the various support offices on campus to be introduced to the assistance available to them. Finally this reviewed program must be cognisant of commuter students unable to arrive early in the morning or travel late at night to attend.”

[523] I also recommend that attention be given to improving the Res Ed programme. Once again, I can do no better than to reiterate a recommendation provided by the students:

“ResEd sessions should be compulsory throughout the year for first years where the progress is tracked via a SUNLearn module. The programme should be updated to include qualified facilitators and presented by qualified experts. In this review, the name should be changed to include PSO students- but also to remove the already negative connotations to it. These sessions should however not be purely theoretical but rather based in the practical context of SU.”

[524] Finally, I also endorse two recommendations made by the students in relation to the involvement of faculty transformation committees in the student experience, both during the Welcoming Programme and in general. In this regard, I agree with the students that “[f]aculty transformation committees should have a session during Welcoming where they engage with newcomers on current initiatives related to social justice and transformation.” I also agree that “[c]ritical engagements must take

place through faculty committees to integrate these conversations in all spaces on campus.”

Student Communities

[525] In order to address the problems that have been identified in the Student Communities, I recommend that the University undertake a rigorous process to ensure that the rules and constitutions of all of the Student Communities align with the University’s values.

[526] In addition, I recommend that careful attention is given to the procedures that affect the appointment and regulation of Residence Heads. To this end, the student leaders made several insightful recommendations that I support entirely, and shall quote directly:

[527] Firstly –

“Residence Heads should have a cap on the number of terms they can serve in a particular Community and as a Res Head in general. A review panel must be created that will investigate the effectiveness of a Res Head before an additional term is approved. It should further be investigated whether an annual feedback mechanism can be created for a Community to evaluate their residence head’s performance.”

Secondly –

“A unique process to report allegations against Res Heads must be created that takes into consideration the unique role of the position. This process must be clearly conveyed to relevant student leaders.”

And thirdly –

“PSO Coordinators must be appointed in the same manner as Res Heads to singular Communities as the alternative has led to overworked and underperforming coordinators.”

[528] I shall add to this final recommendation that the alternative has also led to an unfair burden on and lack of support for Community leaders in PSOs.

Training for student leaders

[529] One of the most crucial recommendations to come from this Inquiry is that improved training needs to be provided to all student leaders, and particularly Community leaders. I agree with the student leaders, who recommended that “[s]tudent leadership trainings, particularly House Committee trainings should not be superficial

and should include practical content as well as critical engagement and skills development.”

[530] Moreover, I recommend that the Division of Student Affairs investigate ways of utilising collaborative partnerships between different role players at the University who are able to equip student leaders to grapple with their duties. This collaboration must commence with the CSLEEC and the CSC, but could also include the Centre for the Study of the Afterlife of Violence and the Reparative Quest, and possibly the Transformation Office.

Mentorship and support for students

[531] I once again emphasise and recommend that the University take deliberate steps to ensure that all student leaders at the University have access to support and guidance, especially during times of crisis. It must also take deliberate steps to ensure that these channels of support are understood by and accessible to the student leaders.

[532] Furthermore, I also recommend that the University consider implementing mentorship programmes for student leaders to enhance their development. In this regard, the University must consider implementing specialised mentorship programmes for Black student leaders to assist them with building confidence and overcoming the various challenges that have been outlined in this report.

(d) *The language policy*

[533] I must emphasise that there is no inherent prejudice in wanting to speak one’s mother-tongue, but as is true with all things, context matters. The overwhelming impression created by the evidence is that, in the context of the University, the use of English is the preferred language to facilitate inclusivity.

[534] With this in mind, and on a conspectus of all of the evidence about the tensions and problems created by the University’s multilingual policy, I recommend that the University consider reviewing and revising its language policy to remove the possibility of language exclusion through the preference of Afrikaans.

[535] It would be remiss of me not to caution the University that this process of review must pay careful attention to the negative duty on it, as a public university, to not deprive Afrikaans-speaking students of their enjoyment of the right to study in their

preferred language without appropriate justification. In this regard, I advise the University to consider the Constitutional Court’s judgments in the matters of *Chairperson of the Council of UNISA v AfriForum NPC*⁴⁸ (*UNISA*) and *Gelyke Kanse v Chairperson of the Senate of the University of Stellenbosch*.⁴⁹

[536] There are several significant principles that crystallised in these judgments. Firstly, they recognise that although there is no obligation on universities to provide higher education in a student’s language of choice, if a student is already benefitting from being taught in their preferred language, it is incumbent on the relevant institution to not deprive the student of that right without appropriate justification. Secondly, determining whether an institution has appropriately justified this deprivation will entail balancing various interests and considerations. For instance, in *Gelyke Kanse*, the University successfully demonstrated that—

“the previous language policy created an exclusionary hurdle, specifically for Black students studying at the University of Stellenbosch. The policy made Black students who were not conversant in Afrikaans feel marginalised, because they could not understand the lectures presented in Afrikaans. They felt stigmatised by real time interpretation during lectures and these students felt excluded from other aspects of campus life, including residence meetings and official university events.”⁵⁰

[537] This, considered with the conscientious and comprehensive cost analysis provided by the University demonstrating the financial burden of its previous language policy, ultimately led the Constitutional Court to conclude that the University had acted reasonably in its decision to change its language policy.⁵¹

[538] Moreover, the importance of an institution approaching any contemplated change in its language policy with the requisite diligence came to the fore in *UNISA*. In that matter, the Constitutional Court set aside *UNISA*’s revised language policy on the basis that *UNISA* failed to demonstrate that it was not reasonably practicable for it to continue offering certain courses in Afrikaans in addition to English.⁵² It was also significant that, in that matter, *UNISA* committed various procedural irregularities in adopting its new language policy.⁵³

⁴⁸ [2021] ZACC 32; 2022 (2) SA 1 (CC); 2022 (3) BCLR 291 (CC).

⁴⁹ [2019] ZACC 38; 2020 (1) SA 368 (CC); 2019 (12) BCLR 1479 (CC).

⁵⁰ See *UNISA* above n 48 at para 63.

⁵¹ See *Gelyke Kanse* above n 49 at para 45.

⁵² See *UNISA* above n 48 at para 78.

⁵³ *Id* at paras 85-6.

[539] The University would be wise to pay heed to these principles, amongst the many others espoused in these judgments, should it choose to pursue this recommendation.

(e) *Incidental recommendations*

[540] Considering that the University is still in the process of finalising its internal processes for the Huis Marais incident and the Law Dance incident, it would be inappropriate for this Commission to make recommendations on those incidents. I do, however, have several recommendations relating to the Huis Marais residence.

[541] Firstly, it is plain that there needs to be a decisive change of leadership in the residence, beginning with the Residence Head. In addition, I would strongly recommend that the new HC and Prim of Huis Marais undergo leadership training and mentorship, to assist them in reforming what is evidently a very toxic culture. In this regard, I would advise that Huis Marais partner with the Centre for the Study of the Afterlife of Violence and the Reparative Quest, which offers excellent leadership development programmes with a focus on building cohesion in environments with a history of conflict.

[542] Finally, I recommend that Huis Marais' culture be closely examined by the Division of Student Affairs with the intention of introducing long-term solutions that will reform Huis Marais as a Community that represents and upholds the University's values. I would even recommend that the proposal of converting Huis Marais into a mixed residence be revisited. After all, the agreement that was signed in 2020 appears not to have accomplished its desired ends.

VI Part 6: Conclusion

[543] Earlier in this report, I mentioned that the evidence exposes two polarised perceptions of the University. The one perceives the University as the final bastion of Afrikaans pride and heritage, which must be protected at all costs to safeguard the legacies and rights of the White, Afrikaans community. The other understands the University as exactly the same place that it was during the apartheid era, and perceives it as a hostile and unchanged environment for Black people. My conclusion, at the end of an arduous and comprehensive Inquiry, is that these perceptions are equally untrue. They are both influenced by the preconceived ideas of different groups of people with radically different histories, and they indicate that much learning and introspection is needed.

[544] The words of former President Mandela, on which I humbly relied at the beginning of this report, indicate that if we hope to achieve anything in the new South Africa, we must first do what is necessary to change ourselves. This Inquiry unveiled many past scars and traumas, and indicated that there is still much healing to be done in our country. The University can only hope to realise its potential of becoming the national asset that it can and should be if all members of the University feel that they belong and that it is a place for them. The solution is not to fight and defend the past, it is to unite and build a future together.

[545] After all, the fact that an identical sentiment of fear was expressed by both White, Afrikaans and Black students at the University is an indication that members of the University community are missing opportunities to communicate, connect and understand one another in terms of similarities rather than difference. This state of affairs must be interrupted through this Commission's findings and recommendations so that the University can optimise its transformation apparatus. If this does not happen, it is unlikely that the University will be able to shed its historic scars, heal and grow into the national asset to which it aspires.

[546] My opening words to this report were deliberately chosen. Although it is the work of the entire University community and our greater society to rebuild a country in which all people are provided opportunities to flourish, this cannot be achieved unless every individual is willing to look inwards and change. That is precisely why this

Commission has recommended the implementation of a compulsory, Shared Humanities module, in order to facilitate this critical process of introspection and growth. My closing advice to the University, and indeed anyone willing to listen, borrowed from the words of another luminary of transformation, have been chosen with equal deliberation:

“Darkness cannot drive out darkness, only light can do that. Hate cannot drive out hate, only love can do that.” (Martin Luther King, Jr.)

Addendum: Academic Resources

- i. Ahmed “A phenomenology of whiteness” (2007) 8 *Feminist Theory* 149.
- ii. Bozalek *et al* “Engaging with difference in higher education through collaborative inter-institutional pedagogical practices” (2010) 24 *South African Journal of Higher Education* 1023.
- iii. Durrheim “Race Trouble and the Impossibility of Non-Racialism” (2017) 5 *Critical Philosophy of Race* 320.
- iv. Fiarman “Unconscious Bias: When Good Intentions Aren't Enough” (2016) 74 *Disrupting Inequity* 10.
- v. Kamanga Lived Experiences of Hidden Racism of Students of Colour at an Historically White University (MA thesis, Stellenbosch University, 2019).
- vi. Koopman “Racism in the Post-Apartheid South Africa” in Kretzschmar & Hulley (eds.) *Questions About Life and Morality: Christian Ethics in South Africa Today* (Thorold's Africana Books, 1998).
- vii. Le Grange “A Comment on Critiques of the Article Age- And Education-Related Effects On Cognitive Functioning In Colored South African Women” (2019) 33 *South African Journal of Higher Education* 9.
- viii. Lilienfeld “Microaggressions: Strong Claims, Inadequate Evidence” (2017) 12 *Perspectives on Psychological Science* 138.
- ix. Maart “Black Bodies on South African Beaches: Lus en smaak jou lekkerding” (2020) 33 *Alternation Special Edition* 207.
- x. Maart “Unpacking Decoloniality and Decolonial Education: South Africa and the World” (2020) 33 *Alternation Special Edition* 14.
- xi. Maart “Race: with Emphasis on South Africa” in *Sociology: A South African Perspective* (Cengage, London, 2015).
- xii. Maart “When Black Consciousness Walks Arm-in-arm with Critical Race Theory to Meet Racism and White Consciousness in the Humanities” (2014) 21 *Alternation* 54.
- xiii. Msimang “Non-racialism isn't in the future of South Africa: towards a pessimistic view of race in South Africa” (2018) 96 *Transformation Critical Perspectives on Southern Africa* 48.

- xiv. Tate & Bagguley “Building the anti-racist university: next steps” (2017) 20 *Race Ethnicity and Education* 289.
- xv. Tatum “Defining Racism: Can we talk?” in Tatum “Why Are All the Black Kids Sitting Together in the Cafeteria” and Other Conversations about Race (Perseus Books, 2017).
- xvi. Van der Riet & Verwoerd “Diagnosing and dismantling South African whiteness: ‘white work’ in the Dutch Reformed Church” (2022) 78 *Theological Studies*.