

## Advice Note

Responsible Officer: Manager People Services

Date of Meeting: 16 March 2021

Meeting of the: Council

Item: Motion from Cr Kepert – Complaints Management CEO

### DETAIL

The City of Melville has a duty to review and conduct a fair investigation where an accused employee is provided with the right to have a complaint/s against them determined objectively and any sanction decided on by an unbiased decision-maker or maker's e.g. Council.

A complaint which is widely disseminated without any form of preliminary assessment and consideration of:

1. Is the complaint vexatious?
2. Does the complaint lack substance?
3. Is the complaint frivolous?
4. Is the complaint malicious?

can undermine the integrity of a workplace investigation if warranted and the challenging of any subsequent sanction made against an employee.

Specifically an employee such as the Chief Executive Officer may claim:

1. that a complaint that has had no preliminary assessment prior to its dissemination has caused a deterioration in their standing in the workplace so as to alter the CEO's position being Adverse Action within the meaning of s 342 of the FW Act (81); and

Further injuring an employee in his or her employment' has also been taken to have a wider meaning than financial injury or injury involving deprivation of rights which the employee has under a contract of service. It can be applicable to any circumstances where an employee in the course of his or her employment is treated substantially differently to the manner in which he or she is ordinarily treated and where that treatment can be seen to be injurious or prejudicial.

2. that a complaint that has had no preliminary assessment prior to its dissemination could alter their position to the Chief Executive Officer's prejudice because of the exposure to a potential disadvantage of imposition of a penalty if the complaint is ultimately substantiated e.g a written warning

Whilst there is an inherent interest in complaints about employees such as the CEO; not all complaints received are valid.



To mitigate risk and the ability to defend any future sanctions; the appropriate dissemination of a complaint would, if any, be done so on the basis of having been preliminarily assessed.

If said assessment demonstrates a basis for an investigation by a decision at this time the Mayor, the terms contained within the CEO's contract of employment must be referred to and the relevant parties being the Council, the complainant and the respondent being advised accordingly.

This will ensure overall procedural fairness, risk mitigation and privacy so as to limit any harm or damage to an employee's current or future employment.

The Council should rightfully receive a copy of complaints after the preliminary vetting process as outlined above is undertaken and it is not recommended to simply provide "a copy of any complaint made against the CEO once received by any party."