

Report by the Inspector Pursuant to Section 140(3) of the Independent Commissioner Against Corruption Act 2017 into Supplementary News Corp Australia Complaint

Document title	Report by the Inspector Pursuant to Section 140(3) of the Independent Commissioner Against Corruption Act 2017 into Supplementary News Corp Australia Complaint
-----------------------	---

Contents

Executive Summary.....	3
Background.....	3
Conclusion and Recommendations	7

Executive Summary

1. This Report, pursuant to section 140(3) of the Independent Commissioner against Corruption Act 2017 ("ICAC ACT"), deals with a complaint formally made to me by News Corp Australia ("News Corp") on 14 December 2021 raising issues concerning an alleged disclosure of information obtained by the Independent Commissioner against Corruption ("ICAC") in the course of performing functions connected with the administration of the ICAC Act within the meaning of section 145(1) thereof.
2. I have decided that actions in question do not involve any misconduct, impropriety or breach of the ICAC Act and, therefore, the News Corp complaint should be dismissed.

Background

3. On 14 December 2021, I presented a Report pursuant to section 140 (3) of the Independent Commissioner against Corruption Act 2017 to the Chief Minister in which I dealt with a complaint made to me by News Corp, the publisher of the Northern Territory News and its former editor, Mr Matt Williams.
4. In that complaint, which was dated 5 August 2021, News Corp, somewhat indirectly, raised issues concerning dealings between Mr Greg Thomson, then General Manager of the NT News, and Mr Matt Grant, then Deputy Chief Executive Officer of the Office of the ICAC in June 2021 shortly before the ICAC released the Public Statement which was the subject of my earlier Report.
5. By email to me dated 14 December 2021 News made its complaint in this respect explicit, in the following terms:
 - (1) *Do you, as ICAC Inspector, consider that it was appropriate for Mr Grant to speak to and correspond with Mr Thomson to make adverse and false claims about the conduct of Mr Williams, in circumstances where Mr Williams had no notice of the allegations against him, and where Mr Thompson was not permitted to inform him of those allegations? As indicated in our initial letter of complaint, Mr Grant made seriously defamatory claims about Mr Williams to Mr Thomson, who had worked very effectively and closely with Mr Williams for seven years.*
 - (2) *Was Mr Grant authorised to disclose the information to Mr Thompson that he did? We note that section 145 of the Act sets out the circumstances in which a person is permitted to disclose information obtained in the course of performing official functions. We are unaware of any provision of the Act which enables an ICAC officer to disclose confidential information for the purpose of raising concerns about a breach of the Press Council guidelines (as Mr Grant purported do in his email to Mr Thomson 21 June 2021).*
 - (3) *If the disclosure of this information was not "for the administration of the Act, was Mr Grant authorised in writing by the Commissioner to disclose that information, as is required under section 145(3)(d)?*
6. The correspondence between Mr Grant and Mr Thomson comprised a conversation and three emails dated either 21 or 22 June 2021 in the following terms:

Grant to Thomson 21/6/21

Hello Greg

Thanks for your time on the phone today.

The purpose of this correspondence is to bring a sensitive matter to your attention. The ICAC is conducting an investigation, which is currently in the natural justice stage, meaning that those people

who may be subject to adverse comment have received their portion of the report and the Commissioner is carefully considering their responses before coming to his final conclusion. We maintain strict internal information security practices during this process and serve confidentiality notices on all parties to ensure the sanctity of the process.

I would not ordinarily approach anyone from the media during this phase of an investigation and took you into my confidence to relay our concern that the NT News may be inadvertently breaching the Australian Press Council's Standard of Practice – particularly general principle 8 relating to conflicts of interest and their influence on published material – and that your actions may subsequently have an impact on the course of justice.

Your editor has a personal and professional relationship with actors central to the ICAC investigation and their industry. Some time ago your editor communicated in writing with a person who is central to the investigation, when they were receiving negative media coverage and there was talk of reporting the matter to the ICAC. Amongst other things the editor said, 'will do my absolute best to put a stop to this' and 'you can count on us to deliver plenty of positivity when the <<redacted>> opens' and 'the NT News, especially since I've been in charge has been a big supporter'.

We have analysed the NT News coverage since this commitment was made and find it to be unusually weighted in favour of the individual, the club and the industry. Further, we have noticed intense criticism of the ICAC, across a number of fronts by the NT News in the lead up to the release of this report. We do not comment on the NT News' right to hold us to account, but the level of reporting on a government agency including front pages seems incredibly high. Further the NT Bushranger article this weekend included an implication that the ICAC has preferential relationship with a competing news outlet.

I acknowledge that it is difficult for you to take action whilst maintaining the requisite level of security, prior to the release of this report. I ask you to respect the commitment you made to me at the start of our conversation and err on the side of caution to protect this investigation. It would be particularly improper for News Corp to discuss any detail of an ICAC Investigation or pending report with NT based staff.

Please contact me if you require further clarification.

Thomson to Grant 21/6/21

Hello Matthew

Thanks for your time on the telephone and for sharing the information you have.

Our business has no interest in influencing the outcome of any current ICAC investigations and I appreciate the background you have provided.

My main concern revolves around your office's view of Matt Williams and any perception of conflict of interest in relation to NT News coverage of any ongoing ICAC investigations or the conduct of the ICAC Commissioner Ken Fleming, between now and the end of his tenure.

By way of coincidence, Matt Williams has been appointed to a new role with News Corp and has no day-to-day supervision of the newsroom from today.

I undertake to escalate this issue on a confidential basis to John McGourty, News Corp's National Community Mastheads Editor, to enable him to provide a third-party oversight of any coverage of ICAC matters by the Darwin newsroom.

Should you require any further information, please do not hesitate to contact me.

Grant to Thomson 22/6/21

Hello Greg

Thanks for your response, I note and appreciate the third party oversight that you have proposed.

I have further considered your observations about Commissioner Fleming's media performance over his period in office and have booked media training for the incoming Commissioner in late July to ensure alignment with contemporary practice. We would be interested in you and your new editors [sic] feedback prior to that training.

In the interests of resetting and establishing a more positive future relationship, are you both available to meet in late July?

The precise sequence of this correspondence is not clear to me but that does not appear to matter in the circumstances.

7. I sought a response to the News Corp allegations from Mr Grant and received such a response from Senior Counsel acting on Mr Grant's behalf, Ms Mary Chalmers SC on 12 January 2022. I will attach that response to this Report. Broadly speaking, I accept the matters advanced by Ms Chalmers.
8. Nevertheless, I will deal with each of the questions from News Corp which I have set out in paragraph 3 above.

Question 1: Appropriateness of Mr Grant's Conversation with, and Email to, Mr Thomson.

9. I do not accept that this question states accurately the matters to which I must have regard in dealing with a complaint under the ICAC Act. That Act specifies (section 135(1)(b)) that my functions as Inspector include receiving and dealing with complaints about the ICAC. Section 138(3) empowers me to deal with a complaint in any manner I consider appropriate. While there are no criteria specified for dealing with complaints, I consider, nevertheless, that a complaint may only be upheld if it demonstrates some form of misconduct, impropriety, breach of the ICAC Act or other relevant Northern Territory legislation or an erroneous approach to such legislation on the part of the ICAC or the ICAC officer in question. Certainly, it is not enough, for example, that I disagree with the decision which is the subject of the complaint, or would, or would not, have taken the action myself if I were in the position of the relevant ICAC officer. Thus, I will consider this question on the basis indicated, not whether it was "appropriate" or not.
10. Approached in this way, I do not consider that Mr Grant's conversation with Mr Thomson, or his first email to him, shows any form of misconduct or impropriety, or breach of any relevant legislation. Rather, it seems obvious to me that the purpose of the call and correspondence was to ensure fairness to those who might be the subject of adverse findings in the forthcoming ICAC report while the ICAC was in the process of according them procedural fairness, or as Mr Grant refers to it in his first letter, "natural justice". Nor do I discern from the correspondence any intent to interfere with the freedom of the press and, specifically, that of the Northern Territory News.
11. While Mr Grant referred to the incomplete version of the text message with which I dealt in my 14 December 2021 Report to the Chief Minister, he was not aware that the text message in the hands of the ICAC was incomplete and bears no responsibility himself for the fact that it was. I do not consider that this amounts to any form of misconduct or impropriety or breach of any applicable legislation.

Questions 2 & 3: Authority to Disclose the Information, Effect of s.145 of the ICAC Act.

12. Both Questions 2 and 3 raise questions as to whether Mr Grant's actions in having his discussion with Mr Thomson or sending him the emails set out above amounted to a breach of section 145 of the ICAC Act.
13. My clear view is that nothing Mr Grant did amounted to a breach of section 145. My principal reason for that conclusion is that, if there were any relevant disclosure (a matter of which I am not convinced), it was plainly "for the administration of the Act" to use the words of section 145(3)(a)(i).
14. Section 145 of the Act is in the following terms:

(1) *A person commits an offence if:*

- (a) *the person obtains information in the course of performing functions connected with the administration of this Act; and*
- (b) *the person intentionally engages in conduct; and*
- (c) *the conduct results in the disclosure of the information and the person is reckless in relation to the result.*

Maximum penalty: 400 penalty units or imprisonment for 2 years.

(2) *Strict liability applies to subsection (1)(a).*

(3) *Subsection (1) does not apply if:*

- (a) *the person discloses the information:*
 - (i) *for the administration of this Act; or*
 - (ii) *for legal proceedings arising out of the operation of this Act; or*
 - (iii) *for dealing with a referral; or*
 - (iv) *for obtaining professional legal advice from a legal practitioner; or*
 - (v) *for obtaining professional assistance from a health practitioner; or*
- (b) *the person has knowledge of the information independently from obtaining it in the course of performing functions connected with the administration of this Act; or*
- (c) *the person is an independent entity, or an officer or employee of an independent entity, and:*
 - (i) *the information is not identifying information; or*
 - (ii) *the information is identifying information but the person has given consideration to the principles mentioned in section 91 and disclosure is reasonably necessary to perform the functions of the independent entity; or*
- (d) *the disclosure is authorised in writing by the ICAC or the Inspector; or*
- (e) *the information is otherwise available to the public; or*
- (f) *the person discloses the information believing on reasonable grounds that:*
 - (i) *circumstances of sudden or extraordinary emergency exist; and*
 - (ii) *disclosing the information is the only reasonable way to deal with the emergency; and*
 - (iii) *the disclosure is made in response to the risk and that risk significantly outweighs any risk to a protected person in disclosing the information.*

15. As the section says, the prohibition contained in sub-section (1) of section 145 does not apply if the disclosure is made "for the administration of [the] Act". Mr Grant was acting to protect the integrity of a significant ICAC investigation as I have said in [10] above and, as such, his actions seem to me, beyond rational argument to the contrary, to have been for the administration of the Act within the meaning of section 145(3)(a)(i). Also relevant is the fact that Mr Grant was acting at the request of the Commissioner at the time. That is a further indication that his actions were for the administration of the Act.
16. I note Mr Cameron's argument that there is no provision of the Act that enables the raising of concerns about a breach of Press Council guidelines. That seems to me to mistake Mr Grant's purpose, as I have set it out in [10] above. The reference to the Press Council guidelines was a simple reminder of the Northern Territory News' obligation of fair and accurate reporting and, as such, consistent with Mr Grant's purpose to protect the integrity of the investigation.
17. I also note Mr Cameron's query in his Question 3 as to whether Mr Grant had written authority of the Commissioner to make the disclosure in question. It does not appear from my enquiries that there was such written, as opposed to oral, authority, but, in view of my clear conclusion that the disclosure (assuming it to be such) was for the administration of the Act, that question seems to me to be irrelevant.

Conclusion and Recommendations

18. For these reasons, I consider that Mr Grant's actions did not breach section 145 of the Act, nor amount to any form of misconduct or impropriety and I propose to dismiss the News Corp complaint.
19. I do not think it necessary to recommend that the Chief Minister table this Report although he is free to do so if he wishes. I propose to recommend to the Commissioner that he place a link to this Report on his website, and additionally arrange for it to appear on that of the Inspector.

Respectfully submitted



Bruce R McClintock

Inspector, Independent Commissioner against Corruption

14 January 2022



Mr Bruce McClintock SC
Inspector ICAC
c/- GPO Box 4396
DARWIN NT 0801

12 January 2022

Via email only: brmclintock@sixthfloor.com.au

Dear Inspector (Mr McClintock SC),

I have been engaged by the Solicitor for the Northern Territory to assist Mr Matthew Grant, staff member of the Northern Territory ICAC, in relation to a formal complaint made by News Corp Australia. The complaint is contained in News Corp's letter to you of 14 December 2021, inclusive of annexed email correspondence between Mr Grant and NT News General Manager Greg Thomson ("**the complaint**").

The complaint is about a discrete matter in connection with your recently published *Report by the Inspector Pursuant to Section 140(3) of the Independent Commissioner Against Corruption Act 2017 into a Complaint by News Corp Australia, the Northern Territory News and Matt Williams* ("**the report**").

I note that Mr Grant has been provided a limited opportunity to respond to potentially adverse matters raised in the complaint.

In brief terms, the complaint makes two (2) allegations:-

- i. Mr Grant's conduct in communicating with Mr Thomson on 21 June 2021 was inappropriate because it involved false allegations against an NT News editor Mr Williams, in circumstances where Mr Williams had no notice, and Mr Thomson was not permitted to inform him of the allegations; and
- ii. Mr Grant's communication was unauthorised - with reference to s 145 of the *Independent Commissioner Against Corruption Act 2017* ("**the Act**").



Response

The background to this matter is known to you and set out in the report.

Mr Grant's purpose in contacting Mr Thomson on 21 June 2021 is evident from the content of his email to Mr Thomson sent 13:55 on 21 June 2021. It was high-level confidential communication about the possibility of a conflict of interest on the part of the then NT News editor, in connection with the Darwin Turf Club, which was then under investigation by the ICAC. The investigation was the subject of intense media coverage at the time.

Mr Grant instructs that the email was preceded by a brief telephone conversation on the same date, and the entire exchange with Mr Thomson was convivial in nature. I note this is evidenced to a degree in the email response of Mr Thomson included in the complaint.

We submit that the communication was not inappropriate for the following reasons: -

- (a) The communication was made in the public interest (and the interests of News Corp) and was consistent with the objectives of the Act. Its purpose, evident from the emails, was to ensure that reporting of the ongoing ICAC investigation be accurate, balanced and lawful. More particularly, it was to ensure that parties potentially adversely affected by the outcome of the ICAC's investigation were not prejudiced at the sensitive natural justice stage by inaccurate, unbalanced or unlawful reporting. In this regard, the context of the communication should not be overlooked. This was the most significant ICAC investigation in the history of the office, involving serious allegations of corruption.
- (b) Mr Grant was asked to communicate with Mr Thomson for this purpose by the former Commissioner Mr Fleming QC. Mr Grant acted on that request in good faith. Mr Fleming QC was a very experienced legal practitioner and was Mr Grant's superior.
- (c) The communication in no way suggested or was intended to interfere with the freedom of the press.
- (d) At the time of the communication, Mr Grant and Mr Fleming QC were in possession of an incomplete version of the text message referred to your report. Further, as found by you, both were unaware at the time that they had an incomplete version. The incomplete version of the text message suggested that the editor of this jurisdiction's dominant media outlet was a supporter of Mr Dixon and intended to do his "*absolute best to put a stop to (this)*" with apparent reference to an ICAC investigation into alleged corruption.



Although you refer to a 'siege mentality' on the part of ICAC in the report, the fact of the matter is that there existed a legitimate concern. If you think it will assist your investigation of the complaint, we can compile a chronology of the NT News reporting.

- (e) As you can see from Mr Thomson's response to Mr Grant, he apparently took the matter seriously, and assured Mr Grant that the matter would be treated on a confidential basis. Mr Grant accepted that assurance. No action needed to be taken against Mr Williams as he had already been appointed to a new role. Mr Grant did not request any action be taken against him. It was not a matter in which notice was required to be given to Mr Williams.
- (f) The communication was not unauthorised (see below).

In summary, Mr Grant's conduct was not inappropriate, because it was carried out for a legitimate purpose, in good faith, at the request of a more qualified superior, and on the basis of information that included a concerning text message that unbeknownst to Mr Grant was incomplete.

Was the communication unauthorised?

We submit that the communication was authorised (and not made in breach of s 145 of the Act) for the following reasons: -

- (a) It was made at the request of the Commissioner (whether or not in writing);
- (b) It was made for the purposes of administering the Act and consistent with the objects of the Act;
- (c) Notwithstanding that it was made at the request of the Commissioner on this occasion, Mr Grant held the appropriate delegation to authorise such communications in his own right.

We hope that this assists in finalizing the matter and note that Mr Grant is happy to cooperate with any further inquiry.

Yours faithfully,

MARY CHALMERS SC, BARRISTER
Murray Chambers Northern Territory