

**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**

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1. This report determines a complaint concerning the conduct of the Independent Commissioner against Corruption ("ICAC") made by Nationwide News Pty Ltd ("News"), the publisher of the Northern Territory News, and its former editor, Mr Matt Williams. That complaint concerns the Public Statement issued by the ICAC on 25 June 2021 at the conclusion of its investigation into the circumstances in which the Northern Territory Government made a grant to the Darwin Turf Club ("DTC") to construct a grandstand at its Fannie Bay racecourse. In addition, I have decided to deal with the same issue in respect of a Report which the ICAC prepared and provided to the Chief Minister dealing with the DTC grant. At the time the Public Statement and Report were issued, Mr Kenneth Fleming QC was the Independent Commissioner against Corruption. Mr Fleming retired from that position shortly thereafter.

## Executive Summary

2. I have determined that the ICAC breached section 50(2) of the *Independent Commissioner Against Corruption Act 2017* ("ICAC Act") by failing to give Mr Williams and News notice of an adverse finding contained in the Report, denied Mr Williams and News procedural fairness in respect of a similar adverse finding contained in the Public Statement and that the conduct of the ICAC in relation to the finding against Mr Williams and News was unsatisfactory. I make recommendations to deal with these matters.

## Background

3. On 25 June 2021, the ICAC released a Public Statement purportedly pursuant to section 55 of the ICAC Act entitled *By the Length of the Straight*. On the previous day, 24 June 2021, the ICAC had provided to the Chief Minister, who is the Minister responsible for the ICAC, a Report dealing with the same subject matter. This report has not been tabled in the Legislative Assembly, nor otherwise made public.
4. The Public Statement contains the following passages at the places indicated:
  - *The inside edge was further assisted by a senior representative of a media organisation who told Mr Dixon that his organisation was a "big supporter" and would provide positive media coverage. That undertaking was honoured and continues to this day.* Public Statement, page 7;
  - *[416] A senior media figure has a personal and professional relationship with actors central to this ICAC investigation and their industry. On 21 October 2019 they communicated in writing to Mr Dixon, when he and [DTC] were receiving negative media coverage and there was talk of reporting the matter to the ICAC. Amongst other things the media figure 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 grandstand opens' and 'our agency, especially since I've been in charge has been a big supporter'.* Public Statement, page 92;
  - *21 Oct 2019 Text message from senior media figure to Mr Dixon: 'Hi mate, thanks for the chat. Hang in there. Will do my absolute best to put a stop to this and you can count on us to deliver plenty of positivity when the grandstand opens. I can understand how tough this has been on you. [name redacted], especially since I've been in charge has been a big supporter.'* Public Statement, page 156 Chronology.
5. I made enquiries of the ICAC as to the content of the Report provided to the Chief Minister referred to in [1] above and as to what it regarded as the statutory source of the power to make such a report to the Chief Minister. The ICAC informed me on 15 November 2021 that the same passages as quoted in [4] above appear verbatim at pp 80, 94 and 158 respectively of the Report provided to the Chief Minister. The ICAC informed me that it was acting pursuant to section 50 of the ICAC Act in providing the Report to the Chief Minister. For convenience, I will refer to the passages of the Public

Statement, except where it is necessary to differentiate between them and the equivalent passages in the Public Report. Unless I do so differentiate, my findings are equally applicable to the passages quoted in [4] above in the Public Statement and to the equivalent passages in the Report to the Chief Minister.

6. On 21 October 2019 at 8:18AM, Mr Williams, who, as I have said, was the Editor of the NT News at the time, sent a text message to Mr Brett Dixon, Chairman of the Board of DTC. The complete text of that message is this:

*Hi mate*

*Thanks for the chat.*

*Hang in there.*

*Will do my absolute best to put a stop to this and you can count on us to deliver plenty of positivity when the grandstand opens.*

*I can understand how tough this has been on you.*

*The NT News, especially since I've been in charge, has been a big supporter of racing and we will continue to be.*

*Call me anytime.*

*Matt [my underlining]*

The words underlined were omitted from the purported quotation of Mr Williams' text message in the Public Statement and the equivalent sections of the Report to the Chief Minister. I set out the circumstances in which that occurred below.

7. I have examined the messages passing between Mr Dixon and Mr Williams before and after that quoted above to determine whether the context may change the meaning of Mr Williams' language. In my view, they do not.
8. In the passages from the Public Statement quoted in [4] above, the ICAC has substituted the words "our agency" for the words "NT News" in the quotation set out in the second bullet point above. The words redacted in the third bullet point were "NT News" and the "senior representative" and "senior media figure" referred to was Mr Williams.
9. It is not entirely clear what Mr Williams is referring to when he says he will do his "absolute best to put a stop to this". It is probably a reference to adverse publicity given by media organisations other than the NT News to the awarding of the contract to construct the grandstand on behalf of the DTC in September-October 2019. An example is the following passage taken from an item on the ABC News website on 13 September 2019:

*The Darwin Turf Club's decision to award a multi-million-dollar, government-funded tender to a construction company part-owned by the club's chairman did not meet the public's expectations, the Northern Territory Chief Minister says.*

*In July, the Government gave the Darwin Turf Club (DTC) a \$12 million capital grant to build a multi-purpose grandstand at the Fannie Bay racetrack.*

*Earlier this month, it was revealed the company which submitted the successful tender was Jaytex Constructions, a company co-owned by club chairman Brett Dixon.*

10. How did it come about that the words underlined in the quotation of the text message in [6] above were omitted in the quotation in the Public Statement? The present Commissioner, Mr Michael Riches, informed me that what occurred was that Mr Dixon was required to produce his mobile telephone during an examination pursuant to section 34 of the ICAC Act. Production of the phone is authorised by subsection 34(4) of the ICAC Act. Attempts were made on behalf of the ICAC to download the contents of the phone, but they were unsuccessful. Because of time pressure, a search was performed on the phone for the word “grandstand” and screenshots taken of the material that resulted from the search. It was these screenshots that were the source of the quotations set out in the Public Statement in [4] above. What does not seem to have been appreciated is that this method does not cause the entire message to be displayed on the screen of the phone and that only occurs when highlighted text is clicked on. As a result, the screenshot of the relevant text message did not set out its complete text, omitting the words underlined in [6] above. Thus, the ICAC relied upon an incomplete version of Mr Williams’ text message to Mr Dixon in formulating the findings set out in the Public Statement as quoted in [4] above.
11. Paragraph 416 of the Public Statement was inserted very shortly before the draft was finalised because of a decision made by the then Commissioner, Mr Ken Fleming QC, during a meeting of ICAC staff involved in the preparation of the report on 24 June 2021. That was the day that the Report referred to above was provided to the Chief Minister and the day before the Public Statement was released on 25 June 2021. As I say in [5] above, identical passages were included in the Report provided to the Chief Minister pursuant to section 50 of the Act.
12. It is apparent, as News and Mr Williams assert in the passages set out below, that the ICAC did not inform them he proposed to quote the passage in question in the Report or Public Statement nor did it give them an opportunity to respond to the assertions set out in the relevant passages of those documents.

## NT News Complaint

13. On 5 August 2021 Mr Michael Cameron, National Editorial Counsel of Nationwide News’ parent company wrote to me making a complaint about the passages from the Public Statement set out above. Mr Cameron’s letter is Attachment A to this Report. Mr Cameron expresses his complaint in the following terms:

*My clients’ complaint includes the following areas of concern:*

1. *A failure of the ICAC to afford Mr Williams, a person adversely affected by the investigation, the right of reply to unsubstantiated allegations contained in the ICAC report;*
  2. *A breach of the confidentiality provisions of the ICAC Act by certain personnel at the ICAC;*
  3. *A failure by the ICAC to accurately report the full content of an exchange of text messages between Matt Williams and Darwin Turf Club chairman Brett Dixon;*
  4. *The unprofessional conduct of ICAC personnel in their conduct of the inquiry.*
14. I replied to Mr Cameron’s letter by email dated 6 August 2021 indicating that I proposed to accept his complaint for determination by me as Inspector of the ICAC. I have, however, decided not to deal with the matter raised by Mr Cameron in paragraph 2 of his letter of complaint, that is, his allegation of breach of confidentiality provisions of the ICAC Act. My reason is that these allegations are presently the subject of an investigation by the Northern Territory Police Service, and, in such circumstances, it would be inappropriate for me to investigate them. Further, the Northern Territory Police are better equipped to deal with such matters. I propose, however, to follow the police investigation and take such steps as may be necessary as Inspector at its conclusion.

15. On reviewing Mr Cameron's complaint and its references to the Public Statement, I had some concerns as to whether such a Public Statement was authorised by section 55 of the ICAC Act. Mr Michael Riches, the Commissioner informed me on 13 October 2021 that three of the four applications for judicial review which have been commenced in the Northern Territory Supreme Court arising out of the DTC Public Statement assert that section 55 of the ICAC Act does not provide authority for the making of a Public Statement such as the one released by the ICAC on 25 June 2021. In these circumstances, I decided not to deal with that issue but to await its determination by the Supreme Court and, at that point, take any action which might be necessary after considering the reasons for decision of the Court.
16. Mr Cameron expanded on his complaint of lack of procedural fairness, that is, the matters specified in paragraph 1 of his letter to me dated 5 August 2021 quoted in paragraph [13] above as follows:

*My clients now understand that "senior media figure" to be Matt Williams, the then editor of the NT News.*

\* \* \* \*

*Mr Williams was not afforded the opportunity to refute highly defamatory and false allegations that he tailored the newspaper's reporting to benefit a friend. The Inspector should investigate who at the ICAC was responsible for the adverse reference to Mr Williams and why they did not provide Mr Williams with an opportunity to respond. Further, Mr Williams' position as a media professional had nothing to do with the terms of reference of the inquiry. Mr Williams was not involved in the decision to make the government grant to the turf club; nor was he the beneficiary of any government grant. It is apparent that he was dragged into the controversy by the ICAC as some form of payback for the newspaper doing what newspapers are supposed to do: that is, hold the powerful to account. The NT News has provided scrupulously balanced coverage of the grandstand controversy over the years. An analysis of the NT News' coverage of the matter would show that the newspaper had been balanced in its coverage of the matter. By way of example, the NT News published highly critical articles on its front page on two occasions in February 2020.*

17. As to the allegation set out in paragraph 3 of the letter of complaint quoted in [13] above, that is, that the text of the message set out in the Public Statement was incomplete, Mr Cameron provided the following further information:

*The grandstand report includes an incomplete and doctored version of some text exchanges between Mr Williams and Mr Dixon. By way of example, a text exchange between Mr Williams and Mr Dixon, as quoted in the report (at paragraph 416) ends with Mr Williams texting these words to Mr Dixon:*

*"The NT News, especially since I've been in charge, has been a big supporter."*

*The inference made by the ICAC of this text exchange was that Mr Williams was indicating his personal support of Mr Dixon. An identical inference was also drawn by the NT Independent website in an article published on 4 July 2021. The NT Independent made great play of the fact that it had "seen" a copy of the text message exchange. However, the ICAC version of the text exchange (as copied by the NT Independent) was false and incomplete. I am advised by Mr Williams (who still has his text messages) that the full relevant sentence of that text message reads:*

*"The NT News, especially since I've been in charge, has been a big supporter of racing and we will continue to be."*

*Here Mr Williams was clearly indicating his support of the racing industry in general, and not any particular individual. It is apparent that the ICAC has doctored that sentence to suit its own purposes. It is apparent that reproducing a true version of the full sentence did not suit the ICAC's campaign of*

*bias towards the NT News. Further, someone within the ICAC has (in breach of the confidentiality provisions of the Act) leaked this incomplete version of the text exchange to the NT Independent. The NT Independent's version of the text exchange is identical to the erroneous version produced in the ICAC's report. The reasonable conclusion to be drawn from this is that the NT Independent website was supplied with information in breach of the confidentiality provisions of the ICAC Act and in furtherance of the ICAC's attempt to smear Mr Williams' reputation by circulating inaccurate transcripts of text messages.*

18. The NT News complaint did not raise any issue concerning the contents of the Report to the Chief Minister pursuant to section 50 of the Act, no doubt because those making the complaint were unaware of the contents of that Report. On learning that the passages in question replicated those in the Public Statement, I determined to widen the scope of my enquiry to determine whether the ICAC breached section 50(2) of the Act by failing to give Mr Williams and the NT News a reasonable opportunity to respond to any adverse material in the Report and by failing to include a fair representation of their response in the Report.
19. Thus, the key issues appeared to me to be the following:
1. Did the ICAC breach section 50(2) in the manner stated in the preceding paragraph?
  2. Was Mr Williams denied procedural fairness in so far as he was given no opportunity to answer the allegations made in the Public Statement set out in [4] above?
  3. Did the ICAC state the content of Mr Williams' text message accurately and, if not, how did that come about?
  4. Was there unprofessional conduct by the ICAC in the way it managed the enquiry?
20. My resolution of these issues is set out below.

## The Report—Breach of Section 50(2) of the ICAC Act

21. Sub-section 50(2) of the Act provides:

*If the ICAC proposes to make an adverse finding about a person or body in an investigation report, the ICAC must give the person or body a reasonable opportunity to respond to the adverse material and include a fair representation of the response in the report.*

22. The first question is whether the sections of the Report which replicate the passages quoted from the Public Statement in [4] above amount to "an adverse finding about a person or body". It is undisputed that the ICAC did not give the NT News or Mr Williams an opportunity to respond to such material if it was adverse.
23. I sought a response from the ICAC to News and Mr Williams' allegations that they had been denied procedural fairness. Through the ICAC, former Commissioner Fleming responded as follows:

*Paragraph 416 is in a section of the Report titled "How the Government was dissuaded from exercising the power to require repayment of the Grant"*

*It was included to demonstrate the environment in which the debate about the Grant was in the community. It did not identify any person or outlet. In that sense it was part only of the res gestae.*

*Section 50(2) deals with the making of an adverse finding in a Report. The ICAC was of the view that no adverse finding was being made by the paragraph against a person. The material did not attach to or identify a person or organisation, to the point where natural justice ought to be afforded to the unnamed person or organisation?*

*Further, the ICAC took external legal advice about the whole issue of adverse findings and natural justice before the natural justice process commenced.*

24. I disagree. In my opinion, the contents of the relevant parts of the Report do amount to an adverse finding about Mr Williams and, through him, the NT News. First, the material is critical of the “senior media figure” referred to, suggesting, as it was no doubt intended to do, a bias in favour of the DTC in its coverage rather than a belief that such coverage should be both factual and neutral. Criticism of that sort amounts, in my opinion, to “an adverse finding”. The matter can be tested by asking whether a hypothetical newspaper proprietor or editor would be happy to have such criticism made. The obvious answer is that such a person would not. Secondly, I do not believe it is relevant to this question whether the “senior media figure” was referred to by name or not, the argument the ICAC suggested in the material quoted in the preceding paragraph. First, there is no support in the statutory language for the argument that a finding about an unnamed person is not “adverse” because he is unnamed. Secondly, in a small community such as Darwin it would have been obvious to anyone with local knowledge reading the Report that it was referring to the NT News and its editor or, at the very least, that the “senior media figure” was one of a small group of perhaps 2-3 people. There is a very small pool of “senior media figures” in Darwin. Thirdly, the person referred to as the “senior media figure” would obviously be aware that he was the person referred to, if only because of the quotation of the contents of a text message which he sent to Mr Dixon. He would, therefore, be aware of the criticism and the finding.
25. As stated, I consider that the ICAC breached section 50(2) of the Act by including the passages in question in the Report without giving the NT News or Mr Williams an opportunity to address them. This failure highlights a view I have held for many years that compliance with statutory provisions such as this and with common law procedural fairness obligations improves administrative decision making. If the ICAC had raised the matter with Mr Williams, they would have learned that the text message was incomplete and the erroneous and incomplete quotation would not have been included in either the Report or the Public Statement.

## The Public Statement--Denial of Procedural Fairness

26. The first question to be determined in relation to this issue is whether when promulgating a Public Statement under section 55 of the ICAC Act, the ICAC is obliged to accord procedural fairness persons the subject of adverse reference in such a Statement and, if so, the content of such an obligation. In this connection there is no equivalent provision in section 55 of the Act to sub-sections 50(2).<sup>1</sup> Nevertheless, even in the absence of a specific statutory obligation, there can be no doubt that the ICAC was required by law to accord to any person the subject of possible adverse reference in a section 55 Public Statement the opportunity to answer the allegation. That is long settled--*Kioa v West* (1985) 159 CLR 550. The High Court (at 582) said this:

*It is a fundamental rule of the common law doctrine of natural justice expressed in traditional terms that, generally speaking, when an order is to be made which will deprive a person of some right or interest or the legitimate expectation of a benefit, he is entitled to know the case sought to be made against him and to be given an opportunity of replying to it: Twist v Randwick Municipal Council (1976) 136 CLR 106 at 109; Salemi v MacKellar (No 2) (1977) 137 CLR 396 at 419; Ratu (1977) 137 CLR 461 at 476; Heatley v Tasmanian Racing and Gaming Commission (1977) 137 CLR 487 at 498-499; FAI Insurances Ltd v Winneke (1982) 151 CLR 342 at 360, 376-377; Annamunthodo v*

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<sup>1</sup> A matter which suggests to me that the Northern Territory Legislature did not contemplate that a Public Statement under section 55 would contain “adverse findings” about persons which had not already been included in a Report under sections 50 or 52 and as to which procedural fairness had not already been accorded as required by subsection (2) of each of those provisions.



*Oilfields Workers' Trade Union [1961] AC 945. The reference to "right or interest" in this formulation must be understood as relating to personal liberty, status, preservation of livelihood and reputation, as well as to proprietary rights and interests.*

27. The ICAC appears to have accepted such an obligation in relation to the Public Statement because it obtained advice from counsel about its obligation to accord procedural fairness, although counsel providing that advice was not asked to, and did not, consider whether the matters stated in [416] of the Public Statement should be put to Mr Williams for response.
28. For the same reasons that I have expressed in [24] above, I consider that the material set out in [416] of the Public Statement was adverse and, in those circumstances, the ICAC breached its obligation to accord procedural fairness to Mr Williams and, through him, the NT News by failing to inform them that the material in question would be included in the Public Statement and by failing to give them an opportunity to respond to such material.

## Was the content of Mr Williams' text message accurately quoted?

29. The answer to this question is obvious--Mr Williams' text message was not accurately quoted, omitting as it did the words "of racing". This had the effect of making a significant change to the meaning that a reader would ascribe to the passage as it appeared in the Report and the Public Statement. In the manner presented in those documents, I consider that the reader would think that the "senior media figure" was suggesting that his media organisation was a big supporter of the DTC as opposed to the racing industry in general. While I appreciate that some might think there was not much difference between the two in Darwin, it is incumbent on an investigative body such as the ICAC with wide-ranging powers to be scrupulously accurate in its fact-finding. In this case, it was not.
30. I do not believe the failure was deliberate but came about because of the inexperience of the person tasked with downloading the contents of Mr Dixon's phone and his inability to download the contents thereof, as well as a failure to realise that a screenshot obtained in the manner described above does not necessarily contain the entirety of the communication in question.

## Unprofessional Conduct?

31. This aspect of the complaint is best understood by setting out the following passage from the 5 August 2021 letter referred to in [13] above:

*The inaccurate reproduction of text exchanges and the leaking of this inaccurate version to a third party media outlet is just one example of the unprofessional conduct by the ICAC in relation to this matter. The reasonable conclusion to be drawn from this episode is that a person or persons within the ICAC deliberately doctored transcript of the text exchange in the final report (and subsequently leaked it to a third party media website) in a petty and ultimately futile attempt to embarrass my clients. The ICAC's inaccurate reproduction of the texts would appear to indicate a sinister purpose that goes beyond the remit of the ICAC Commissioner and the terms of reference of the grandstand inquiry. This demands a thorough investigation by the ICAC Inspector.*

*The final ICAC report, in so far as it affects my clients, appears to be a rushed hatchet job designed to somehow publicly embarrass my clients.*

32. My investigation does not support the assertion that the transcript of the text message was "deliberately doctored" or that it was an attempt to embarrass Mr Williams and the NT News. Rather, as I say in [10] above, it came about because of inexperience.
33. That said, there are several matters which emerge from my investigation. The inclusion of [416] in the Public Statement and its analogue in the Report to the Chief Minister seems to have been prompted by a siege mentality that developed inside the ICAC concerning the NT News and fear about its coverage
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of the ICAC investigation into the DTC grandstand matter. Such an attitude is inappropriate for a body such as the ICAC. Inevitably, such agencies will be criticised, sometimes severely and sometimes unfairly, in the media. It would be absurd to think that all such criticism will be fair or accurate. Much probably will not be. Agencies such as the ICAC are, by their very nature, controversial and deal with controversial issues which must be the subject of report and debate in a democratic society. Such debate may not always be dispassionate and considered but sometimes angry and contentious. The media is where such reporting and debate must take place. Officers of such agencies may perceive such external criticism to be unfair and, indeed, on many occasions, it may be. But the best response to such criticism is to ensure that the agency carries out its significant investigative functions competently and fairly. It is, almost invariably, a mistake to respond to such matters. It clearly was in this case.

34. Thus, for the reasons I have given, while I do not believe the word “unprofessional” is appropriate, I do regard the ICAC’s performance in the respects considered in this report as unsatisfactory and falling short of the standards which should govern its conduct.

## Conclusion and Recommendations

35. What, then, should be done to deal with the matter? As this is a Report pursuant to section 140 of the Act, I will submit it to the Chief Minister. He was the recipient of the ICAC Report on 24 June 2021, which has not been made public. Submission of this report to the Chief Minister seems to me to be sufficient to correct any misleading impression arising from the inclusion of part only of the relevant text message. Different considerations arise in relation to the Public Statement because it was made public on 25 June 2021 and remains on the ICAC website. Accordingly, I recommend that the ICAC amend that version of the Public Statement to delete the passages set forth in [4] above and add a link to a copy of this Report, whether on the ICAC website or on that of the Inspector.
36. After preparing a draft of this report, I provided a copy to the former Commissioner, Mr Kenneth Fleming QC, to accord him procedural fairness. Mr Fleming’s response dated 6 December 2021 is attached to this report (Attachment B).

Respectfully submitted



Bruce R McClintock

Inspector, Independent Commissioner against Corruption

14 December 2021

*News Corp* Australia

2 Holt Street  
Surry Hills NSW 2010

5 August 2021

Mr Bruce McClintock SC  
The Inspector  
Northern Territory Independent Commission Against Corruption  
Darwin, NT  
By Email

Dear Mr McClintock

***Complaint to the NT ICAC Inspector***

I represent the publishers comprising News Corp Australia, including Nationwide News Pty Ltd, publisher of the *NT News* newspaper and its former editor Matt Williams. Pursuant to section 138 of the ICAC Act, the *NT News* and Mr Williams seek an investigation by the Inspector into the conduct of the Northern Territory Independent Commission Against Corruption during its recent investigation into the Northern Territory Government's award of a grant to the Darwin Turf Club to construct a public grandstand. A report into the matter titled "By the length of the straight" was released by the ICAC on 25 June 2021.

My clients' complaint includes the following areas of concern:

1. A failure of the ICAC to afford Mr Williams, a person adversely affected by the investigation, the right of reply to unsubstantiated allegations contained in the ICAC report;
2. A breach of the confidentiality provisions of the ICAC Act by certain personnel at the ICAC;
3. A failure by the ICAC to accurately report the full content of an exchange of text messages between Matt Williams and Darwin Turf Club chairman Brett Dixon;
4. The unprofessional conduct of ICAC personnel in their conduct of the inquiry.

**Failure of the ICAC to afford Mr Williams the right of reply**

The right to respond to adverse findings is a key tenet of our legal system. To deny a person the right to respond would amount to a denial of natural justice. At paragraph 416 of the ICAC report into the grandstand it is stated:

*A senior media figure has a personal and professional relationship with actors central to this ICAC investigation and their industry. On 21 October 2019 they communicated in writing to Mr Dixon, when he and DTCL were receiving negative media coverage and there was talk of reporting the matter to the ICAC. Amongst other things the media figure 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 grandstand opens' and 'our agency, especially since I've been in charge has been a big supporter'.*

My clients now understand that "senior media figure" to be Matt Williams, the then editor of the NT News. Why do they hold this view? Because an employee of the ICAC informed my clients that this was the case four days prior to the release of the report. On 21 June 2021 a senior officer at the ICAC telephoned and emailed NT News general manager Greg Thomson to advise him that Matt Williams was the "senior media figure" who would be criticised in the forthcoming report. I am advised that, among other email exchanges, the senior officer wrote to Mr Thomson at 1.55pm on 21 June 2021 to say:

*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.'*

In both phone conversations and emails, I am advised that the senior official indicated that the then ICAC Commissioner held the belief that NT News coverage of the grandstand matter was being influenced by Mr Williams' relationship with DTC chairman – a serious defamatory imputation for which he provided no evidence to support. I am advised that Mr Thomson was given the impression by the senior officer that the reference to Mr Williams in the forthcoming report was, in essence, a retaliatory act by the ICAC over the NT News' reporting of unrelated matters concerning the ICAC. The senior officer stated in one email that "the level of reporting on a government agency including front pages seems incredibly high."

The ICAC report into the DTC grandstand identifies a number of individuals who received adverse mentions for the roles in the grandstand matter. All of these individuals are afforded the opportunity by the ICAC to respond to these findings (see pages 113-138 of the report). Yet at no stage prior was Mr Williams afforded an opportunity to refute such claims. We submit that this amounts to a prima face breach of the Act, namely Section 43, which provides:

Right of response if adverse allegations made

(1) If, at a public inquiry, allegations are made against a person or body that, if true, could reasonably affect the ICAC's findings on the subject matter of the inquiry, the ICAC must give the person or body a reasonable opportunity to respond to the allegations.

- (2) The ICAC may determine whether the opportunity to respond is to be given by allowing the person or body to make written submissions to the inquiry or appear at the inquiry or both.

Mr Williams was not afforded the opportunity to refute highly defamatory and false allegations that he tailored the newspaper's reporting to benefit a friend. The Inspector should investigate who at the ICAC was responsible for the adverse reference to Mr Williams and why they did not provide Mr Williams with an opportunity to respond. Further, Mr Williams' position as a media professional had nothing to do with the terms of reference of the inquiry. Mr Williams was not involved in the decision to make the government grant to the turf club; nor was he the beneficiary of any government grant. It is apparent that he was dragged into the controversy by the ICAC as some form of payback for the newspaper doing what newspapers are supposed to do: that is, hold the powerful to account. The NT News has provided scrupulously balanced coverage of the grandstand controversy over the years. An analysis of the NT News' coverage of the matter would show that the newspaper had been balanced in its coverage of the matter. By way of example, the NT News published highly critical articles on its front page on two occasions in February 2020.

### **A breach of the confidentiality provisions of the Act**

We draw your attention to section 145 of the Act which refers to the unauthorised disclosure of information obtained in the performing of official functions, reproduced in part here:

Unauthorised disclosure of information obtained in course of performing official functions

- (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.

We submit that unauthorised disclosures made by ICAC employees to external persons prior amounts to a breach of the non-disclosure provisions of the Act. We respectfully ask the inspector to investigate the unauthorised disclosure of information by officers from the ICAC. We also submit that there is prima facie evidence that an unknown person within the ICAC leaked certain information to a third party media website, the 'NT Independent' in breach of section 145. The grandstand report includes an incomplete and doctored version of some text exchanges between Mr Williams and Mr Dixon. By way of example, a text exchange between Mr Williams and Mr Dixon, as quoted in the report (at paragraph 416) ends with Mr Williams texting these words to Mr Dixon:

"The *NT News*, especially since I've been in charge, has been a big supporter."

The inference made by the ICAC of this text exchange was that Mr Williams was indicating his personal support of Mr Dixon. An identical inference was also drawn by the NT Independent website in an article published on 4 July 2021. The NT Independent made great play of the fact that it had “seen” a copy of the text message exchange. However, the ICAC version of the text exchange (as copied by the NT Independent) was false and incomplete. I am advised by Mr Williams (who still has his text messages) that the full relevant sentence of that text message reads:

***“The NT News, especially since I’ve been in charge, has been a big supporter of racing and we will continue to be.”***

Here Mr Williams was clearly indicating his support of the racing industry in general, and not any particular individual. It is apparent that the ICAC has doctored that sentence to suit its own purposes. It is apparent that reproducing a true version of the full sentence did not suit the ICAC’s campaign of bias towards the NT News. Further, someone within the ICAC has (in breach of the confidentiality provisions of the Act) leaked this incomplete version of the text exchange to the NT Independent. The NT Independent’s version of the text exchange is identical to the erroneous version produced in the ICAC’s report. The reasonable conclusion to be drawn from this is that the NT Independent website was supplied with information in breach of the confidentiality provisions of the ICAC Act and in furtherance of the ICAC’s attempt to smear Mr Williams’ reputation by circulating inaccurate transcripts of text messages.

### **Unprofessional Conduct**

The inaccurate reproduction of text exchanges and the leaking of this inaccurate version to a third party media outlet is just one example of the unprofessional conduct by the ICAC in relation to this matter. The reasonable conclusion to be drawn from this episode is that a person or persons within the ICAC deliberately doctored transcript of the text exchange in the final report (and subsequently leaked it to a third party media website) in a petty and ultimately futile attempt to embarrass my clients. The ICAC’s inaccurate reproduction of the texts would appear to indicate a sinister purpose that goes beyond the remit of the ICAC Commissioner and the terms of reference of the grandstand inquiry. This demands a thorough investigation by the ICAC Inspector.

The final ICAC report, in so far as it affects my clients, appears to be a rushed hatchet job designed to somehow publicly embarrass my clients. I am advised that the practice of the ICAC is to circulate drafts of the final document to interested parties prior to the release of the final report. I am advised that the earlier drafts of the report circulated to others did not include this paragraph 416. There was no reference to the “senior media figure.” I am advised that the NT News was not afforded an opportunity to view any draft versions. The paragraph in question appears to have been included at the last minute in some crude attempt at a payback over my clients’ coverage of the ICAC’s handling of other matters. This theory is borne out by the fact, in its rush to publish the final report, the ICAC produced two paragraphs numbered ‘416’ in the final version of the report, including the paragraph

referring to the senior media figure. We submit that the ICAC Inspector should investigate why two sections 416 ended up in the final version of the report and why the reference to the "senior media figure" was a late inclusion in the final version of the report.

### **Conclusion**

We submit that there are serious questions to be asked in regards to the conduct of the NT ICAC in so far as it relates to my clients, Mr Williams and the NT News. Apart from offending provisions in its own Act, it is apparent that the ICAC has embarked on a campaign against the NT News outside of its term of reference. In doing so it has denied Mr Williams natural justice and perpetuated defamatory falsehoods against Mr Williams and the newspaper. Needless to say, this amounts to serious misconduct by an organisation that is supposed to be beyond reproach. This misconduct must be investigated by the Inspector. This letter does not amount to an exhaustive statement of my clients' position on the matter. There are other examples of the ICAC's malfeasance. We would be willing to assist the ICAC Inspector in any way we can with the provision of witnesses and original documentation.

Yours sincerely



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News Corp Australia

Ken Fleming QC

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Mr Bruce McClintock SC,

NT ICAC Inspector

Via email: [brmcclintock@sixthfloor.com.au](mailto:brmcclintock@sixthfloor.com.au)

Dear Inspector,

1. Please find below my response to a natural justice opportunity provided to me, in your correspondence dated 25 November 2021, which I received via the NT ICAC on 26 November 2021.
2. I note your provisional determination that I breached section 50(2) of the ICAC Act by failing to give Mr Williams and 'News' notice of an adverse finding contained in the Report, denied Mr Williams and News procedural fairness in respect of a similar adverse finding contained in the Public Statement and that my conduct in relation to the finding against Mr Williams and News was not satisfactory.
3. Ref Para 15 of your report - I gave significant consideration to the propriety of issuing a Public Statement pursuant to section 55 of the ICAC Act. As with all fresh Acts of Parliament, interpreting the complexities of individual sections in the absence of case law specific to the Act in question presents its own challenges. I agree with your position that the Northern Territory Supreme Court is the proper place for this issue to be determined.
4. Ref para 10 and 30 of your report – I agree with your finding that there was no deliberate attempt in my report to misquote the text message from the then NT News Editor Mr Williams to the then Darwin Turf Club President Mr Dixon. The material was misquoted as a result of a mechanical difficulty in downloading the last line of a text message from Mr Dixon's mobile phone.
5. Ref paras 21 to 28 of your report - I restate my position that my report and subsequent recommendations covered the influence that lobbyists, industry and the media can have on government, and may embolden potential improper activity by others. The material upon which the complaint to you was based was included in my report to provide context about the amount of support offered to the racing industry, which, in a democratic society, is a fundamental influencer of political outcomes. On page four of his letter of complaint to you, Mr Cameron appears to confirm this position by saying *'Mr Williams was clearly indicating his support for the racing industry in general and not any particular individual'*. I accept that proposition.
6. Having read Mr Cameron's letter of complaint and your provisional determination, I accept that the comments in the report may have caused a person or body some offence. I apologise for that unequivocally. I refer, in paragraphs 5 above, to my reasons for including the information. In preparing the report and at the time of publishing, I considered the material fell short of the 'adverse finding' threshold which would be required to trigger section 50(2) of the ICAC Act. For



that reason, I considered that I was not required under the Act to give the person or body a reasonable opportunity to respond. Again, if I am wrong in that legal construction then I apologise for that failing.

7. It was an honour to serve as the inaugural Northern Territory Independent Commissioner Against Corruption. The task of interpreting the legislation, setting up an agency from scratch and engaging with the broader public sector and community, was an enormous challenge. The Office of the ICAC is staffed by some of the most hard working and dedicated people you would meet, who show considerable resilience in the face of intense scrutiny by you the Inspector, by the community which they serve, and by no means least, by the media. I accept, and agree with, the proposition (and the subsequent comments) in your report that *'... agencies will be criticised, sometimes severely and sometimes unfairly, in the media. It would be absurd to think that all such criticism will be fair or accurate. Much probably will not be.'*
8. Further, I accept the manner in which you propose to deal with the issues raised.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ken Fleming', written over a horizontal line.

Ken Fleming QC

Barrister at Law

06 December 2021