

18 July 2023

[REDACTED]

[REDACTED]

Dear [REDACTED]

Correspondence regarding RMIT FactLab article

I write in response to the letter dated 27 June 2023 (**Letter**) from your client, Australian News Channel Pty Ltd (**ANC**), and your correspondence sent on 5 July 2023 (**Second Letter**, together the **Letters**), and your follow up email on Friday 14 July, and today's date.

Please accept our apologies in taking time to respond. The allegations raised in the Letters are significant, and taken very seriously by our organisation, so we have sought to ensure our response is fulsome and considered. For convenience, we adopt the same capitalised defined terms in the Letters.

1) Concerns notice

The Letter refers to "reputational harm" to the "ANC and its presenters". Please confirm whether your Letter, or the Second Letter constitutes a "concerns notice" for the purposes of any state defamation legislation, and if so, which legislation.

2) Statement of Opinion

The Letter does not quite set out the full statements from Ms Flint in the Segment, which were the subject of the Fact Check. To assist, this is what Ms Flint stated in full, with paragraph letters and emphasis added for ease of reference:

- (a) *"Way back in 2007 the United Nations passed a Declaration. Now at the time, it was the Howard Government, Australian voted against the Declaration. The USA, New Zealand and Canada also voted against it. Then in 2009, when Labor were elected, they endorsed it. And ever since, the Human Rights Commission has been trying to get Australian governments to legislate the Declaration.*
- (b) ***Now there are 46 Articles separate Articles and the ones that everyone at home should be very concerned about are the ones that suggest that there should be a separate Indigenous nation within Australia, a separate Indigenous government, separate Indigenous economy, rules, law, institutions.***
- (c) ***And it essentially says that Indigenous Australians could choose whether they want to opt in or out of Australian society, you know, under the Federal government, or State***

governments.

- (d) *It also suggests that Federal and State governments would have to consult on every single piece of legislation that might impact Indigenous Australians, which arguably, is every single law that gets passed because Indigenous people are citizens just like the rest of us, so this is worse than the Voice, Corey.*
- (e) *The Voice is potentially dangerous enough and we don't really know how it will be implemented. But this could be infinitely worse. The only reason we know this is being discussed is because its currently before a Joint Standing Committee, before the Federal Parliament. But because, again, everyone's talking about the Voice, this is going fairly well unnoticed and it's hugely concerning."*

When RMIT FactLab examined the statements at (b) and (c), they were found to contain false information. The expert academic sources the FactLab team were in contact with in relation to the statements were Associate Professors Dr Amy Maguire, from the University of Newcastle, and Dr Kate Galloway, from Griffith University's Law School.

Ms Flint appears to refer to Article 5 of the UNDRIP. For completeness, the full text of Article 5 is:

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Ms Flint is entitled to express her opinion. However, her statements at (a) and (b) seek to describe what the Articles of the UNDRIP say, being that the Articles of the UNDRIP:

- (a) "suggest that there should be a separate Indigenous nation within Australia" and
(b) "essentially says that Indigenous Australians could choose to opt in or out of Australian society under the Federal or State governments".

These statements are incorrect or misleading. Each statement mischaracterises the Articles of the UNDRIP by either not providing the full picture – being the totality of the effect of the Articles, or the relevant context.

The full picture and relevant context includes what is set out in Article 46 of the UNDRIP, which provides that all its Articles are subject to the overriding principle of state sovereignty and territorial integrity:

"1. Nothing in this Declaration may be ... construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States."

Where an opinion is based on misleading information, or where the promotion of the opinion amounts to the promotion of misleading information, RMIT FactLab is able to undertake a check in relation to the underlying information, which is what has been done in this instance.

Here, because of the effect of Article 46, Article 5 does not have the meaning which Ms Flint promotes. Her statement at (a) is false because Ms Flint does not acknowledge the overriding effect of Article 46.

Further, the statement by Ms Flint at (b) is a misrepresentation: any person, not just Indigenous people can choose to participate fully, partially or not at all in relation to a nation's society, and such participation (or not) is always subject to the sovereignty and territorial integrity of Australia as a nation.

The Letter states that Ms Flint's statements were "not incompatible" with the statements of Dr Maguire and Dr Galloway. With respect, we disagree in relation to this characterisation. The statements and expert advice of Dr Maguire and Dr Galloway make it clear that Ms Flint's statements were false by omission, and were a misrepresentation of Articles of the UNDRIP.

The Letter refers to the "range of views on the potential effect of Article 46", and as evidence quotes former Australian Ambassador to the United Nations Robert Hill and Professor Dominic O'Sullivan of Charles Sturt University. Despite Mr Hills' view, the Australian government endorsed UNDRIP in 2009, and the Fact Check states this explicitly. Furthermore, quotes attributed to Professor O'Sullivan go to the confirmation of the substance of the Fact Check: regardless of how Indigenous Australians practise their distinct political systems, laws or ways of life they are none-the-less part of the nation state of Australia and the two can co-exist.

Simply describing a statement as "opinion" does not mean it is exempt from being considered in the context of whether it contains or promotes misleading or false information.

3) Errors

The Letter lists six instances where it says the Fact Check incorrectly attributed statements to Ms Flint that she did not make or is otherwise an error. We address these as follows:

- (a) *The headline used for the Fact Check is "The United Nations is not advocating for a separate Indigenous nation within Australia". This is despite Ms Flint making no comment in the Segment on the position of the United Nations.*

Ms Flint discussed the UN Declaration on the Rights of Indigenous Peoples that was adopted by the UN General Assembly in 2007. It is therefore a reasonable characterisation of the Declaration that it represents the position of the United Nations on the rights of Indigenous peoples.

- (b) *In a box under the heading "What was claimed", the Fact Check states "... Nicolle Flint claims the UN Declaration on the Rights of Indigenous Peoples suggests there should be a separate Indigenous nation in Australia". This is despite Ms Flint's statements referring to concerns about particular Articles of the UNDRIP, not the UNDRIP as a whole.*

Ms Flint's statement selectively refers to Articles from the UNDRIP, and excluded other Articles which override the one she focuses on, in a way to render her statement misleading and false. We disagree that the boxed text is an error. As you would appreciate, headlines and sub header text cannot repeat the entirety of an article, and it is our view that the boxed text here is an appropriate summary of the content of the Fact Check.

- (c) *The Fact Check attributes the foundation of Ms Flint's statements to Article 5 of the UNDRIP, despite Ms Flint expressly referring to more than one Article. For example, the Fact Check makes no mention of Article 4, which expressly contemplates a right for indigenous people to "autonomy or self-government in matters relating to their internal or local affairs", Article 9, which expressly contemplates a right to belong to an "indigenous community or nation", or Article 20, which expressly contemplates a right for indigenous people to "maintain and develop their political, economic and social systems or institutions..."*

Regardless of which Articles Ms Flint is referring to, there are none that propose what was claimed: that there are articles "that suggest there should be a separate Indigenous nation within Australia, a separate Indigenous government, separate Indigenous economy, rules, law, and institutions". The Articles do not "essentially" say "that Indigenous Australians could choose whether they want to opt in or out of Australian society under the federal government or state government". Article 46

(1) affirms that Indigenous Australians have the right to practise their distinct political systems, laws or ways of life, within the framework of the existing nation state.

- (d) *The proposition which Dr Maguire is cited as rejecting (i.e. that the UNDRIP “would establish a separate Indigenous nation in Australia”), does not reflect the statements of Ms Flint in the Segment. Ms Flint expressed concern about how certain suggestions contained in Articles of the UNDRIP might ultimately be implemented into law by the Australian Parliament.*

As noted, Ms Flint is entitled to her opinion. But in the Segment, the opinion was not expressed as a full representation of the UNDRIP Articles and contained false information. There are no articles in UNDRIP that might support the establishment of a separate Indigenous nation in Australia, because all Articles are subject to Article 46, which Ms Flint did not mention during the segment.

- (e) *Various references are made throughout the Article to conspiracy theories (with an imputation that Ms Flint has contributed to such conspiracy theories), none of which were mentioned or entertained in the Segment (which is a weekly segment involving Ms Flint titled “the hidden agenda”).*

The Fact Check did not state that Ms Flint was promoting or entertaining a conspiracy theory. The Fact Check states that the claim made by Ms Flint “feeds into” an already existing conspiracy theory that there is a hidden agenda about the Voice. It is the Segment itself which refers to “the hidden agenda”.

The section in the Fact Check under the heading “Why are Facebook users sharing the Sky News segment on the UN declaration?”, provides evidence of other Facebook users sharing the Sky News video to support their conspiratorial beliefs about the United Nations. The Fact Check did not refer to Ms Flint in this section.

- (f) *In a box under the heading “The verdict”, the Fact Check states that “There are no articles in the UN Declaration on the Rights of Indigenous People that propose the establishment of a separate Indigenous nation in Australia...”. This is despite Ms Flint making no comment to that effect in the Segment, as opposed to expressing concern over how certain suggestions contained in Articles of the UNDRIP might ultimately be implemented into law by the Australian Parliament.*

We disagree with your contention here: we consider that Ms Flint did make comments to that effect. Her statement was that the Articles in the Declaration to be concerned about are those that “suggest the establishment of a separate indigenous nation within Australia, a separate Indigenous government, separate Indigenous economy, rules, law, and institutions.”

The Fact Check provides statements from legal and academic experts on the relevant subject matter. They are well-informed, deeply knowledgeable resources who have conducted their own research, published their own papers and can draw on their own experience and knowledge.

The Fact Check provides the context for the issue, and enables readers to go directly to the Segment’s site at first instance to see the full exchange between Mr Bernardi and Ms Flint, as well as the source document which Ms Flint is concerned with, including the Declaration. That is, the Fact Check page itself sends traffic to your client’s site for viewers to see the Segment in full.

The Fact Check also provides links to the actual source materials, including the interview with Ms Flint, as well as the Declaration itself, plus links to the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, which according to the Segment is “the only reason we know this is being discussed.”

4) Impartiality

In your Second Letter, your firm suggests that RMIT FactLab is not impartial, independent or transparent.

We disagree with these suggestions, and we reject your contention that RMIT FactLab has breached the IFCN Code of Principles. The suggestions are as follows in italics, with our response underneath:

- (a) *Some staff members, including Mr Skelton, have published political statements on their social media pages.*

Yes, every person in Australia is entitled to publish political statements on their social media pages, subject to applicable laws such as those regarding racial or religious vilification.

To do so does not inherently mean that the fact checking or journalism activities of that person in the course of their profession are not done in a way which complies with applicable standards.

I personally also post on political issues on my social media pages. I would be concerned if you also considered that I was not able to provide impartial legal advice to my client on that basis.

Please confirm if you are suggesting it is not possible to hold, in a personal capacity, views on political, social or cultural matters, but to also undertake a job which requires impartial analysis of current issues.

- (b) *FactLab fails to disclose the experts personal views in the verdict.*

The Fact Check identifies the experts, including their role, title and place of employment. Further, links to the expert's own workplace profile pages are also included. If any person who read the Fact Check wanted to find out more about the experts' other publications or communications, whether academic or not, they are able to do so and well equipped to through the links provided in the Fact Check to make such enquiries.

What would be more problematic is if the Fact Check sought to quote "an unnamed academic" or "an expert source who preferred not to be identified". This is not how FactLab operates.

RMIT FactLab's commitment to transparency means that experts are named including their place of employment – and links are provided to the relevant source material to enable readers to look at the original data or documents or expert opinions directly.

- (c) *The verdict is not balanced, failing to set out or make reference to any evidence or context which might support Ms Flint's claim, for example noting the academic discussion of the ambiguities inherent in UNDRIP (or noting that some of the claims made by the relevant experts do not align with their other published work).*

As indicated above, the Fact Check includes numerous links throughout, including back to the Segment itself. The Fact Check does not exist to create arguments for or against what Ms Flint has said: the purpose is to rate the accuracy of her statement through original reporting, which may include interviewing primary sources, which is what has been done here.

- (d) *The author of the verdict did not contact Ms Flint or our client to seek supporting evidence.*

Your firm may have a misapprehension about how fact checking can be conducted: depending on the nature of what is being confirmed or examined, a fact checker may engage in their own review and analysis on primary materials and raw data, and then provide this as part of its fact

check publication. However it is also a legitimate and common form of fact checking for a researcher to, when examining an assertion, ask experts who have relevant knowledge and experience in the field to provide analysis or exploration of a statement or topic, and then publish this as part of their fact check. This is what the Fact Check has done here.

- (e) *FactLab has a clear preference for targeting certain types of articles, rather than applying their scrutiny equally across the board.*

The checks which are conducted by RMIT FactLab reflect the issues that are current. At the moment, the Voice to Parliament is attracting much media attention, and has a significant presence on social media.

[Meta](#) itself uses technology including AI and machine learning to detect posts that are likely to contain misinformation based on various signals, including how people are responding (eg people commenting that a post is false) and how fast the content is spreading. Any person on Facebook or Instagram can flag content which they think may contain false information, which data is incorporated into Meta's analysis. Meta then surfaces potential misinformation to fact checking organisations which are part of its program.

RMIT University's Statement in relation to the Voice is set out on its [website](#), in which RMIT encourages its community to be well informed on the Voice to Parliament to fully participate in the democratic process. Specifically, RMIT states, "We understand there are differing opinions and encourage the RMIT community to engage in the debate with respect."

RMIT FactLab does not have a position in relation to the Voice. It is acknowledged that there are differing perspectives on it, from Indigenous Australians as well as non-Indigenous Australians.

What your Second Letter characterises as a "preference for targeting certain types of articles rather than applying their scrutiny equally across the board" is actually a reflection of the data regarding potential viral misinformation posts: the volume of social media misinformation and disinformation around the Voice is currently tending to come more from the "No" supporters; and there is less disinformation identified online which is in favour of the "Yes" campaign.

By way of example, a review of the fact checks conducted earlier in 2022 indicates, similarly, that there were more posts identified online as containing false or misleading information which had an "anti-vaccination" perspective, than posts which were in favour of vaccination.

We appreciate that your client may not like or take offence at some of the posts or re-posts on social media made by members of RMIT staff. In particular, your Second Letter refers extensively to the Twitter account of Russell Skelton. Russell's Twitter account states that any views he expresses on his Twitter account are his own.

RMIT University has guidelines concerning staff use of social media, which includes a requirement to comply with our staff code of conduct. RMIT University also has an intellectual freedom policy, which reflects the University's strong position and protection of freedoms related to academic freedom and freedom of speech. When exercising intellectual freedom and freedom of speech, staff and students must comply with law.

RMIT University does not purport to prevent its staff from holding opinions in their personal capacity or to make public expression of them. We do not consider that by re-tweeting certain posts on Twitter via his

personal Twitter account, Russell has engaged in any breach of law, the RMIT staff code of conduct or its social media guidelines, or the IFCN principles.

5) Accreditation by the IFCN

Your Second Letter also suggests that RMIT FactLab has engaged in misleading or deceptive conduct under s 18 of the Australian Consumer Law by holding itself out as having IFCN certification.

In my email correspondence dated 5 July 2023, I explained that the IFCN website identifies nearly [180 signatories in total, 46 of which whose verification status is listed as expired](#); and in respect of which the following disclaimer is set out:

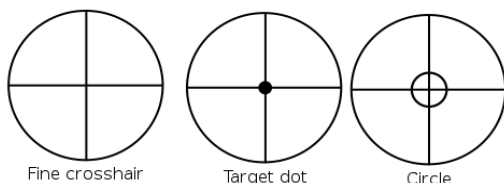
Due to the high volume of applications, some of the signatories that have expired may be undergoing the renewal process. To confirm which organization is undergoing renewal, please reach out to us at factchecknet@poynter.org. Thank you for your understanding.

As you may be aware, the IFCN is a comparatively small operation. I am instructed that their team comprises about [5 people](#) (ie very small), and that at the time of renewals there were IT issues which affected review times. Further, earlier this year, the Interim Director's wife was traumatically [injured](#) in a random attack. As such, I would speculate that the review of renewal applications would not necessarily be their utmost priority at this time. The IFCN website notes that if you wanted to check the status of a renewal, you can email them directly at the email address above.

In this context, I confirm that RMIT FactLab has previously put in its renewal, and that this will take the IFCN time to reflect on their website, given their current resourcing and operating constraints. In the meantime, RMIT FactLab continues to undertake its own activities consistently with the IFCN Principles.

We appreciate that your client objects to having been the subject of a fact check. Many persons who are the subject of a fact check do not like it. However, we are concerned that in threatening to take legal action against RMIT in the way it has, your client risks undermining the very important conversations and discussions which are required to take place in Australia in a democracy, and about matters of public interest. We welcome and support informed engagement on issues which affect Australians. Sending letters threatening legal action in this way potentially has a chilling effect on open and informed debate.

As a final matter, in relation to the last paragraph in the Letter, which describes the image use in the Fact Check as being Ms Flint in "cross hairs" – this is incorrect – the red diagonal lines form an "x" which is a typical visual indicator of something being incorrect or wrong. Cross hairs, or "a reticle", are the visual markings built into eyepieces of optical devices are represented by vertical and horizontal lines, usually with a circle at the centre, like these:



The diagonal "x" mark is used across multiple articles published by RMIT FactLab, and does not represent the kind of cross hairs symbol described in the Letter. Please be assured we do not intend to portray any

persons, whether elected senators or not, as being in the scope of an optical device through a cross hair symbol.

If you have any other questions in relation to this matter, please contact me. Otherwise I confirm that RMIT will not be taking the actions requested in your Letters.

Yours faithfully,

A large black rectangular redaction box covering the signature and name of the sender.