

<b>COMPLAINT NUMBER</b>	19/465
<b>COMPLAINANT</b>	D Reeve & 3 Others
<b>ADVERTISER</b>	New Zealand National Party
<b>ADVERTISEMENT</b>	New Zealand National Party, Twitter/Facebook
<b>DATE OF MEETING</b>	22 January 2020
<b>OUTCOME</b>	Not Upheld No Further Action Required

### Description of Advertisement

The advertisement on the New Zealand National Party Facebook and Twitter platforms show a background of a petrol pump with the heading “Price of fuel.” The accompanying text says “This government is fleecing New Zealanders through petrol taxes and Jacinda Ardern is the Fleecer-In-Chief.”

The image in the advertisement shows the price of \$1.91 /L with a blue bar with the National Party logo and “Tax: \$0.87. \*Average Nov 2008-Sep 2017.” A red bar shows the Labour Party logo and “Tax: \$1.12 \*National average price as at 29 Nov 2019.” The advertisement contains the data source and an authorisation statement.

### Summary of the Complaint

Four Complainants are concerned the advertisement is misleading by visually showing a bar graph which is not to scale. The complainants also consider the advertisement is misleading to compare an average price over nine years for National with a single month period for Labour. One Complainant also says the use of the term “Fleecer-in-Chief” in reference to the Prime Minister, Rt Hon Jacinda Ardern, is demeaning.

### Issue Raised:

- Truthful Presentation

### Summary of the Advertiser’s Response

The Advertiser said the figures are sourced from the MBIE Weekly Fuel Price Monitoring and are extrapolated to show average figures. The numbers are clearly and prominently displayed on the advocacy advertisement and therefore the hyperbole used in the visual representation of a bar graph would not be misleading. The Advertiser said the source data for the graphic is displayed as a footnote and is publicly available information. The Advertiser confirms it is clearly identified as required for Advocacy advertisements.

### Summary of the Complaints Board Decision

The majority of the Complaints Board did not uphold a complaint about a National Party fuel tax advertisement which used average fuel price comparisons between National and Labour and an illustrative bar graph which exaggerated the difference between the two figures. The majority said the data displayed was correct which saved the hyperbolic graphic from being misleading, given the political medium used and the principles of advocacy advertising.

## Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaint with reference to the following codes:

### ADVERTISING STANDARDS CODE

**Principle 2: Truthful Presentation:** Advertisements must be truthful, balanced and not misleading.

**Rule 2 (b) Truthful Presentation:** Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission, false representation or otherwise. Obvious hyperbole identifiable as such is not considered to be misleading.

**Rule 2 (c) Use of data:** Advertisements must not use tests, surveys, research results or quotations from technical and scientific literature in a manner which is misleading or deceptive.

**Rule 2 (e) Advocacy advertising:** Advocacy advertising must clearly state the identity and position of the advertiser. Opinion in support of the advertiser's position must be clearly distinguishable from factual information. Factual information must be able to be substantiated.

### Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 08/201 which was Upheld and Decision 19/279 Appeal 19/011 which was Upheld by the Complaints Board but overturned on Appeal.

The full version of decision 19/279 Appeal 19/011 can be found on the ASA website

<https://www.asa.co.nz/decisions/>

**Decision 08/201** concerned an advertisement for the National Bank which used actual figures together with an illustrative bar graph to compare the relative interest earned on a bank deposit versus a National Bank investment fund.

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The Complaints Board was of the view that the high standard of social responsibility required by the Code for Financial Advertising meant that it was not appropriate to use a graph which did not accurately reflect the data points it was representing. The Complaints Board ruled there was no room for hyperbole within financial advertising.

**Decision 19/279 Appeal 19/011** concerned an advertisement on the New Zealand National Party's Facebook page comparing budget funding allocation for Pharmac versus the Provincial Growth Fund.

The Appeal Board ruled that consideration context and placement of the advertisement was important given that the likely audience on a political party's social media platform would have an appreciation of the political landscape and advocacy advertising.

### Complaints Board Discussion

#### *Consumer Takeout*

The Complaints Board agreed the likely consumer takeout of the advertisement was that petrol was considerably more expensive under the current Labour Government and

consumers were paying more tax on petrol than when the National Party were in power. The Board noted that consumers tend to have a heightened awareness of petrol pricing as it is something that many consumers purchase regularly.

*Is the advertisement advocacy advertising?*

The Complaints Board said the advertisement before it fell into the category of advocacy advertising and noted the requirements of Rule 2(e) of the Advertising Standards Code, that the identity of the advertiser to be clear; opinion to be distinguished from factual information and factual information must be able to be substantiated. The Advocacy Principles developed by the Complaints Board in previous decisions considered under Rule 11 of the Code of Ethics remain relevant. They state:

1. That section 14 of the Bill of Rights Act 1990, in granting the right of freedom of expression, allows advertisers to impart information and opinions but that in exercising that right what was factual information and what was opinion, should be clearly distinguishable.
2. That the right of freedom of expression as stated in section 14 is not absolute as there could be an infringement of other people's rights. Care should be taken to ensure that this does not occur.
3. That the Codes fetter the rights granted by section 14 to ensure there is fair play between all parties on controversial issues. Therefore, in advocacy advertising and particularly on political matters the spirit of the Code is more important than technical breaches. People have the right to express their views and this right should not be unduly or unreasonably restricted by Rules.
4. That robust debate in a democratic society is to be encouraged by the media and advertisers and that the Codes should be interpreted liberally to ensure fair play by the contestants.
5. That it is essential in all advocacy advertisements that the identity of the advertiser is clear.

Having established the advertisement posted on Facebook and Twitter was from the New Zealand National Party comparing the price of fuel during each party's time in office, the Complaints Board confirmed political advertisements were not only acceptable but encouraged, as they were an essential and desirable part of the functioning of a democratic society.

The Complaints Board also observed that in a free and democratic society, differences of political opinion should be openly debated without undue hindrance or interference from authorities such as the Complaints Board, and in no way should political parties, politicians, lobby groups or advocates be unnecessarily fettered by a technical or unduly strict interpretation of the rules and regulations. Therefore, the Complaints Board considered the rest of the complaint in conjunction with this liberal interpretation under the application of the Advocacy Principles.

*Is the identity of the Advertiser clear?*

The Complaints Board agreed the Advertiser had met the identity requirements for advocacy advertising under Rule 2(e). The advertisement was posted on the New Zealand National Party Facebook page and Twitter feed, the identity of the Advertiser was clear and an authorisation statement from Simon Bridges, Leader of the National Party was included.

*Is the graphic representation of the data misleading?*

The majority of the Complaints Board said the execution of the infographic was mischievous but did not reach the threshold to mislead within an advocacy environment. This is because despite the selection of data points and the visual presentation, the actual figures are presented. The majority of the Board said the advertisement was saved by providing the correct data and the source of the information.

A minority of the Complaints Board disagreed and said it was reasonable for an audience to assume the visual element of a graphic comparison would match the numerical data it represents. The minority considered that some consumers would rely solely on the bar graph proportions rather than the numbers provided, especially when viewed in conjunction with the strong wording used in the text of the advertisement that said the government was “fleecing New Zealanders”. The minority also considered comparing a nine year average fuel price with the average price on a single day, did not present like-for-like data and this could also cause confusion.

*Who is the likely audience?*

The Complaints Board noted that the advertisement was posted on the New Zealand National Party’s Facebook page and Twitter account. The advertisement was not a sponsored post, meaning the audience viewing the advertisements would only see the posts if it actively engaged with the Advertiser’s social media platforms or if an individual shared the content with them.

The majority of the Complaints Board considered the advertising medium to be important. It said the placement of the advertisement on the National Party’s Facebook page and Twitter account meant the audience was likely to have a political interest in policy and performance comparisons between the major parties and an appreciation of the political stance a party’s own Facebook and Twitter platforms were likely to present.

In considering the issue raised about the phrase used in the advertisement “Fleecer-in-Chief” in reference to the Prime Minister, Rt Hon Jacinda Ardern, the Complaints Board agreed the made-up term was a hyperbolic statement which was unlikely to cause serious or widespread offence.

For the majority of the Complaints Board, the advertisement did not reach the threshold to mislead or deceive consumers, taking into account context, medium, audience and product and the advocacy principles.

A minority of the Complaints Board disagreed and said the medium and political advocacy arena did not save the advertisement from potentially misleading some consumers who did not take the time to examine the data figures which accompanied the graphic representation.

However, in accordance with the majority, the Complaints Board ruled the advertisement was not in breach of Principle 2 or Rules 2(b) and 2(c) of the Advertising Standards Code.

**Outcome**

The Complaints Board ruled the complaint was **Not Upheld**.

No further action required.

**APPEAL INFORMATION**

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website [www.asa.co.nz](http://www.asa.co.nz). Appeals must be made in writing via email or letter within 14 days of receipt of this decision.

## APPENDICES

1. Complaints
2. Response from Advertiser

### Appendix 1

#### COMPLAINT FROM D REEVE

The New Zealand National Party posted a campaign advertisement on their Twitter and Facebook pages (and likely other locations) that I believe breaches a number of provisions of the codes, specifically 2(b), 2(c), 2(d) and potentially 1(c) in the identification of the Prime Minister as "Fleecer-in-Chief"

The issues of truthfulness are mostly contained within the deceptive use of data to imply information that it untrue. The graphic compares a 9-year average of price data to a single sample which presents an unrealistic impression of the situation they're describing. Using an average, and showing absolute prices rather than proportional figures, gives the previous National government unreasonable advantages based on inflation, international price changes and increasing distributor profit margins that have contributed to overall cost increases during the period they're averaging.

Additionally, the graphic which presents that misleading data is constructed to further mislead by exaggerating the relative proportions of the Labour graph compared to the scaling in the National graph.

Actual price data when analysed objectively does not present the same outcomes. Depending on the sampling and period it will generally show that tax as a proportion of pump prices rose slightly during National's 9-year term and has remained largely unchanged in Labour's term so far.

The proportion cited in the graphic, for example (\$1.12 tax on a \$2.23 pump price - a 50% tax component), is functionally no different from a sample at the end of National's last term (\$0.94 tax on a \$1.88 pump price - also 50% tax component).

The end result is that this ad is deliberately constructed to be misleading and it presents data in a dishonest way. Additionally, it needlessly demeans the Prime Minister with the phrasing "Fleecer-in-Chief"

#### COMPLAINT FROM J LANGWORTHY

This ad is deliberately misleading.

1. The scales of the comparative graphs are inconsistent and misleading (vertically and horizontally)
2. The comparison itself is statistically invalid as it compares an average over 9 years when the price increased with a single data point. A more valid comparison would be to compare the final price and tax portion under National with the current price under Labour.
3. The lack of inflation, crude price or exchange rate adjustments further reduces the value of any comparison.

### **COMPLAINT FROM N JONES**

My complaint relates to this digital advertisement from the New Zealand National Party, posted to the party's Twitter account on December 5, 2019:

<https://twitter.com/NZNationalParty/status/1202349076336889856>

I contend that the advertisement is in breach of Principle 2 of the Advertising Standards Code. I draw your attention in particular to Rule 2(b) Truthful Presentation, Rule 2(c) Use of Data and Rule 2(d) Comparative Advertising.

The advertisement features a bar graph purporting to show fuel prices under both National and Labour. The presentation of this data is likely to mislead, deceive or confuse consumers.

1. The Labour bar is thicker than the National bar. There is no reason for this, other than to misrepresent the data.

2. The tax component of the Labour bar (\$1.12) is presented twice as high as the National bar's tax component (\$0.87). Clearly, \$1.12 is not twice the amount of \$0.87.

3. The Labour bar representing total fuel cost under Labour is \$2.23. The National bar representing total fuel cost under National is \$1.91. However, the relative sizes of the bars bear no comparison to the actual figures. The Labour bar has been presented much larger than the figures would justify.

4. For their own bar, the National Party have used an average from 2008-17, not where prices and taxes actually were when they left office. This artificially makes their bar look smaller, and makes it appear it has increased more than it has. For Labour's bar they do not use an average over their term, but a specific point in time. The two are simply not comparable.

This is of course a common pattern from the National Party's social media. The intention, repeatedly, is to mislead, confuse and deceive consumers. I ask that the Advertising Standards Authority act to preserve the integrity of our democracy.

### **COMPLAINT FROM S R POPHAM**

Blatant manipulation of facts in order to send a political message, unfortunately many people see graphics as the truth, but subtle and not so subtle manipulations misrepresent the message and underlying facts. I won't go into the many ways in which this is misleading because it has been summarised very well in this article - <https://www.statschat.org.nz/2019/12/05/graphicalinflation/>

I am not sure if this is in the purview of the ASA but someone needs to hold the truth to account because this appears to fast becoming the norm,

### **Appendix 2**

### **RESPONSE FROM ADVERTISER, NEW ZEALAND NATIONAL PARTY**

Thank you for your email dated 12 December 2019 regarding our Fuel Tax graphic.

In regards to advocacy advertising, and particularly regarding political matters, it has been the previous view and practice of the Advertising Standards Authority that the spirit of the Code is more important than any minor technical breaches. People have a right to express their views and this right should not be unduly or unreasonably restricted by Rules.

In regard to the complaint at hand I note the relevant sections you mention are:

- Principle 2 - Rule 2(b), Rule 2(c), and Rule 2(e).

In response to the complaint I would like to note the following in regard to each section:

Rule 2 (b) states that hyperbole may be acceptable if it is unlikely to mislead. Given the fuel price monitoring information, which is extrapolated to show average figures, are clearly and prominently displayed on the advocacy advertisement, it is unreasonable to suggest viewers of the advertisement could be misled.

Furthermore, evidence of source of the figures used in the advertisement are displayed as a footnote. This information is publicly available, so viewers have the ability to check the veracity of the information.

Rule 2 (c) is not relevant to this instance. The data is properly sourced and compared equally for the periods of the previous government with the current Government.

The bars displayed on the graphics are simply a visual tool to show that there are two separate figures and one is more than the other. It is not misleading as the figures are displayed prominently on the graphic. The dictionary definition of a bar graph is “a graph or chart that uses narrow columns of different heights to show and compare different amounts.

Rule 2(e) is not relevant in this case as the complainant has sought to address the concern to the National Party. As such it is clear who the advertiser is, and the advert contains our correct authorisation and was displayed on our publicly available Facebook page.

I would conclude by noting that these complaints are similar in nature to ones provided for complaint 19/469. While they relate to different issues, the same standards apply. Namely, the information is sourced correctly, displayed in a format to highlight the difference clearly, without any intention to mislead.

It is difficult to assume the motives of complainants in questioning official data provided by a government department, in this case the Ministry for Business, Innovation and Employment, to source an advocacy advertisement to detail how the Labour government has contributed to increasing fuel prices for hardworking everyday Kiwis. However, if the complainants have an issue with the publicly available data, I suggest they address that to the Ministry in question.

#### **FURTHER RESPONSE FROM ADVERTISER REGARDING THE SAMPLING PERIODS USED IN COMPARISON**

At the time of the advocacy advert being made it was a relative point of comparison to make due to the release of a report by MBIE into fuel prices. This is the source information provided and noted on the advocacy advert.

The period for National dictates the average between our term in government from 2008-2017. And the Labour side shows the national average as at the time of the report released considering Labour are the Government, and ultimately responsible.

We were completely and utterly transparent in how it was calculated, with foot notes below each column and going further than that, additional source information included at the bottom of the advocacy advert. We couldn't have been clearer.

The information as presented and sourced is not incorrect, nor is it misleading. Some people who view the information may have chosen not to read how it is calculated, even given the

source and methodology. That is their prerogative, but it still doesn't make the information incorrect as sourced and noted clearly on the advert.

The requirements of an advertiser under the code have been met in our opinion as per my previous statements.