

COMPLAINT NUMBER	20/037
COMPLAINT	B Reymer
ADVERTISER	New Zealand Labour Party
ADVERTISEMENT	New Zealand Labour Party, Facebook
DATE OF MEETING	10 March 2020
OUTCOME	Not Upheld No Further Action Required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about a post on the Labour Party Facebook page comparing the number of linear accelerator radiation machines directly funded by the Labour Government to the number directly funded by the previous National Government. The Advertiser used the word “directly” to differentiate its new funding from the National Government’s health funding using the DHB model. The majority of the Board said the advocacy advertisement did not meet the threshold to mislead consumers.

Description of Advertisement

The New Zealand Labour Party Facebook post from 4 September 2019 is headed “Better cancer care with new radiation machines.”

The accompanying text says “1 in 3 New Zealanders are affected by cancer. We’re directly funding 12 new life-saving cancer radiation machines, including plans to put machines into Hawke’s Bay, Taranaki and Northland for the first time. We’re also establishing a national cancer agency, boosting Pharmac funding for more medicines, and strengthening prevention and early detection services. We campaigned on better cancer care and now we’re making it happen – because that’s what New Zealanders deserve.”

The advertisement contains a video of the Leader of the Opposition, Hon Simon Bridges, which says: “The reality is this is little more than business as usual, that any Government has to do, I mean effectively replacing machines that need replacing.” The text of the video says, “Number of these machines National invested in fixing or upgrading over nine years – 0.”

Summary of the Complaint

The Complainant is concerned the advertisement is misleading to say National failed to invest in any radiation machines in its nine years in office. The Complainant provides examples of linear accelerator machines (LINACS) being introduced during this time.

The Complainant said the difference is that Labour is funding LINACS directly rather than through DHB’s like the National Government did and said there is no context provided for consumers to understand the difference.

Issues Raised:

- Truthful Presentation

Summary of the Advertiser's Response

The Advertiser said the post draws an important distinction between Labour's approach to cancer care compared to National's approach when in Government. It said the use of the word "directly" refers to Labour providing funding specifically for these machines beyond normal DHB funding, while National did not provide any specific funds for this purpose when in office.

The Advertiser agreed some LINACS were upgraded during 2008-2017 but said this was due to DHB's prioritising funding for the machines despite a fall in health care funding over National's time in office. The Advertiser provided a link to an Infometrics analysis about core Crown health expenditure since 2009/10 to support this.

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 (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.

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the Facebook post was the Labour Party will provide better cancer care for New Zealanders and as part of this will directly fund 12 new radiation machines, in contrast to the National Government which did not provide direct funding for any new machines.

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. This Rule required 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.

The Complaints Board confirmed that 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.

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) of the Code. The advertisement was posted on the New Zealand Labour Party Facebook page, the identity of the Advertiser was clear.

Is the advertisement presenting fact or opinion?

The Complaints Board said the statement the Complainant considers misleading is that the Labour Government have funded 12 LINAC's machines in its two years in office while National did not fund any during its nine years in Government. The Board said this is a factual claim which required substantiation.

Has the claim been substantiated?

The majority of the Complaints Board said by using the word "directly" the Advertiser has sufficiently qualified its comparison of funding 12 machines versus 0 from the National Government.

The Complaints Board agreed the likely consumer takeout of the advertisement may not distinguish between the direct funding approach taken by the Labour Government and the National Government funding DHBs to manage the procurement process. However, the majority of the Complaints Board said that the advocacy nature of the advertisement and the context of its placement on the Labour Party Facebook page meant the Advertiser could present a factually correct statement with a bias in its favour.

The majority of the Board said that while the stated facts must be truthful, the use of the qualifying word "directly" meant the advertisement was not misleading within the advocacy environment.

The context of the advertisement

The Complaints Board noted the advertisement was posted on the Labour Party Facebook page on 4 September 2019 and it needed to be considered within the context of that timeframe. It was posted at the time the Government's cancer care health package was released, establishing a national cancer agency, additional funding for Pharmac and prevention and early detection services. The Board noted cancer care had been the subject of wider public debate and media interest at the time. This provided additional context for the Advertiser's message and a distinction between the two political parties on the subject of healthcare funding. In addition, the Board noted the advertisement was not a sponsored post, meaning the target audience were people connected with the Labour Party Facebook page.

Sourcing the information used in the advertisement

The Complaints Board confirmed it was best practice for Advertisers to include the source data in advertisements when quoting facts. The Complaints Board noted the source of the Labour Party number was the public announcement of the funding at the time of the post. With regard to the funding model used by the National Government, the Advertiser provided a link to an Infometrics analysis about core Crown health expenditure since 2009/10. The Board said in this instance, as the comparison was between funding models, a data source was not material.

A minority of the Complaints Board disagreed with the majority and said despite the context of the advertisement and the liberal interpretation under advocacy advertising, the use of the word "directly" in the text of the advertisement was not sufficient. The minority said that many consumers would focus on the video element of the advertisement which did not include the word 'directly' to confirm the comparison of direct funding to DHB-sourced funding of the LINAC machines.

The minority said the video's message did not contain any qualifying statement and deliberately over-simplifies the procurement process adopted by each party when in Government. The minority said the advertisement could mislead or deceive consumers.

In accordance with the majority, the Complaints Board said the advertisement was not likely to mislead or deceive consumers, taking into account context, medium, audience and product and when viewed through the lens of advocacy advertising. It ruled the advertisement was not in breach of Principle 2 or Rules 2(b) and 2(e) 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. Appeals must be made in writing via email or letter within 14 calendar days of receipt of this decision.

APPENDICES

1. Complaint
 2. Response from Advertiser
-

Appendix 1

COMPLAINT FROM B REYMER

On their Facebook page, the New Zealand Labour Party has posted a video saying National failed to invest in fixing or upgrading any radiation machines over their nine years in government.

They have not sourced this claim and the below explanation shows the claim to be totally untrue. This is a transparent attempt by Labour to distract from their failure to deliver better cancer care and convince New Zealanders they are delivering more than they are.

These radiation machines are called 'linear accelerators' or 'LINACs' as you can see here in the Labour Government press release on the same announcement being referred to in Labour's post text: <https://www.beehive.govt.nz/release/new-cancer-treatment-services-regions-announced>

This Ministry of Health report, published in December 2014 makes specific reference to "10 new linear accelerators" being purchased in the last five years as one of the NZ Cancer Plan's achievements on page 17. These machines were all purchased during the last National Government: <https://www.health.govt.nz/system/files/documents/publications/new-zealand-cancer-plan-2015-2018-dec14-v3.pdf>

Here is former National Health Minister Tony Ryall's speech from 2011, unveiling a new LINAC for CCDHB as "one of ten new cancer radiation machines approved under this John Key government." <https://www.beehive.govt.nz/speech/new-linac-cancer-treatment-ccdhb>

Here is Ryall eight days later opening another LINAC for the CCDHB. At the end of this press release, you can see that in their first term, the National Government "approved ten new linear accelerators." <https://www.beehive.govt.nz/speech/launch-new-cancer-radiation-linear-accelerator-machine-christchurch-hospital>

The following year, Ryall issued this press release congratulating MidCentral DHB on commissioning a new LINAC. <https://www.beehive.govt.nz/release/health-minister-congratulates-midcentral-dhb>

The post text accompanying the video says "We're directly funding 12 new lifesaving cancer radiation machines, including plans to put machines into Hawke's Bay, Taranaki and Northland for the first time." This is an explanation that the only difference between Labour and National's approach to funding LINACs is that Labour is doing it directly whereas National did it through DHBs. This is a technicality and therefore basing an entire attack video on it is grossly misleading to New Zealanders watching it.

The Government press release expanding of the announcement does explain the Labour Government is funding LINACs 'directly' rather than through DHBs but this has not been linked to in the post, nor commented in the comments section so viewers of the video have no way of gaining clarity over what Labour means by 'directly'. The only link shared by Labour in the comments of the post is a party political blog post which does not clarify or expand on 'directly', leaving Facebook users with no further information or explanation of

how they came to the figures on the graphic. <https://www.labour.org.nz/cancer-action-plan-1909?fbclid=IwAR29ZP4Fs890IzHJhASyvPcvxVD8syKI4Gwpy0Pnzv> v6APSKbIVL AV QUE

What is obvious from the video is that the Labour Party will split hairs in their response to this complaint about their inclusion of the word 'directly' once in the text post. They will try and convince you they haven't been misleading and that National didn't 'directly' fund LINACs so this complaint shouldn't be upheld. To a layman, the obvious inference would be that Labour has funded 12 radiation machines in two years and National funded none in nine. That is a lie.

The National Government increased health funding year-on-year and, as a result, DHBs were able to invest in new LINACs. For Labour to suggest to New Zealanders no such LINACs exist because the National Government didn't 'directly' fund them is willfully misleading.

Appendix 2

RESPONSE FROM ADVERTISER, NEW ZEALAND LABOUR PARTY

I refer to your emails of 17 February, which raised related complaints regarding two separate posts on Labour's Facebook page concerning cancer care with new radiation machines. As the two posts are related, we respond jointly to what is essentially the same complaint.

Response

Cancer care, and health funding more generally, has been the subject of robust political debate and advocacy between National and Labour going back many years. Many claims in this space are contested. Labour's Facebook posts are part of that long running public policy debate, and are about one of those contested claims.

The posts draw an important distinction between Labour's approach to cancer care now, compared with National's approach to cancer care when last in government.

In August 2019, Labour invested directly in 12 new linear accelerator machines to help treat patients with cancer. That is, Labour provided funding specifically for these machines that goes above and beyond normal District Health Board funding. We clearly make this point about direct funding in the text accompanying the video and in the main headline of the graphic post.

National did not provide any funding specifically for this purpose when in office. Instead, DHBs had to find room in their normal operating budgets for these large expenses. That was enormously difficult for DHBs under National because, [as Infometrics found in 2017](#), health funding fell in inflation-adjusted, per person terms over National's time in office. That means the average person in New Zealand had a lower level of health services available to them in 2017 than they had in 2008, because funding levels didn't keep pace with the combined impact of price rises and population growth. Infometrics estimated those health service cuts were valued at around \$2.3 billion over National's nine years.

That underfunding is part of the reason that some of New Zealand's linear accelerators are now well past their use-by date. Linear accelerators should normally be replaced every 10-12 years, but I'm advised that the machines the current government has funded replacements for were up to 16 years old.

We agree, of course, that some linear accelerators were upgraded in New Zealand during the period 2008-2017. Indeed, the fact that some DHBs fought through National's underfunding to find ways to upgrade their linear accelerators is a huge credit to those DHBs.

But those DHB decisions are no credit to National. National Ministers did not make any specific funding decisions or tradeoffs to allow those upgrades to happen; only DHBs did. Labour's position is that DHBs made those purchases not because of National's largesse; they made the purchases despite National's real, per person health cuts.

That's why the copy that the complainant is concerned about in our Facebook posts is accurate.

The video post says the "number of these [linear accelerator] machines National invested in fixing or upgrading over nine years" is zero. That is true. National made no specific investments in fixing or upgrading linear accelerators over their nine years in office. They also cut DHBs' ability to fund health services for their populations at precisely the same time as these large investments were needed. The fact that National party Ministers of Health issued 11th hour congratulatory press releases and cut ribbons doesn't change that.

We stand by our posts.

Finally, we note that it appears the complainant's complaint is itself part of the long-running public policy debate about cancer care. The complaint contains highly contestable National Party talking points about nominal funding increases - ignoring the more robust Infometrics analysis linked above - and equivocating between "approving" another entity to buy a cancer machine and buying it themselves.

I also note that National MPs including Paula Bennett have attempted on social media to make political claims about this particular ASA complaint when the ASA hasn't even considered the matter yet.