

<b>COMPLAINT NUMBER</b>	17/334
<b>COMPLAINANT</b>	J. Thomas
<b>ADVERTISER</b>	New Zealand National Party
<b>ADVERTISEMENT</b>	Digital Marketing
<b>DATE OF MEETING</b>	18 September
<b>OUTCOME</b>	No Grounds to Proceed

**Advertisement:** A post advertising the New Zealand National Party on Facebook said in part: “Labour confirms: You will pay \$1,060 more tax from 1 April 2018.” Underneath in smaller text, was the qualification: “For anyone earning more than \$52,000 pa.” The advertisement included an authorisation statement. The post was headed with a message from the National Party which said, in part: “#BREAKING: The Labour Party are now onto the fifth version of their tax policy in the last month. Labour are making it up as they go.”

The advertisement also included a link through to a Press Release on the National Party website titled “Two taxes down, five to go”. An excerpt from the Press Release reads, in part:

‘The Labour Party has postponed two new taxes but has left five more in place that would slow down the New Zealand economy and restrict growth, National Party Finance spokesperson Steven Joyce says.

“They’ve postponed the introduction of two taxes but have reaffirmed their intention to impose a water tax, regional fuel tax, tourism tax, income tax increases, and bringing farming into the ETS,” Mr Joyce says.’

**The Chair ruled there were no grounds for the complaint to proceed.**

**Complainant, J. Thomas, said:** “I believe that the claim in the advertisement, 'Labour confirms: You would pay \$1,060 more tax from 1 April' is misleading because the electoral advertisement implies the election of the New Zealand Labour Party will result in a net increase of an individual's personal income tax contribution on 1 April 2018 based on their current rate.

The incumbent government (The New Zealand National Party) have legislated a reduction of income tax due to take effect on the 1 April 2018 in the 2017 Budget under the Taxation (Budget Measures: Family Incomes Package) Act 2017, which states 'From 1 April 2018, the \$14,000 income tax threshold will increase to \$22,000, and the \$48,000 threshold to \$52,000' (NZ National Party, 2017).

The Labour Party tax policy states that if elected, will 'Reverse National's proposed tax cuts and re-invest that money in a fairer package of support for families and in core public services such as health, education, housing and police' (New Zealand Labour Party, 2017).

The net effect of the change (if the Labour Party were to form a government), based on today's personal income tax rate prior to the general election on 23 September 2017, will be financially neutral.

The advertisement is likely to mislead an uninformed elector through the impression that an incoming Labour government (if elected) would increase their current personal income tax rate by \$1,060, as opposed to the future rate they may pay on 1 April 2018 under a National government (which is yet to be realised).

I believe this is in breach of the Advertising Code of Ethics, specifically with regard to the principle that 'No advertisement should be misleading or deceptive or likely to mislead or deceive the consumer'. The advertisement contravenes the rule of 'Truthful Presentation' in that it deliberately intends to deceive an elector through implication, omission, ambiguity of the facts.

#### References

1. New Zealand Labour Party. (2017). Labour's tax plan. Retrieved from <http://www.labour.org.nz/tax>.
2. New Zealand Legislation. (2017). Taxation (Budget Measures: Family Incomes Package) Act 2017. Retrieved from <http://www.legislation.govt.nz/act/public/2017/0022/20.0/DLM7266807.html>
3. NZ National Party. (2017). Family Incomes Package. Retrieved from [https://www.national.org.nz/family\\_incomes\\_package](https://www.national.org.nz/family_incomes_package)
4. NZ National Party. (2017). Labour's tax agenda. Retrieved from <https://www.facebook.com/NZNATS/posts/1926345527381033:0>.”

#### **The relevant provisions were Basic Principle 4 and Rule 2 and Rule 11 of the Code of Ethics.**

**The Chair** noted the Complainant's concerns the advertisement was “likely to mislead an uninformed elector through the impression that an incoming Labour government (if elected) would increase their current personal income tax rate by \$1,060, as opposed to the future rate they may pay on 1 April 2018 under a National government (which is yet to be realised).”

The Chair noted the National Party was the Advertiser and it was posted by the National Party on Facebook. The Chair said the advertisement was an advocacy advertisement and Rule 11 of the Code of Ethics applied. Rule 11 states:

**“Advocacy Advertising** - Expression of opinion in advocacy advertising is an essential and desirable part of the functioning of a democratic society. Therefore such opinions may be robust. However, opinion should be clearly distinguishable from factual information. The identity of an advertiser in matters of public interest or political issue should be clear.”

Also applicable were the Advocacy Principles, developed by the Complaints Board in previous Decisions for the application of Rule 11. These said:

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 right 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.

Turning to the advertisement before her, the Chair confirmed that the identity of the Advertiser, the New Zealand National Party was clear, a requirement under Rule 11.

The Chair then considered the Complainant's issue regarding the content of the advertisement. The Chair said the advertisement stated the National Party's opinion on the Labour Party position to revoke the tax cuts the National Government had put in place for 1 April 2018 and this was provided for under Rule 11 of the Code of Ethics.

The Chair 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.

The Chair noted a precedent Decision (17/327) which concerned the same claim, albeit with a slightly different presentation, that Decision stated, in part:

"The Complaints Board considered the likely consumer take out of the advertisement and said it gave the impression that if you vote for Labour then people who earn over \$52,000.00 per annum, will pay more tax from 1 April 2018. The Complaints Board noted the Advertiser's response that this is because National have planned and legislated for tax cuts that Labour plans to remove should they be elected.

The Complaints Board acknowledged that there could be differing views about whether the removal of a tax cut was a tax increase, but regardless, based on current legislation, some people will pay more income tax under a Labour Government from 1 April 2018. The Complaints Board took into account the context of the advertisement as a National Party election advertisement, posted by it on its Facebook page. It also considered the information provided about Labour's plans to revoke the legislated tax cuts in 2018. The Complaints Board said the advertisement did not reach the threshold to mislead and was not in breach of Rule 2 of the Code of Ethics.

The Complaints Board said the advertisement presented the National Party's opinion on the impact of the Labour Party policy on revoking the tax cut if elected and was part of the political discourse allowed under the provisions of Rule 11 of the Code of Ethics. Therefore, the Complaints Board said the advertisement had been prepared with a due sense of social responsibility to consumers and society required by Basic Principle 4 of Code of Ethics."

The Chair said the Complaints Board finding in the above Decision was directly relevant to the complaint before her. She noted the advertisement before her also included a link to a National Party Press Release which provided further context to the claim in the advertisement.

While she acknowledged the Complainant's concern the advertisement was misleading, the Chair said the Complaints Board had consistently ruled that advertisements presenting an opinion on another party's policies were allowed as part of advocacy election advertising.

The Chair said the advertisement complied with the requirements of Rule 11 and taking into account the Advocacy Principles, did not reach the threshold to breach Rule 2 or Basic Principle 4 of the Code of Ethics.

Accordingly, she ruled that there were no grounds for the complaint to proceed.

**Chair's Ruling:** Complaint **No Grounds to Proceed**