

# **ASA Guide on Election and Referenda Advertising 2020**

## **Contents**

<b>1.</b>	<b>Definitions</b>	<b>Page 2</b>
<b>2.</b>	<b>Jurisdiction</b>	<b>Page 3</b>
<b>3.</b>	<b>Advertising Standards Code</b>	<b>Page 5</b>
<b>4.</b>	<b>Advocacy Principles</b>	<b>Page 8</b>
<b>5.</b>	<b>Consumer Complaints Process and Timing</b>	<b>Page 9</b>
<b>6.</b>	<b>Appeal Process and Timing</b>	<b>Page 14</b>
<b>7.</b>	<b>Competitor Complaints Process and Timing</b>	<b>Page 15</b>
<b>8.</b>	<b>Recent Decisions and Guidance on Code Interpretation</b>	<b>Page 18</b>
<b>9.</b>	<b>The Role of the ASA</b>	<b>Page 27</b>

## 1. Definitions

### *ASA Definition of Advertising*

“Advertising and advertisement(s)” are any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed.”

### *Election Advertising*

Party and candidate election advertisements on radio and television (defined as election programmes), are under the jurisdiction of the Broadcasting Standards Authority (see the Broadcasting Act 1989 and the Election Programmes Code of Broadcasting Practice).

From 16 March 2020, the ASA will focus on dealing with complaints about paid election advertising in media not covered by the BSA Election Programmes Code.

This includes paid digital advertisements, paid communications from social media platforms (including boosted or sponsored posts and paid advertisements), print, addressed and unaddressed mail, cinema and outdoor advertising. Television and radio advertising for third parties is also subject to the Advertising Standards Code.

The ASA will decline to adjudicate on complaints about posts on branded social media pages (referred to as organic posts) or websites from political parties, candidates, and election-related advocacy groups.

Context is a key part of assessing a breach of the advertising codes. In an election year, if consumers choose to visit or follow websites or branded social media pages from political parties, candidates, and election-related advocacy groups, they need to be aware the content is presented from a particular perspective and should be viewed in that context. This content may also be shared with them by people they know, but that is outside the control of advertiser.

The ASA encourages all advertisers to refer to the Advertising Standards Codes to support responsible advertising when developing advertisements.

### *Referenda Advertising*

The ASA will deal with complaints about paid advertising in all media on the two referenda subjects, enactment of the End of Life Bill and the Cannabis Legalisation and Control Bill.

The ASA will decline to adjudicate on complaints about referenda-related posts on branded social media pages (referred to as organic posts) or websites from political parties, candidates, and referenda-related advocacy groups.

### *Complaints Board*

The ASA Complaints Board is a nine member Board with five public and four industry members. The quorum for the Board is five members, of which at least three must be public members.

### *Appeal Board*

The ASA Appeal Board is a three member Board with two public members and one industry member. The quorum of the Appeal Board is two members, both of whom must be public members.

## 2. Jurisdiction

If you are not sure who to complain to, any of these agencies will point you in the right direction.

# ELECTION AND REFERENDA ADS, EDITORIAL AND PROGRAMME CONTENT

## WHO DOES WHAT?



TV and radio  
party & candidate  
ads and  
programme  
content



Paid party &  
candidate ads in  
other media.  
Paid referenda &  
third party  
election ads in all  
media



Advertiser identity  
/ promoter  
statement issues /  
expenditure limits



Print / digital news  
sites  
Editorial content

# ELECTION AND REFERENDA ADS, EDITORIAL AND PROGRAMME CONTENT

WE ARE HERE TO HELP

## EXAMPLES OF ISSUES

Advertiser identity not clear
TV/Radio programme about election issues
Location of party hoardings in local area
Social media sponsored post
TV/Radio ad from candidate
News website opinion piece on election outcome
Lobby group ad on election issue
Expenditure limits on election & referenda advertising
Print story on political party policies
TV/Radio ad for political party
Print/outdoor/cinema ad from party or candidate

## CONTACT

Electoral Commission
Broadcasting Standards Authority
Local Council
Advertising Standards Authority
Broadcasting Standards Authority
NZ Media Council
Advertising Standards Authority
Electoral Commission
NZ Media Council
Broadcasting Standards Authority
Advertising Standards Authority

[www.bsa.govt.nz](http://www.bsa.govt.nz)

[www.asa.co.nz](http://www.asa.co.nz)

[www.elections.nz](http://www.elections.nz)

[www.mediacouncil.org.nz](http://www.mediacouncil.org.nz)

### 3. Advertising Standards Code

The full code is available here: <https://www.asa.co.nz/codes/codes/advertising-standards-code/>

Rules that are most often referred to in complaints about election or referenda advertisements are:

#### 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.**

#### Guidelines

- Obvious untruths, exaggeration, puffery or deliberate hyperbole that are unlikely to mislead may be acceptable.
- Advertisers must hold evidence to substantiate all claims made in an advertisement.
- When evidence is included in an advertisement, it must be easily understood.
- Advertisers must not suggest that their claims are universally accepted if there is a significant division of informed or scientific opinion.
- Disclaimers, asterisked, footnoted or “small print” information must not contradict the claims that they qualify. The information must be obvious and located and presented in such a way as to be clearly and easily read and / or heard. Where appropriate, the information must be linked to the relevant part of the main message.
- Advertisers must be able to meet any reasonable demand created by their advertising
- Pricing information in an advertisement must be clear, accurate, unambiguous and must not mislead.

## **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.**

## **Guidelines**

- Evidence (e.g. academic studies, expert opinion) in support of factual information must be appropriate and robust and must be readily available and obtainable.
- The identity of the advertiser must be obvious and easily recognised. Where an advertiser is not well known, additional information such as a physical address, website address or phone number may be appropriate to include

Sometimes consumers find content in advocacy advertising offensive as it can deal with sensitive issues. Rule 1(c) of the Advertising Standards Code may be relevant for these types of complaints.

## **Rule 1 (c) Decency and Offensiveness**

**Advertisements must not contain anything that is indecent, or exploitative, or degrading, or likely to cause harm, or serious or widespread offence, or give rise to hostility, contempt, abuse or ridicule.**

## **Guidelines**

- Grounds for offence include but are not limited to: gender; race; colour; ethnic or national origin; age; cultural, religious, political or ethical belief; sexual orientation; gender identification; marital status; family status; disability; occupational or employment status.
- Advertisements must not exploit, degrade, denigrate, demean or objectify any person or group of people or any products, services, objects or places.
- Stereotypes may be used to simplify communication in relation to both the product offered and the intended consumer. However, advertisements must not feature stereotypical roles or characteristics which, through their content and context, are likely to be harmful or offensive to people, particularly children and young people. This includes, but is not limited to, advertisements that:
  - Mock people for not conforming to gender stereotypes.

- Portray an activity or product as being inappropriate for a girl or boy because it is stereotypically associated with the opposite sex.
- Portray men or women failing at a task that is stereotypically associated with the opposite sex.
- Include irresponsible or offensive depictions of differences including race, body shapes and sizes. For example, suggesting it is desirable to be an unhealthy weight (under or overweight).
- Humorous, satirical treatment of people and groups of people are natural and accepted features of societal relationships and may be acceptable, provided they are not likely to cause harm or serious or widespread offence.
- Advertisers must not use offensive, degrading or provocative copy and/or images to attract attention or promote the sale of products or services.
- Sexual imagery or language must be appropriate to the audience and medium.
- Sexual depictions of people or groups of people may only be used to advertise relevant products and services.

#### 4. Advocacy Principles

*The advocacy principles were developed by the inaugural Chair of the Advertising Standards Complaints Board, Laurie Cameron C.B.E, QSM and Executive Director, Glen Wiggs MNMZ.*

*The principles recognise the role of freedom of speech and the importance of robust debate in matters of public interest.*

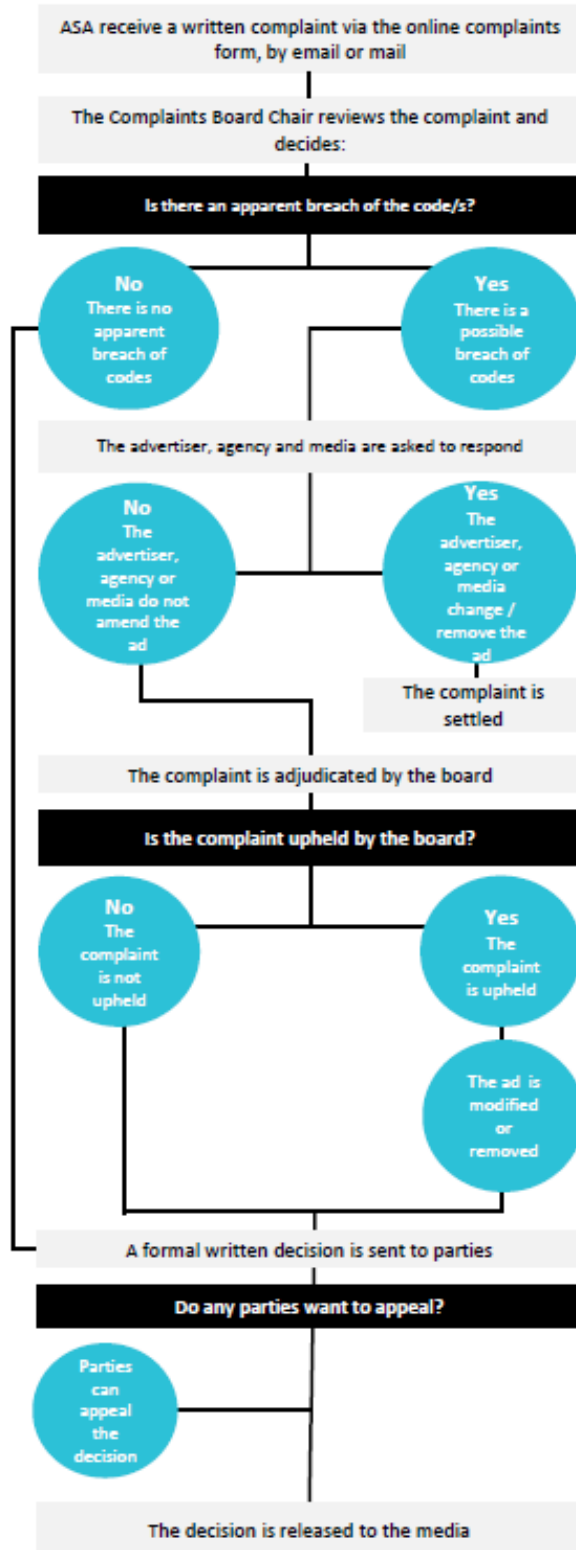
*The principles are taken into consideration by the Chair of the Complaints Board in assessing whether there is a possible Code breach and by the Complaints Board and the Appeal Board when applying Rule 2 (e) of the Advertising Standards Code.*

The Advocacy Principles are:

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 is factual information and what is 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 advertiser 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.



## 5. Consumer Complaints Process and Timing



## How to complain - consumers

Any consumer can complain about any paid election or referenda advertisement which may be in breach of the [ASA Codes](#).

### Step 1

Provide us with your name and contact details. Our [Privacy Policy](#) is on our website. We don't accept anonymous complaints.

Your name and contact details will not be provided to the advertiser unless the Chair of the Complaints Board determines the advertiser requires that information to provide a response to the complaint.

Sign a waiver agreeing not pursue the complaint in any other forum. The waiver is to reduce the risk of people using the Complaints Board as a test process.

### Step 2

Check previous decisions. Your concern or a similar concern may already have been assessed by the Chair or the Complaints Board. You can search our decisions database [here](#).

Complete our [Complaint Form](#).

Ensure you include information about the advertisement you are complaining about:

- For broadcast media: The date, approximate time and channel/station on which the advertisement was played and the name of the advertiser.
- For digital media: The URL or website address and screenshot of the relevant part of the site, or a copy of the actual advertisement.
- For social media: An image or screenshot of the complete post, the platform it appeared on and how it was delivered to you (e.g. via sponsored post or from a friend).
- For all print advertisements: A copy or image of the advertisement together with the name and date of the publication.
- For billboard or outdoor advertisements: A digital image/ photo of the billboard is helpful. Other useful information includes the name of the billboard company, which is usually visible on the billboard, and its exact geographic location.

When writing your complaint, please be specific. Examples:

- "I find the advertisement offensive because the part where it says, " ...." demeans all young mothers " This is much more effective that a general statement such as "I did not like this advertisement."
- "I believe the claim in the advertisement, "...." is misleading because..."

### Step 3

Upon receipt of your complaint, the Chair of the [Complaints Board](#) will decide whether to accept the complaint. If accepted, the complaint is sent to the advertiser, media platform and advertising agency (if there is one) for a response and you will be advised. If the Chair determines there are no grounds for the complaint to proceed, we will send a ruling to you, the advertiser and the media platform (if there is one) and the ruling will be released on the ASA website.

When assessing a possible Code breach for election or referenda advocacy advertising, the Chair takes into account the following:

- Is the identity of the advertiser clear?

- Is the position of the advertiser clear? (are they in favour or opposed, is it clear which political party or advocacy group they are or they support?)
- Does the advertisement express an opinion or make statements of fact?
- Is there a matter of public debate and are there a range of sources to access information?

In making this assessment, factors to consider include:

- Are there source references?
- Are these references correct?
- Who is the target audience?
- Where was the advertisement placed / seen?
- What is the likely consumer takeout of the advertisement?

#### **Step 4**

The complaint is put before the Complaints Board. They review the complaint, the advertisement, the responses and any relevant precedent decisions. The Board will decide whether there has been a breach of the Codes. A formal written decision is distributed to you, the other parties to the complaint and to the media via the ASA website.

#### **Step 5**

If a complaint is upheld, the advertiser, in accordance with self-regulatory principles, is requested to immediately withdraw the advertisement. Additionally, the media are similarly requested not to publish or broadcast an advertisement which has been held by the Complaints Board to be in breach of the Codes.

#### **Step 6**

Any party may lodge an appeal to the decision. Until a decision on the appeal application is made to overturn a Complaints Board ruling, that ruling stands. If a complaint is upheld, the advertisement may not be used again until the outcome of the appeal has been determined. If the complaint is not upheld, the advertisement may continue to be published or broadcast.

## How to respond to a complaint

There are two options available to advertisers, agencies and media organisations in response to a complaint.

### 1. Settle the Complaint

You may choose to withdraw advertisements due to complaint(s) (or withdraw the part of the advertisement raised in the complaint) before the complaint is considered by the Complaints Board.

Please notify the ASA in writing and indicate the timeframe in which the particular advertisement (or part) will be withdrawn.

The ASA also requires a written undertaking that the advertisement (or part) will not be re-broadcast or re-published at a later date. The advertisement will go forward to be considered by the Complaints Board if an advertiser does not commit to not re-publishing or re-broadcasting the advertisement.

### 2. Respond to the Complaint

The Complaints Board reviews the information provided by parties and makes a decision on whether or not the complaint is in breach of the ASA Codes, and is upheld or not upheld.

The following guidelines are intended to assist those responding to a complaint.

1. Please read the complaint carefully before responding and address the specific points raised.
2. If the complainant has challenged a claim made by the advertiser, the advertiser must substantiate that claim. In the response please provide detailed information backing up the claim or claims that have been challenged. For example, a survey result, a media story, independent research. When an advertiser is unable to adequately substantiate a claim, the complaint is likely to be upheld.
3. The ASA Guidance Note for responding to a complaint about misleading claims has helpful information about different types of claims and the required level of substantiation.
4. If media placement is an issue raised in complaint, it is helpful to receive information about why that medium was chosen in relation to the target market.
5. Please refer specifically to the Codes that the Complaints Board has applied to the complaint.
6. It may be useful for you to search the decisions database. The decisions database has full copies of all the decisions made by the Complaints Board since 2015 and you can search the database by Code and keywords.

## Timing

The following is a guide to the average timeframe for complaints to be resolved.

To assist the ASA to meet these timeframes, we ask the complainant to clearly communicate their concerns about the advertisement and provide sufficient detail to identify it. The advertiser and other relevant parties (the media and agencies) are asked to co-operate with the process and meet the required deadlines in order for the complaint to be processed in the timeframes outlined below.

<b>Action</b>	<b>Now to 15 August 2020</b>	<b>From 16 August to 15 September 2020</b>	<b>From 16 September 2020</b>
Chair review of new election complaints	Weekly	Daily	Weekly
Time for advertiser / media to respond to complaints	7 days	48 hours	7 days
Complaints Board meetings	Fortnightly	Weekly or more frequently if required	Fortnightly
Notification of decision to parties	About 1 week following meeting	Within 48 hours of meeting	About 1 week following meeting
Release of decision to media	Three days after received by parties	24 hours after received by parties	Three days after received by parties
Appeal deadline	14 days after receipt of decision	3 days after receipt of decision	14 days after receipt of decision

## 6. Appeal Process and Timing

Rulings and Decisions of the Complaints Board may be appealed on certain grounds. There is no right of appeal in the Competitor Complaints process.

### Appealing an ASA Complaints Board Decision

Any party to a consumer complaint may appeal the decision of the Complaints Board. The request for an appeal shall be made in writing to the ASA following receipt of the Complaints Board's written decision.

The Appeal Board Chair decides whether to accept the matter on any of the following grounds:

- a. The proper procedures have not been followed.
- b. There is new evidence of sufficient substance to affect the decision.
- c. Evidence provided to the Complaints Board has been misinterpreted to the extent it has affected the decision.
- d. The decision is against the weight of evidence.
- e. It is in the interests of natural justice that the matter be reheard.

If the Chair accepts an appeal it may be referred to the Complaints Board for a re-hearing or to the Appeal Board. Pending determination of the appeal or rehearing the Chair may suspend the previous decision.

Until a decision on the appeal application is made to overturn a Complaints Board ruling, that ruling stands. If a complaint is upheld, the advertisement may not be used again until the outcome of the appeal has been determined. If the complaint is not upheld, the advertisement may continue to be published or broadcast.

### Appealing a Ruling from the Chair of the Complaints Board

Any party to a complaint may appeal any ruling of the Chair of the Complaints Board to the Chair of the Appeal Board. The request for an appeal shall be made in writing to the ASA following receipt of the written ruling. The appeal can be on any of the following grounds:

- a. The proper procedures have not been followed.
- b. There is new evidence if sufficient substance to affect the ruling.
- c. Evidence provided to the Chair of the Complaints Board has been misinterpreted to the extent that it has affected the ruling.
- d. The ruling is against the weight of evidence.
- e. It is in the interests of natural justice that the matter be reheard.

If the Chair accepts an appeal, the complaints will be referred to the Complaints Board for a re-hearing.

Action	Now to 15 August 2020	From 16 August to 15 September 2020	From 16 September 2020
Appeal of Ruling or Decision	14 days from receipt of decision	3 days from receipt of the decision	14 days from receipt of decision

## 7. Competitor Complaints Process and Timing

Any complaint received on behalf of a political party or from an office holder in a political party about another political party's advertising will be considered a competitor complaint.

The competitor complaints process is a user-pays process where all parties have an opportunity to put their cases to a specially convened three person panel, drawn from the membership of the Complaints and Appeal Boards (two public and one industry member).

The overriding consideration is making a fair, fast decision, based solely on the Advertising Codes. Once a decision is made, offending advertisement/s are requested to be withdrawn.

### How to complain- competitors

#### Step 1

Provide a detailed complaint with your name and contact details and cite the provisions of the Advertising Codes you believe to have been breached and enclosing copies of the relevant advertisement/s.

#### Step 2

The Chair of the Complaints Board will consider whether the complaint is suitable to be dealt with in the competitor complaints process – this consideration will occur within 24 hours.

#### Step 3

A copy of the complaint is circulated to the advertiser, agency and media involved, and a response sought. The hearing date is set after that deadline.

You sign a waiver agreeing not pursue the complaint in any other forum. The waiver is to reduce the risk of people using the Complaints Board as a test process.

The Complainant will also be sent an invoice for the hearing fee. An adjudication panel of three complaints board or appeal board members will be confirmed.

#### Step 4

With the written comments of all parties circulated beforehand, the hearing is held. You have the opportunity to speak to your submission and refute your opponent's arguments. The process is not unduly formal, more akin to a robust board meeting than a court case, and usually takes around two hours.

#### Step 5

The Adjudication Panel will come to a decision and it will be circulated to parties. If your complaint is upheld, the advertiser, agency and media are requested to withdraw or amend the advertising. In accordance with the industry's self-regulatory principles, compliance is excellent.

The decision of the Panel will be full and final and that there is no appeal procedure within the competitor complaints process.

### How much does it cost?

Stage	ASA Funders	Non-funders
Complaint accepted but does not proceed – file closed	No Charge	No Charge
Initial letter sent but complainant withdraws or complaint settled, decision issued - file closed	\$3,000	\$3,000
Responses received, agenda prepared. Complainant withdraws or complaint settled, decision issued – file closed	\$5,000	\$7,000
Complainant proceeds with adjudication, hearing takes place, decision issued – file closed	\$10,000	\$15,000

There is no fee for advertisers, agencies or media to defend themselves against competitor complaints. If the complaint is upheld then, in accordance with self-regulatory principles, the advertiser is requested to voluntarily pay the hearing fee, which is refunded to the complainant on receipt. Engagement with this process is voluntary and the ASA is not able to make the advertiser refund the fee.

### Do I need a lawyer?

This is up to you – a number of lawyers are familiar with the ASA process and the Advertising Codes. Legal representatives appear in around 50% of competitor complaints.

### Can I complain under the consumer process instead?

No. Experience over many years has shown that competitor complaints are by their nature more complex and the free consumer complaints service is not suitable. There is also no right of appearance for the parties involved in the consumer process.



## Timing

<b>Action</b>	<b>Now to 15 August 2020</b>	<b>From 16 August to 15 September 2020</b>	<b>From 16 September 2020</b>
Chair review of new election competitor complaint	24 hours	24 hours	24 hours
Time for advertiser / media to respond to complaints	7 days	48 hours	7 days
Adjudication panel meetings	On demand	On demand	On demand
Notification of decision to parties	About 1 week following meeting	Within 48 hours of meeting	About 1 week following meeting
Release of decision to media	3 days after receipt by parties	24 hours after receipt by parties	3 days after receipt by parties

## 8. Recent Decisions and Guidance on Code Interpretation

### The lens of advocacy advertising

The Advertising Standards Authority has been dealing with election and advocacy advertising since the early 1990's.

Election and advocacy advertising is often characterised by parties having differing views that are expressed in robust terms. This is especially so when there is proposed legislation or a referendum on an issue or during a General Election. Issues may include abortion, fluoridation, immunisation and legalisation of cannabis and the end of life debate.

The ASA has a substantial body of precedent decisions. While these are not binding on the Boards today, they help inform decision-making and support consistency.

In New Zealand, the Bill of Rights Act protects free speech. This right is not absolute, and the Advertising Standards Code is one of the fetters on that right.

### Application of Rule 2(e) (see page 5)

Given the importance of free speech and role of advocacy in public discussion, if the advocacy criteria in Rule 2(e) are met, the Codes will be interpreted in a less technical and more liberal way than for commercial advertising. See the Advocacy Principles on Page 8.

The role of the Complaints Board in election and advocacy advertisements is to ensure there is fair play and the right of free expression is not unduly restricted. Accordingly, the Complaints Board liberally interprets the Codes and tries not to be concerned with minor or technical breaches.

**For a more liberal interpretation of the Codes to apply to election and advocacy advertisements, the following is required:**

- **The identity of the advertiser must be obvious and easily recognised. Where an advertiser is not well known, additional information such as a physical address, website address or phone number may be appropriate to include.** A physical address is desirable but a P.O. Box number and/or telephone number are acceptable. An email address alone is not sufficient. A website address featuring the organisation's name may be used providing the website has contact details. It is essential this information is clear and easily seen by the reader / viewer, not hidden in the fine print. The term "Authorised by" should only be used where required by law. **If legislation provides specific wording for such a statement, compliance with the legislation will be deemed to meet this requirement under the ASA Codes.**
- **It must be clear in the advertisement what view the advertiser advocates and ideally this should be clear in their identity.** For example: a short advertisement stating 'Contact the Fluoridation Foundation for information on fluoridation' would not qualify. On the other hand, the names Pro-Fluoridation Foundation or Anti-Fluoridation Foundation are acceptable along with a clear statement in the advertisement about its purpose – "Stop Fluoridation Now" or Support Fluoridation in the Referendum".
- **Advertorial style advertisements must be clearly labelled 'Advertisement' or 'Advertorial'.** This requirement applies regardless of the medium used. Layout and context is important and special care must be taken to ensure the consumer is not

mislead about the nature of the communication. See Rule 2 (a) Identification, Advertising Standards Code and the ASA Guidance Note on Identification of Advertisements.

### **Evidence**

- Evidence may be cited in support of the opinion, but it should be clear that it supports the opinion rather than being the full factual position. Evidence in support of an opinion should be clearly cited and readily obtainable.
- Complainants sometimes ask the Complaints or Appeal Boards to in effect decide which side in an advocacy debate is correct. The Boards have consistently declined to have a view on the merits of one side of the argument over another. Similarly, the Board will not determine which of competing academic studies or other evidence is correct. The Boards' only role is to determine whether there has been a breach of the Advertising Standards Code taking into account Rule 2(e). That is, is the identity of the advertiser clear; is there a statement of opinion or of fact; can the statement of fact be substantiated.

## Minimising the risk of a Code breach

The Advertising Standards Code provides a framework to support responsible advertising. All advertisers should be familiar with the Code and its requirements.

In determining whether the Code has been breached, the Complaints Board will have regard to all relevant matters, including;

- the Code;
- generally prevailing community standards;
- previous decisions;
- the consumer takeout from the advertisement;
- the context, medium and intended audience; and
- what is being advertised.

The following steps will help minimise a risk of an ASA Code breach.

1. Make sure your identity is clear in the advertisement with a promoter's statement, required by law.
2. If you are making factual claims to support your view – include the source of the facts in the advertisement.
3. The source material should substantiate the claim you are making. If your claim relates to a specific example, make that clear in the advertisement.
4. If you are using an unrestricted medium where it is more difficult to target an audience by age, take care with the images and language you include in your advertisement.
5. If you use challenging or strong imagery to help make a point or attract attention, consider the media platform you want to use and whether the audience for that platform is likely to be offended or disturbed.
6. As part of its process, the Complaints Board considers the likely consumer takeout of the advertisement. This can differ from the message the advertiser intended. One way for an advertiser to check the takeout is to test it with people not directly involved in the advertiser's organisation.
7. Hyperbole and exaggeration can play a role in advertising, but advertisers must take care to ensure the likely audience will understand the level of humour or exaggeration used.

**Summary of some recent decisions on election and advocacy advertising 2018-2020**

<b>Complaint No. / Advertisement</b>	<b>Issue</b>	<b>Outcome</b>	<b>Summary</b>
<p>20/040</p> <p>National Party Social Media Post referred to “Labour’s “Year of Delivery” and has two columns headed “Promises” and “Delivery?” with a list of policy areas with x’s in the delivery column</p>	Misleading	No Grounds to Proceed	<p>Identity of advertiser clear, advocacy rule applies.</p> <p>Complaint that the ad was misleading on a number of counts.</p> <p>The Chair said it was clear the advertisement is the Opposition's view of the Government's achievements in some policy areas. The Chair said whether what had been promised was delivered was open to debate and the advertisement was clearly from the Opposition’s point of view.</p>
<p>20/039</p> <p>Tim Costley MP Social Media Post Said “The Labour Government has raided \$billions from State Highway funding and the Horowhenua community will only get a two-lane road no earlier than 2030.”</p>	Misleading	No Grounds to Proceed	<p>Identity of advertiser clear, advocacy rule applies.</p> <p>Complaint that the statement is misleading as no such fund existed.</p> <p>The Chair said it was clear the advertisement was the Opposition's opinion of the Government’s funding allocations at the time it was published. It promoted the local MP’s support of roading improvements in his electorate and encouraged his constituents to sign a petition.</p>
<p>20/036</p> <p>ACT Party Social Media Post said “Labour wants to control what you say.” The supporting text says: “Support ACT’s campaign for freedom of speech”</p>	Misleading	No Grounds to Proceed	<p>Identity of advertiser clear, advocacy rule applies.</p> <p>Complaint that ad misleading and misrepresents policy with no source.</p> <p>The Chair confirmed the advertisement was an opinion statement from a political party, whose position is against imposing restrictions on free speech.</p>

<p>20/023</p> <p>Right to Life Billboard said "If you think that abortion up until birth is wrong... Ask your MP to vote against the Abortion Bill."</p>	<p>Misleading / offensive / social responsibility</p>	<p>No Grounds to Proceed</p>	<p>Identity of advertiser clear, advocacy rule applies.</p> <p>Complaint that ad is offensive and discriminatory.</p> <p>The Chair said the Advertiser is presenting its view of proposed changes to abortion legislation. The Chair said it is opinion rather than fact and is not in breach of the Code.</p>
<p>20/018</p> <p>National Party Social Media post stating ""National's Justice Spokesperson @MarkMitchellIMP is at a public meeting on gang violence in Hawkes Bay."</p>	<p>Misleading</p>	<p>No Grounds to Proceed</p>	<p>Identity of advertiser clear, advocacy rule applies.</p> <p>Complaint that the ad implied the meeting was organised by Hon Mark Mitchell when it was held by Hon Stuart Nash.</p> <p>The Chair said there was nothing explicit in the ad to support this takeout and it was not misleading.</p>
<p>19/483</p> <p>National Party Social Media post uses a movie poster format and images of the Prime Minister and the Minister of Finance standing side by side. The text says "How to lose a surplus in 2 years."</p>	<p>Misleading</p>	<p>No Grounds to Proceed</p>	<p>Identity of advertiser clear, advocacy rule applies.</p> <p>Complaint that the ad is misleading to suggest the Government had lost the budget surplus.</p> <p>The Chair said the Advertiser was satirising the Government via a mock-up of the poster for the film "How to lose a Guy in 10 Days" with reference to the change in Government forecasts from surplus to deficit.</p> <p>The Chair said the statement amounted to political banter within an advocacy environment.</p>
<p>19/480</p> <p>National Party Social Media Post said</p>	<p>Misleading</p>	<p>Not Upheld</p>	<p>Identity of advertiser clear, advocacy rule applies.</p>

<p>“Labour inherited massive surpluses. In two years it has: Slashed Economic Growth, Piled on Debt, Dragged NZ into Deficit”.</p>			<p>Complaint that the ad is misleading to claim the Labour Party has turned surpluses into deficits.</p> <p>The Complaints Board said the Advertiser had provided adequate substantiation to show the claim was factual at the time the advertisement was published.</p>
<p>19/479</p> <p>National Party Social Media Post included the claim that “Labour inherited surpluses and turned them into deficits in just two years.”</p>	<p>Misleading</p>	<p>Not Upheld</p>	<p>Identity of advertiser clear, advocacy rule applies.</p> <p>Complaint that the ad is misleading to claim the Labour Party has turned surpluses into deficits.</p> <p>The Complaints Board said the Advertiser had provided adequate substantiation to show the claim was factual at the time the advertisement was published, based on Treasury figures.</p>
<p>19/469</p> <p>National Party Social Media Post used an infographic to show increased rents under Labour with two bars illustrating the amounts with the figures included.</p>	<p>Misleading</p>	<p>Not Upheld</p> <p>Appeal Application declined</p>	<p>Identity of advertiser clear, advocacy rule applies.</p> <p>Complaint the advertisement is misleading by visually showing a bar graph which is not to scale and veracity of data queried.</p> <p>The Complaints Board said that despite a level of hyperbole in the scale of the bar graph, the ad included the actual data figures and the source of this information. The Complaints Board said the advertisement, when viewed within a political advocacy landscape, was unlikely to mislead.</p>
<p>19/465</p> <p>National Party Social Media Post</p>	<p>Misleading</p>	<p>Not Upheld</p> <p>Under Appeal</p>	<p>Identity of advertiser clear, advocacy rule applies.</p>

<p>referred to increased petrol tax under Labour with two bars illustrating the amounts with figures. The National Government number was an average over 9 years, the Labour Government number was the national average price on 29 Nov 2019.</p>			<p>Complaint the advertisement is misleading to by visually showing a bar graph which is not to scale and to compare an average price over nine years for National with a single month period for Labour.</p> <p>The majority of the Board 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.</p>
<p>19/391 Voice for Life NZ Billboard advertisement said “Both lives matter both deserve better than an extreme abortion law”.</p>	<p>Misleading / fear / social responsibility</p>	<p>No Grounds to Proceed</p>	<p>Identity of advertiser clear, advocacy rule applies. Advertiser is presenting its view of proposed changes to abortion legislation. The Chair said it is opinion rather than fact and does not in breach of the Code.</p>
<p>19/379 Save Chamberlain Park Newspaper advertisement was headlined: You Wanna What” and shows images of a chainsaw and a bulldozer over an image of a park. The call to action was “Save Chamberlain Park, and “Vote City Vision out”.</p>	<p>Misleading</p>	<p>NOT UPHELD by Complaints Board  Complainant Appeal ALLOWED by Appeal Board – UPHELD</p>	<p>Identity of advertiser clear, advocacy rule applies. Advertisement part of the local election campaign in Auckland. The Complaints Board said the advertisement included statements of opinion and statements of fact and adequate substantiation had been provided for the facts. The Appeal Board said the overall consumer takeout was Chamberlain Park was being completely destroyed rather than repurposed which was misleading. The use of a specific number of trees being removed had been presented as fact and not adequately substantiated.</p>
<p>19/279 National Party Social Media Post compared the Government funding for the Provincial Growth Fund with new</p>	<p>Misleading</p>	<p>UPHELD by Complaints Board Advertiser Appeal ALLOWED by Appeal Board – NOT UPHELD</p>	<p>Included promoter statement, identity of advertiser clear, advocacy rule applies. Insufficient evidence to support claim provided to the Complaints Board.</p>



<p>funding for Pharmac in the 2019 Budget.</p>			<p>The Appeal Board received more information including additional context (published during Budget debate) and substantiation provided by the Advertiser made its approach and the use of the data clear.</p> <p>Not misleading in the context of advocacy advertising.</p>
<p>19/275 National Party Social Media Post challenging Government's clean car scheme fees of \$3000 that in National's view were \$6000.</p>	<p>Misleading</p>	<p>UPHELD Advertiser Appeal DISMISSED by Appeal Board – UPHELD</p>	<p>Included promoter statement, identity of advertiser clear, advocacy rule applies.</p> <p>Misleading about the true cost of the Labour-led Coalition Government's proposed Clean Car Discount feebate and Clean Car Standard schemes. No qualifier statement in ad and likely consumer takeout is that \$6000 fee applies to all car purchases.</p>
<p>19/235 NZ AIDS Foundation Billboard is part of the Ending HIV campaign. It shows the image of a man's face from the mid-chest up. The copy says "I bring condoms. You bring lube. What's your rule?" It includes a URL partly obscured.</p>	<p>Offensiveness</p>	<p>UPHELD</p>	<p>Identity of advertiser not clear, advocacy rule not applicable.</p> <p>Important social message but advertiser not clear and unrestricted audience for billboard.</p>
<p>19/071 National Party Social Media Post said Labour had failed to deliver on its promise of building 10,000 houses in the first year of its housing programme.</p>	<p>Misleading</p>	<p>NOT UPHELD</p>	<p>Included promoter statement, identity of advertiser clear, advocacy rule applies.</p> <p>Advertiser provided sufficient substantiation to support the claim. Most consumers would understand the context of the advertisement as the National Party's assessment of the Government's promises versus what it has delivered.</p>

<p>19/056 Family First NZ Billboard for Say No to Dope referring to a Kids Menu to support its campaign not to legalise cannabis</p>	<p>Misleading / fear / social responsibility</p>	<p>NOT UPHELD</p>	<p>Identity of the advertiser sufficiently clear. Advocacy rule applies.</p> <p>The advertisement refers to some of the different types of cannabis products that might be available for sale in New Zealand, if recreational cannabis is made legal.</p>
<p>18/340 Waves NZ Billboard from Warnings About Vaccine Expectations had a photo of a man and a baby. Next to the photo were the words: "If you knew the ingredients in a vaccine, would you RISK it?"</p>	<p>Misleading / fear / social responsibility</p>	<p>UPHELD</p>	<p>Identity of the advertiser not clear, advocacy rule does not apply.</p> <p>Likely consumer takeout that vaccination is not safe was not sufficiently substantiated by the Advertiser, the advertisement unjustifiably played on fear and was socially irresponsible.</p>

## 9. The Role of the ASA

### **Who is the Advertising Standards Authority (ASA)?**

The ASA is the organisation that sets the standards for responsible advertising in New Zealand. The ASA also runs a complaints process to support the standards. The ASA has 14 member organisations representing advertisers, advertising agencies and media organisations.

### **What are the standards?**

The Advertising Codes set the standards for responsible advertising. They cover truthful presentation and matters of social responsibility. There are specialist codes for advertising to Children and Young People and for categories including alcohol, financial advertising, gambling, and therapeutic and health advertising.

### **Is the Advertising Standards Authority a government agency?**

No. The Advertising Standards Authority is an industry organisation. It is supported by advertisers, advertising agencies and media organisations to maintain standards in advertising.

### **Why does the industry self-regulate?**

Self-regulation encourages the industry to take responsibility to ensure legal, decent, honest and truthful advertising communications to consumers. There are a number of incentives. Most advertisers do not want to deliberately mislead or offend current or potential customers. They understand the importance of responsible advertising of restricted products and engage with pre-vetting processes and code-compliance prior to the release / publication of advertising. If consumers trust advertising, it is more effective. Advertising self-regulation also works best alongside a legislative framework. There are many Acts that cover advertising in New Zealand.

### **Who makes the decision on whether an advertisement is in breach of the Codes?**

The Advertising Standards Complaints Board makes decisions about complaints following responses from parties. The Complaints Board has nine members, five public and four industry and meets fortnightly. The Appeal Board has three members, two public and one industry and meets on demand. The ASA membership has no involvement in the work of the Complaints and Appeal Boards.

### **What do the decisions of the Complaints Board mean?**

**No Grounds to Proceed:** This means the Chair of the Complaints Board has reviewed the complaint and has ruled a Code has not been breached, and there are no grounds for the complaint to proceed. This outcome may occur when a complaint is based on extreme interpretation or is trivial or vexatious, or if there is a precedent decision that relates to the same or similar advertising.

**Upheld:** This means the Complaints Board or Appeal Board has decided a Code has been breached. The advertiser is asked to amend or remove the advertisement.

**Settled:** When an advertiser either withdraws an advertisement or makes immediate changes that addresses the issues raised by the complainant and the advertisement no longer breaches a Code, the complaint can be settled. A settled decision achieves the same outcome as an upheld decision – removal or amendment of the advertisement.

**Not Upheld:** This means the Complaints Board or Appeal Board does not find the advertisement in breach of a Code in relation to the Complainant's concerns.

**No Jurisdiction:** Sometimes a complaint is outside the jurisdiction of the ASA. The ASA deals with complaints about any advertisement that is targeted at NZ audiences. Matters of law or complaints about advertisements from outside of NZ, which are not targeting NZ consumers, are outside the ASA's jurisdiction.

#### **What do the decisions of the Appeal Board mean?**

**Accepted:** The Chair of the Appeal Board has accepted the appeal application for the complaint to be reheard, either by referral back to the Complaints Board or by the Appeal Board.

**Declined:** The Chair of the Appeal Board has determined that the grounds for appeal have not been met and the appeal application will not proceed.

**Allowed:** The appeal application has been successful and the Complaints Board or the Appeal Board has overturned the previous Decision.

**Dismissed:** The appeal application has not been successful and the Complaints Board or the Appeal Board has determined that the previous Decision was correct.

#### **What happens if an advertisement is found to be in breach of a Code?**

If an advertisement is found to be in breach of the ASA Codes, it must be removed and / or amended. This request is made to the advertiser, agency and media after Complaints Board or Appeal Board meetings. There is an excellent rate of compliance for this process. In addition, all decisions are released to the media and often receive considerable publicity. Some may argue the media coverage may be disproportionate to the level of breach against the advertiser and the negative publicity is also a driver for compliance.

#### **How is a Decision released to the media?**

The ASA has a database of decisions on its website. Parties to a complaint will receive a copy of the decision and be given a date the decision will be available on the ASA website. The ASA has a "Decisions Alert" that interested parties can subscribe to and this alert is emailed with a list of the most recently released decisions.

#### **Why are there no fines to make advertisers take down the advertisement if the complaint is upheld?**

The ASA runs a voluntary process to deal with complaints about advertising in very short time-frames. If the advertisement is in breach of the Advertising Codes, it is removed or changed. This can be a considerable cost to the advertiser, depending on the type of advertisement or campaign. In addition, all the decisions are released to the public and media via the ASA website and are often reported. This can result in a reputational risk for the advertiser.

If the ASA had the ability to enforce a fine, our process would be more legalistic and take much longer. It is important to note the complaints process is about testing compliance with the codes. The ASA is also active in promoting code compliance through education and training.

**What happens if an advertiser does not amend or remove an advertisement when the complaint is upheld?**

Most advertisers support self-regulation and responsible advertising and don't deliberately mislead or offend consumers. However, advertising is a creative business and does push boundaries from time to time. If the advertiser pushes too far and a complaint is upheld, almost all advertisers will remove or change the advertisement.

ASA media organisations and agency members also help support compliance. All decisions are released to the public and reported by the media which also helps hold the advertiser to account.

**Contact Us:**

**Email**

[asa@asa.co.nz](mailto:asa@asa.co.nz)

**Telephone**

+64 4 4727852  
or 0800 234 357

**Postal Address**

Advertising Standards Authority Inc  
PO Box 10675  
The Terrace  
Wellington 6143