

COMPLAINT NUMBER	21/511
ADVERTISER	Taxpayers' Union
ADVERTISEMENT	Taxpayers' Union, Television
DATE OF MEETING	15 November 2021
OUTCOME	No Grounds to Proceed

Advertisement:The television advertisement from the New Zealand Taxpayers' Union advocates against the Government's Three Waters reforms. The advertisement features stylised images of the Beehive, Rt Hon Jacinda Arden, Hon Nanaia Mahuta, and critical news headlines, with text highlighting key points. The advertisement ends with the on-screen statement, "Three Waters? Zero Gain". Underneath is a website address for "www.StopThreeWaters.nz" with small text below stating, "Authorised by the New Zealand Taxpayers' Union Inc, Level 4, 117 Lambton Quay, Wellington".

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

Complaint 1

The anti-three waters Taxpayer union advert played at approximately 7:30am on 3/11 is an extremely one sided, americanised, attack politics style campaign. The ad includes partial information, one sided explanations of a complex infrastructure issue, and no balanced information about the reforms. Fake news and misinformation contribute to an environment of low trust, low intelligence and divisive politics. To allow an ad such as this leans into these trends rather than standing in opposition to selective truths, manipulation and scare tactics. I would have hoped that TVNZ and the advertising standards authority would recognise these signs and consider the destructive impacts of these kinds of campaigns. Regardless of whether this ad breaches specific regulations, please consider in future what ideologies ads like these support, and the type of information sharing and communication this encourages. For the sake of truth, openness and democracy, please consider your policies on misinformation-based, fear-motivated, attack-style ad campaigns.

Complaint 2

The advert contained incorrect and misleading information. It said that many independent experts had recommended the reforms NOT go ahead. This is the opposite of the truth. Over 15 years and many independent reports the case for the three waters reform is strong. Independent experts including many from overseas who have done similar reforms and achieved positive outcomes have recommended this type of reform for NZ. The debate has been captured by vested interests and this advert is not in the public interest given the incorrect and terribly misleading information contained in it. I am a concerned citizen that used to work in public policy and I know a lot about this area. I'm very concerned about the level of misinformation on this topic and this advert will be damaging to water outcomes in NZ if it is allowed to remain on air.

Complaint 3

The government are not "seizing the assets". the councils will still have ownership of the assets. It will still be public ownership. Also "no local control" is not true. The councils will appoint members of the Regional Representative group. And the issue of how much further "local" input will be is still an issue within ongoing discussions. but ready it is not "no" local control (remember these are just proposals. [...])

Complaint 4

An ad aired tonight that was funded by the Taxpayers Union depicted three untrue points about governments 3-Waters reform. It is scare mongering at best and at worst eroding the fabric of democracy by continuing to peddle fake news. An advert on prime time TV with that coverage and unchecked level of divisiveness is something seen in America, not New Zealand.

Complaint 5

The Three Waters Ad by the Taxpayers Union appears to contravene the Standards Authority rule 2 (b) by being untruthful (goes directly against government three waters information), contains misinformation, and aggressively misleads.

Complaint 6

I am complaining about a Taxpayers Union advertisement, opposing the Government's Three Waters reforms. I have seen the advertisement several times during ad breaks for The Chase. The ad states: "The Government want to seize your local water assets and put them into the hands of unelected, co-governed entities." "Co-governed" in this context means co-governed by iwi. This claim is untrue. Details of the proposed new system are on an official website and clearly shows governance of the new entities will be the sole preserve of their board. There is no provision for an iwi role in governance whatsoever. They will have an oversight role and have a degree of input, including an equal say with councils on appointing a panel which then will choose a board. Details of governance arrangements and iwi roles are spelled out on P24/25 of this document:

[https://www.dia.govt.nz/diawebsite.nsf/Files/three-watersreform-programme-2021/\\$file/transforming-the-system-for-deliveringthree-waters-services-the-case-for-change-and-summary-of-proposals30-june-2021.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/three-watersreform-programme-2021/$file/transforming-the-system-for-deliveringthree-waters-services-the-case-for-change-and-summary-of-proposals30-june-2021.pdf)

Because the facts show the claim in the advertisement is false, I would hope this would not be a time-consuming matter for the authority to resolve. And because it is part of a political campaign and because this seems not an innocent error of fact but a distortion designed to anger people opposed to Maori interests and rights, I would hope for speedy consideration. I find the tenor of the entire advertisement disagreeable but while I accept the Taxpayers Union is entitled to its own opinions, it is not entitled to its own facts.

Complaint 7

1. This was 2nd time I had seen the ad and still couldnt discern who was behind it. 2. Sweeping statements were made about the 3 waters reform. No statistics and no website to go to for the details to support the sweeping statements. 3. The ad looked 'official' and vulnerable or unquestioning people could be influenced by the statements. The ad didnt even say there were other figures and reports which disputed the opinions given on the advertisement. I feel that it was not possible to fairly assess whether the views expressed in the ad were true (otherwise Id be looking at that rather than writing to you). I feel that vulnerable people would be worried by and unreasonably influenced by this advertisement.

The relevant provisions were Advertising Standards Code - Principle 2, Rule 2(b), Rule 2(e)

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.

The Chair said the advertisement 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 say:

- 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.

Role of the ASA when considering an advocacy advertisement.

The Chair noted her role is to consider the likely consumer takeout of an advertisement and complaints about advocacy advertising are considered differently to complaints about advertising for products and services.

The Chair will consider whether the advertisement includes statements of fact or opinion and whether any factual claims require substantiation from the Advertiser. The Chair noted that a fact is something that is objectively true and can be verified as such whereas an opinion is a personal belief. Others may agree or disagree with an opinion, but they cannot prove or disprove it. Some statements contain both fact and opinion.

The Chair observed that in a free and democratic society, issues 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.

Under Rule 2(e) Advocacy advertising of the Advertising Standards Code:

- The identity of the advertiser must be clear
- Opinion must be clearly distinguishable from factual information, and

- Factual information must be able to be substantiated.

If the identity and position of the Advertiser is clear, a more liberal interpretation of the Advertising Standards Code is allowed.

The Chair noted Complainants were concerned the advertisement is misleading and summarised their issues as follows:

- The statement that independent experts has recommended the reforms not go ahead is wrong
- The level of misinformation in the advertisement is damaging to water outcomes in New Zealand
- The Government are not seizing the assets, councils will still have control.
- The level of local input is still being discussed
- The advertisement is scaremongering and peddling fake news
- The reference to the entities being co-governed is wrong and misrepresents the governance structure. It is designed to anger people opposed to Māori interests and rights.
- The advertisement did not include any statistics or website to go to to support the statements and it looked official and vulnerable people could be influenced by the statements.

The Chair confirmed the advertisement was an advocacy advertisement and the Advertiser's identity and position on the issue was clear. The advertisement complied with the identity requirements of Rule 2(e) of the Advertising Standards Code. It included a website address and an authorisation statement with details for the Advertiser.

The Chair confirmed a more liberal interpretation of the Advertising Standards Code was provided for under the Advocacy Principles in recognition of the protection for freedom of expression in the New Zealand Bill of Rights Act.

The Chair also referred to a recent precedent decision, 21/482 about an advocacy advertisement from the Department of Internal Affairs about the Three Waters project. This Decision said in part:

“The Complaints Board did not uphold a complaint about a television advertisement for the Three Waters Reform Programme public information and education campaign. The Board said in the context of advocacy advertising, the advertisement was not misleading.”

The Chair also noted the number of issues Complainants had raised with the advertising from the Department of Internal Affairs, including:

- “It says the Government is setting up four new regions for water, but it is only a proposal
- It implies Councils are supportive of the proposal
- It implies the only or best way to improve our drinking water is for councils to sign up to this proposal
- It implies water quality will be negatively affected if the proposal doesn't go ahead
- It omits certain aspects of the proposal
- Three Waters is really about shifting ownership of NZ's water assets into Govt and Māori ownership
- It does not clearly distinguish between fact and opinion
- It made an environmental claim which could not be substantiated, that the Three Waters proposal will be better environmentally for NZ water

- It encourages the cultivation of trout in the wild, and trout is considered a pest by the Department of Conservation”

The Chair confirmed the complaints about the Department of Internal Affairs advertising dealt with in Decision 21/482, and the complaints before her about the current Taxpayers Union advertisement critical of the Three Waters proposal, were clear examples of advocacy advertising.

The Chair carefully reviewed the advertisement and said the likely consumer takeout is it presents the Taxpayers’ Union view opposing the proposed Three Waters policy.

The Chair said it was clear the statements in the advertisement reflect the Advertiser’s interpretation of and opinion about the Government proposal on water reform. The Chair noted this is a matter which is the subject of significant public debate with information in support of the reform and in opposition widely available. This context is a key part of the assessment of Code compliance.

The Chair confirmed there is no requirement in advocacy advertising to present both sides of a case when stating a position, or to substantiate an opinion. The Chair confirmed the advertisement included a website which would provide more detail on the Advertiser’s position.

The Chair said in the context of advocacy advertising, the advertisement was not in breach of Principle 2 or Rules 2(b) and 2(e) of the Advertising Standards Code.

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

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

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 with notification of the intent to appeal lodged within 14 calendar days of receipt of the written decision. The substantive appeal application must be lodged with the ASA within 21 calendar days of receipt of the written decision.