

<b>COMPLAINT NUMBER</b>	19/275
<b>APPEAL NUMBER</b>	19/013
<b>COMPLAINANTS</b>	J Lawson & A Currie
<b>APPLICANT</b>	New Zealand National Party
<b>ADVERTISER</b>	New Zealand National Party
<b>ADVERTISEMENT</b>	New Zealand National Party Facebook
<b>DATE OF MEETING</b>	28 January 2020
<b>OUTCOME</b>	Appeal Dismissed Complaint Upheld

## **SUMMARY**

The Complaints Board ruled the complaint made by J Lawson and A Currie about the Facebook advertisement for the New Zealand National Party was Upheld.

The Advertiser appealed the Decision. The Chairperson of the Appeal Board accepted the appeal on the grounds that there was new evidence of sufficient substance to affect the decision and it was in the interests of natural justice for the matter to be heard by the Appeal Board, de novo.

The Appeal Board said the advertisement was misleading because it made a blanket factual statement, without any qualifications. The substantiation provided by the Advertiser did not support the likely consumer takeout of the advertisement.

Therefore, the Complaints Board decision that the advertisement was in breach of the Advertising Standards Code stands.

The Appeal Board dismissed the Appeal and ruled the complaint was Upheld under Principle 2, Rule 2(b) and Rule 2(e) of the Advertising Standards Code.

The Appeal was Dismissed and the Complaint was Upheld.

## **Decision:**

Complaint **Upheld** Appeal **Dismissed**

Please note this headnote does not form part of the Decision.

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## **APPEAL BOARD DECISION**

The Complaints Board ruled unanimously to Uphold the complaint made by J Lawson and A Currie about the New Zealand National Party Facebook advertisement.

The Advertiser appealed the Decision. The Chairperson accepted the Appeal and said the Application raised sufficient grounds for the matter to be considered by the Appeal Board de novo.

### **Relevant Codes**

The Chairperson directed the Appeal Board to consider the advertisement 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.

### **Relevant precedent decisions**

In considering this complaint the Complaints Board referred to precedent Decision 19/259 where the complaint was Not Upheld and Decision 19/279 Appeal 19/011, where the complaint was originally Upheld by the Complaints Board and later ruled Not Upheld on appeal.

The full versions of these decisions can be found on the ASA website:

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

**Decision 19/259** concerned a Twitter advertisement by the New Zealand National Party which compared the potential fees which could be imposed by the Clean Car Discount feebate scheme.

The Complaints Board was of the view that the Advertiser had used extreme examples in terms of the age and price of the cars for its comparison, in order to make a political point, but accepted the substantiation provided by the Advertiser as being sufficient for the level of claim made in the advertisement.

**Decision 19/279 Appeal 19/011** concerned a National Party Facebook advertisement which was Upheld by the Complaints Board. It showed a picture of Minister Shane Jones with the text "The Govt has put 75x more into Shane Jones' slush fund than it has for Pharmac." The small

print said: “Source Budget 2018 and Budget 2019”. The Appeal Board said the additional context and substantiation provided by the Advertiser in their appeal, seen through the lens of advocacy advertising, presented a political point of view that was not misleading in this context.

### **Summary of Complaints Board Decision 19/275**

The Complaints Board upheld the complaints about a New Zealand National Party Facebook advertisement about the true cost of the Labour-led Coalition Government’s proposed Clean Car Discount feebate and Clean Car Standard schemes. The Complaints Board said the substantiation provided by the Advertiser was insufficient for the level of claim made in the advertisement and it was likely to confuse or deceive consumers.

Having reviewed the LEV (Light Electric Vehicle) consultation document, the Complaints Board said there was no evidence the Clean Car Standard scheme would translate to a cost for the consumer as the advertisement claimed. The Board said the proposal was a penalty scheme for vehicle suppliers that failed to meet their emissions target. It said the initiative appeared to encourage suppliers to choose a fleet which balanced out high and low carbon emission vehicles. The Complaints Board said the substantiation provided by the Advertiser in this case was insufficient for the level of claim made in the advertisement.

### **Summary of Advertiser’s Appeal**

The National Party submitted a seven-page document appealing the Complaints Board decision and requesting that the complaint be ruled Not Upheld.

The appeal application provided links to seven documents, described as forming the basis of the Labour-led Government’s Car Tax policies. These documents were available on the Ministry of Transport website. The Advertiser said these documents make it clear that the costs of the policies will be passed on to consumers, in the form of higher vehicle prices. The Advertiser also said a substantial portion of Kiwi households will be affected by these policies. “Officials estimate that 42% of all New Zealand households may purchase a vehicle new to the fleet over the next 6 years to 2025”.

The full version of the Advertiser’s Appeal can be found in Appendix 4.

### **Summary of the Complainants’ Responses to the Appeal**

One of the Complainants, J Lawson, said the Advertiser’s response to the appeal did not address the core of his complaint, which was advertising \$6,000, rather than \$3,000.

J Lawson also said there are affordable low emission vehicles on the market, and by the time the proposed legislation is in place, more will be available.

The other Complainant, A Currie, said the appeal should be dismissed. The advertisement implies that “ordinary” kiwis will pay a \$6000 fee, but “Ordinary kiwis cannot be said to all buy a top of the range vehicle, and even if they all did, they would not pay a \$6000 fee.”

The full version of the both Complainants’ Responses to the Appeal can be found in Appendix 5.

## **APPEAL BOARD DISCUSSION**

The Appeal Board carefully considered the complaints, the advertisement, the Complaints Board Decision, the Appeal application, the response to the Appeal application and relevant precedent decisions.

### *Consumer takeout*

The Appeal Board agreed the likely consumer takeout of the advertisement about “Labour’s Car Tax” was: Anyone who buys a car will be affected by a new car tax of \$6,000.

The Appeal Board said the advertisement makes a blanket factual statement, without any qualifications, which creates the impression the tax will apply across the board, regardless of what sort of car is purchased.

### *Is the advertisement an advocacy advertisement?*

The Appeal 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.

Having established the advertisement was from the New Zealand National Party, the Complaints Board noted 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 Appeal 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. The Appeal Board considered the rest of the complaint in conjunction with this liberal interpretation under the application of the Advocacy Principles.

*Is the identity of the Advertiser clear?*

The Appeal Board agreed the Advertiser had met the identity requirements of an advocacy advertisement. The advertisement was a Facebook post approved by the New Zealand National Party leader, Simon Bridges, posted on the New Zealand National Party's Facebook page and contained the National Party logo. Therefore, the Board said the context, placement and content made the identity of the Advertiser clear.

*Is the advertisement misleading?*

The Appeal Board unanimously ruled the advertisement was misleading. The Board said the advertisement made a blanket factual statement, without any qualifications, which required substantiation. The Board said the substantiation provided by the Advertiser did not support the likely consumer takeout of the advertisement.

The Board said there is nothing in the advertisement to inform the consumer where the Advertiser sourced the information referred to in the advertisement. The Board compared this with Decision 19/279 Appeal 19/011, where the small print in the advertisement notes the source for the "75x more into Shane Jones' slush fund" as "Budget 2018 and Budget 2019".

**Relevant Guidelines**

The Appeal Board referred to the following guidelines from the Advertising Standards Code:

**Guidelines for Rule 2(b) Truthful presentation**

"... Advertisers must hold evidence to substantiate all claims made in an advertisement"  
"When evidence is included in an advertisement, it must be easily understood..."

**Guideline for Rule 2(e) Advocacy advertising**

"Evidence (e.g. academic studies, expert opinion) in support of factual information must be appropriate and robust and must be readily available and obtainable..."

**Precedent Decision**

The Appeal Board referred to a precedent decision, 19/259, regarding a New Zealand National Party Twitter advertisement which says "How's this fair? According to the Ministry of Transport, Labour's Car Tax will slap a \$1000 tax on someone buying a used imported Corolla in order to give a \$1500 discount to someone buying an imported electric Porsche Cayenne! Yet another tax on low and middle-income Kiwis."

The Board noted that while this advertisement used extreme examples, the complaints were Not Upheld because the Advertiser had made the comparison clear in the advertisement and provided sufficient substantiation to support it.

**New Policy**

The Appeal Board said the text "Labour's Car Tax... What they said "Small Fee" What they did \$3,000 Now \$6,000" along with the comment "New Zealand National Party - What hope does an ordinary Kiwi have for getting some relief from taxes and costs if the people running the

Government think \$6000 is a small fee?" together create the impression the new car tax will apply across the board, regardless of circumstances.

The Appeal Board noted the Government proposal referred to in the advertisement says it is designed to encourage New Zealanders to purchase vehicles with lower CO<sub>2</sub> emissions. Changes to import fees will vary depending on the vehicle purchased. Whether or not a fee will be charged, and the size of the fee, will depend on the purchase decision made by the consumer.

The Appeal Board said the advertisement gives the impression a significant fee will be charged to the "ordinary Kiwi", across the board, and this is misleading.

The Appeal Board noted the Advertiser's explanation that the "\$6000" fee referred to in the advertisement is based on the purchase of a 2019 Nissan Patrol, if it were imported as a used car in 2025. The Board said this was not clear in the advertisement.

### **Substantiation**

The Appeal Board noted the information provided by the Advertiser, both in the original response to the complaint and in the Appeal application.

The Appeal Board said while the advertisement describes "Labour's Car Tax" as "\$6,000", it does not provide any context to explain how this figure was calculated. The Board noted the comment from the Advertiser in their response that they have based the figure on the example of "a 2019 Nissan Patrol, being imported as a used car in 2025."

The Appeal Board noted the likely consumer takeout of the advertisement is that anyone who buys a car will be affected by a new car tax of \$6,000. The Board said the advertisement was misleading because it does not provide any indication that this figure does not apply generally, to all cars, but to a specific example.

The Appeal Board noted the Advertiser's reference to a comment in the LEV Cabinet Paper, that "The clean car standard could lead to a small increase in the vehicle prices in the short term". The Board said while this may be so, any increase would not affect all purchases, across the board, as implied in the advertisement.

### *Is the description of Julie Anne Genter misleading?*

The Appeal Board said the depiction of Julie Anne Genter in the advertisement was not misleading and did not imply she is a Labour MP. The Board said Ms Genter is identified in the advertisement as Associate Transport Minister and there is a head and shoulders photo of her. The background colour in the photo is green.

The Appeal Board noted Ms Genter, while a member of the Green Party, is a Minister in the Labour-led Coalition Government and had a leading role in the announcements of these new car tax policies. The Appeal Board ruled this part of A Currie's complaint was not in breach of the Advertising Standards Code.

*Summary*

The Appeal Board unanimously agreed the advertisement was misleading, in the context of an advocacy advertisement, as the substantiation provided by the Advertiser did not support the likely consumer takeout of the advertisement.

The Appeal Board ruled the advertisement was in breach of Principle 2, Rule 2(b) and Rule 2(e) of the Advertising Standards Code.

The Appeal Board unanimously agreed the depiction of Julie Anne Genter in the advertisement was not misleading.

**Decision:**

Complaint **Upheld** Appeal **Dismissed**

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## APPENDICES

1. Description of Advertisement
  2. Complaints from J Lawson and A Currie
  3. Summary of the Complaints Board Decision
  4. Appeal Application from New Zealand National Party
  5. Complainants' Responses to the Appeal
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### Appendix 1

#### DESCRIPTION OF ADVERTISEMENT

The advertisement on the New Zealand National Party Facebook page is headed "Labour's Car Tax". To the left is a photo of Julie Anne Genter, Associate Minister of Transport with the text: "What they said "Small Fee" and to the right the text "What they did ~~\$3,000~~ Now \$6,000". To the right of the graphic the text says "What hope does an ordinary Kiwi have for getting some relief from taxes and costs if the people running the Government think \$6000 is a small fee". The advertisement has a link to a press release by Simon Bridges with further comments about the policies.

### Appendix 2

#### COMPLAINT FROM J LAWSON

This advert contravenes principle 2 of the code as it is not true and, furthermore, rule 2(b) as it is misleading and deceptive advertising. The largest fee is \$3,000, not \$6,000, and that is only on the most gas guzzling brand new 4x4 SUVs which all sell for \$100k+. That is made clear in Appendix 4 on page 41 of <https://transport.govt.nz/assets/Import/Uploads/Our-Work/Documents/11de862c28/LEV-consultation-document-final.pdf>.

#### COMPLAINT FROM A CURRIE

I submit that this ad is contrary to Principle 2 regarding truthful presentation. Principle 2 of the code deals with truthfulness and balance. In particular Rule 2(b) has been breached which about misleading or deceptive advertising.

The largest fee is \$3,000, not \$6,000, and event that is only on a very small number of cars, in particular luxury, brand new 4x4 SUVs which all sell for \$100k+.

There is NO \$6000 fee whatsoever, and the number is entirely made up. The wording conveys the message to the viewer that cars will be taxed by \$6000, whereas the average cost of the tax on new cars is 0\$, as the subsidy makes up for the tax.

That is apparent in Appendix 4 on page 41 of <https://transport.govt.nz/assets/Import/Uploads/Our-Work/Documents/11de862c28/LEV-consultation-documentfinal>.

In addition to this, the MP pictured, Julie-Ann Genter, is not a Labour MP as implied in the ad. She is a Green Party MP.



## Appendix 3

### SUMMARY OF COMPLAINTS BOARD DECISION 19/275

#### Issues Raised

- Truthful Presentation
- Advocacy Advertising

#### Summary of the Advertiser's Response

The Advertiser said Facebook post contained the pinned press release which put the figures in the advertisement into context by discussing the Labour-led Coalition Government's Clean Car Discount Scheme and the Clean Car Standard Scheme. The Advertiser said the intent of the advertisement was to highlight the negative effect of both Government policies which are part of the consultation.

The Advertiser provided the method it used to calculate the \$6000 using a Nissan Patrol vehicle.

#### Summary of the Complaints Board Decision

The Complaints Board upheld the complaints about a New Zealand National Party Facebook advertisement about the true cost of the Labour-led Coalition Government's proposed Clean Car Discount feebate and Clean Car Standard schemes. The Complaints Board said the substantiation provided by the Advertiser was insufficient for the level of claim made in the advertisement and it was likely to confuse or deceive consumers.

The full version of this decision can be found on the ASA website:

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

## Appendix 4

### Appeal Application from New Zealand National Party

1. Thank you for your email regarding complaint 19/275, and as discussed, we wish to appeal the decision reached by the Complaints Board.
2. Under Clause 6 (c) of the second schedule of the Advertising Standards Complaints Board Complaints Procedures, we believe that sections (b), (c), (d) and (e) apply in our case for appeal and ask the Appeal Board to consider the issue de novo.

### Background

3. Our advocacy advertisement in question raises serious concerns of a high public interest regarding the Government's Clean Car Standard and Clean Car Discount policies.
4. While our first iteration of the advocacy advertisement mentioned up to \$3,000 in a car tax on hardworking everyday Kiwis, and was accepted, this merely applied to the Clean Car

Discount and complaint 19/259 was rightly dismissed by the Board.

5. However, in viewing the Labour-led Government's car tax policy in totality, being both the Clean Car Discount and the Clean Car Standard policy, it is imperative the public is rightly informed about the associated costs with both of these policies together.
6. The background information to these policies is substantial, comprising nearly 300 pages of technical reports, Cabinet Papers, and impact assessments. While most everyday Kiwis could not be reasonably expected to read these in totality, it is imperative in a functioning democracy that New Zealanders are engaged with the policy process with policies that will affect them and their families.
7. It is estimated in the Government's own documents that roughly 42% of households may be directly affected by these policies over the next 6 years. That is a substantial group of New Zealanders.
8. The policy must also be viewed in a uniquely New Zealand context, with an understanding for the reasons in which New Zealanders choose to purchase the vehicles they do, mitigation and options present, and alternatives available.
9. In regard to advocacy advertising, and particularly regarding political matters, it has been the previous view and practice of the Advertising Standards Authority that the spirit of the Code is more important than any minor technical breaches. People have a right to express their views and this right should not be unduly or unreasonably restricted by Rules.
10. Furthermore, in very recent previous rulings the Chairperson of the ASA Board noted 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 Chairperson also observed that in a free and democratic society, differences of political opinion should be openly debated without undue hindrance or interference from authorities 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.

## Response

11. We note from the initial decision on complaint 19/275, the Board took issue with only two aspects of the response provided by the New Zealand National Party (the Advertiser), namely:
  1. *"the Complaints Board said there was no evidence the Clean Car Standard Scheme would translate to a cost for the consumer as the advertisement claimed."*
  2. *"The Board noted the reference in the advertisement to the cost being directed at "ordinary Kiwis". It did not consider this was an accurate reflection of the supplier penalty and therefore the advertisement was likely to mislead consumers."*

12. First, I would like to draw the Board's attention to seven documents that form the basis of the Labour-led Government's Car Tax policies and are freely available on the Ministry of Transport's website here:

<https://www.transport.govt.nz/multi-modal/climatechange/electric-vehicles/clean-cars/>

13. Those documents are so titled:

1. **LEV Discussion Document** (*provided in support of the original complaint*)
  - a. Link: <https://www.transport.govt.nz/assets/Import/Uploads/Our-Work/Documents/11de862c28/LEV-consultation-document-final.pdf>
2. **LEV Cabinet Paper**
  - a. Link: <https://www.transport.govt.nz/assets/Import/Uploads/Research/Documents/Cabinet-Papers/57e442ec26/LEV-Cabinet-paper.pdf>
3. **LEV Regulatory Impact Statement**
  - a. Link: <https://www.transport.govt.nz/assets/Import/Uploads/About/Documents/00c81821e5/LEV-Regulatory-Impact-Statement.pdf>
4. **Cost Benefit Analysis – Clean Car Standard**
  - a. Link: <https://www.transport.govt.nz/assets/Import/Uploads/Our-Work/Documents/b4b06015e1/Clean-car-standard-Preliminary-CBA-July-2019.pdf>
5. **Cost Benefit Analysis – Clean Car Discount**
  - a. Link: <https://www.transport.govt.nz/assets/Import/Uploads/Our-Work/Documents/50899cf3ba/Clean-car-discount-Preliminary-CBA-July-2019.pdf>
6. **Social Impact Assessment – Clean Car Standard**
  - a. Link: <https://www.transport.govt.nz/assets/Import/Uploads/Our-Work/Documents/c50c25f19c/Clean-car-standard-preliminary-SIA-July-2019.pdf>
7. **Social Impact Assessment – Clean Car Discount**
  - a. Link: <https://www.transport.govt.nz/assets/Import/Uploads/Our-Work/Documents/66aa6b8dc6/Clean-car-discont-Preliminary-SIA-July-2019.pdf>

### ***Translation of Cost to Consumer***

14. In reference to the first point raised in the Board's initial decision, it noted that "*the Complaints Board said there was no evidence the Clean Car Standard Scheme would translate to a cost for the consumer as the advertisement claimed.*"

15. In making its decision, the Board has failed to take into account the substantial evidence provided in the further six documents that form part of the policy background. Notably the LEV Cabinet Paper, Regulatory Impact Statement, Cost Benefit Analysis – Clean Car Standard, and the Social Impact Assessment – Clean Car Standard, and the previously supplied LEV Discussion document respectively.

16. Those Government documents make it clear throughout that the costs of the policies will be passed onto consumers, and note the following in regard to costs of the Clean Car Standard Scheme policy:

*LEV Cabinet Paper*

1. (Pg 3, para 19) – “The clean car standard could lead to a small increase in the vehicle prices in the short term”
2. (Pg 12, para 74) – “There may be a small increase in average vehicle prices in the short term.”
3. (Pg 13, para 83) – “...Australia by comparison has a similar market to New Zealand and has investigated seeking the same level of decrease in emissions. Officials have assumed in their cost-benefit analysis that the additional cost estimated for suppliers in Australia may also apply to suppliers in New Zealand. They also assumed that this cost will be passed onto consumers.”
4. (Pg 15, para 101) – “...suppliers could choose to limit the sale of high emitting vehicle models; and/or increase the price of luxury or high emitting vehicle models.

*Regulatory Impact Statement*

1. (Pg 5) – “A vehicle fuel efficiency standard could potentially increase the cost of imported vehicles, both new and used....”
2. (Pg 33) – Table displaying costs and their benefits of the Vehicle Fuel Efficiency Standard “worse than doing nothing/status quo”.
3. (Pg 35, Column 7) – Table showing Vehicle Fuel Efficiency Standard costs “Suppliers unable to meet the required standard would be penalized. The penalty costs **would** be passed onto consumers”.
4. (Pg 35, Column 8) – Table showing Vehicle Fuel Efficiency Standard “Would increase vehicle prices as suppliers would expect consumers to pay more for vehicles...”
5. (Pg 47) – Social Impacts - “For both proposals, a key risk is where people require a larger vehicle such as a people mover for a large family, or a ute or van for a small business, and there is no affordable low emission model with the functionality they need on the market. In this situation, these people would have no choice but to purchase a higher emissions vehicle and may possibly be required to pay a fee

*Cost Benefit Analysis – Clean Car Standard*

1. (Pg 1, para 3) – “The majority of costs are incurred by vehicle buyers..”
2. (Pg 4, para 7) – “Some importers might need to absorb part of the increase in the vehicle price. In which case, the technology costs will be borne by the vehicle importers and the private vehicle owners”.
3. (Pg 15, para 3) – “...consumer welfare impacts have been estimated by modelling the projected changes in vehicle demand from the increase in price equal to the technology

cost. This assumes that consumers are price takers and that vehicle importers will wholly pass on this incremental cost to consumers”.

*LEV Discussion Document*

1. (Pg 13, para 9) – “...*there is a risk that average vehicle prices could rise in the short term but then re-adjust over time*”.
  2. (Pg 32, para 7) – “Average vehicle prices might increase in the short term as a result of the introduction of the Clean Car Standard. This may impact low income households more as it would consume a greater proportion of their income”.
  3. (Pg 33, table 1) – Showing 41% of all households will pay a fee, with 36% of low- income households paying a fee. More than half of Rural households are also predicted to pay a fee.
17. These papers make it abundantly clear to those reading them that the policy is designed to implement a tax or “fee” on those vehicles that do not meet its standard per the table attached in the Discussion document to which our original submission and example refers.
18. Furthermore, modelling on vehicle purchasing behavior is noted as difficult to determine, but that New Zealanders have over time become more used to higher capacity/emitting vehicles (Regulatory Impact Statement, page 20 refers), particularly with larger families and in the rural sector as there are no cost-effective alternatives that deliver the same reliable product.
19. It is a nonsense of a policy to implement a tax on someone that has no option to change their purchasing habits to minimize or escape a tax or “fee”. While Transport officials note that suitable cars are in the pipeline to be available, they are not foreseeable at the start time of when this policy would be enacted.
20. Therefore, this policy would directly tax people without providing a suitable alternative for their own personal circumstances.
21. The papers make a very sizeable assessment of the future fuel cost savings of moving to an electric or low emitting vehicle, while also noting that these larger “technology” costs would increase the cost of cars that do meet the intended CO2 target. The primary issue is the papers also note that consumers do not bank the future fuel cost savings into the purchase price of buying a new or used vehicle (Cabinet Paper, Pg 20, para 136 refers, so does the cost benefit analysis of vehicle efficiency standard, pg 19, para 4 refers). Many consumers also do not have the means to pay a larger amount upfront (Regulatory Impact Statement, pg 16 refers).
22. The calculation in our previous submission on our advocacy advertisement is a direct calculation from the appendix tables of the Discussion document (Pg 41 / Appendix 3 refers) and the proposed standards to which importers will be held to account on. This is a real-world scenario of how these policies would apply and given the nature of the domestic vehicle

consumer market, trends of purchasing behavior and Transport Officials own assumptions, it would represent a true and accurate reflection of the policy for the example given.

23. This rationale was also accepted and used by the Complaints Board in reference to Complaint 19/259, which was rightly dismissed. It would appear to us to be counter-intuitive to allow the correct interpretation and use of official statistics and Government documents to endorse a scenario in one case, and not apply the same standard in another.
24. To conclude, on the basis of substantial new evidence provided, the Board's interim decision that costs would not be translated to the consumer as advertised is incorrect and represents a misunderstanding or misinterpretation of the documents provided in support of our Appeal.

### **Costs being directed at "Ordinary Kiwis"**

25. In reference to the second point raised in the Board's initial decision, it noted that "*The Board noted the reference in the advertisement to the cost being directed at "ordinary Kiwis". It did not consider this was an accurate reflection of the supplier penalty and therefore the advertisement was likely to mislead consumers.*"
26. In making its decision, the Board has failed to take into account the substantial evidence provided in the further six documents that form part of the policy background as noted in previous paragraphs of this appeal. Notably the LEV Cabinet Paper, Regulatory Impact Statement, Cost Benefit Analysis – Clean Car Standard, and the Social Impact Assessment – Clean Car Standard, and the LEV Discussion documents respectively.

### *LEV Cabinet Paper*

1. (Pg 16, para 111) – "Officials estimate that 42% of all New Zealand households may purchase a vehicle new to the fleet over the next 6 years to 2025 (additional sources provided in paper). This means that 42% of households may be directly affected by these policies over the next 6 years.
2. (Pg 18, Graph 5) – Graph shows 41% of all households will face a fee, and 36% of low income households.
3. (Pg 18, para 120) – "Rural households buying a vehicle new to the fleet, slightly more than half are more likely to pay a fee than receive a discount."
4. (Pg 27, appendix C) – Shows that the top 7 models of vehicles in NZ fall into the "fees" section under the policy.

### *LEV Discussion Document*

1. (Pg 15, paras 1-2) – "The Clean Car standard would apply to all new and used light vehicles entering the New Zealand Fleet, including all cars, SUVs, vans, utes, and light trucks of 3.5 tonnes gross vehicle mass or less."
2. (Pg 32, para 5 and table) – "42% of households to be affected.."

3. (Pg 33, table 1) – Showing 41% of all households will pay a fee, with 36% of low- income households paying a fee. More than half of Rural households are also predicted to pay a fee.

*Cost Benefit Analysis – Clean Car Standard*

1. (Pg 4, para 1) – “The VFES will be applied to all light vehicles with gross vehicle mass of 3.5 tonnes or less and which are first registered in New Zealand from 2020. It will therefore encompass passenger cars, sports utility vehicles (SUVs), people movers, utes and light commercial vehicles, including pickups and mini buses. It will also apply equally to both new and used vehicle imports.”
27. It is clear from the body of evidence supplied, that the Labour-led Government’s Car Tax will have a heavy burden on New Zealanders, particularly rural and low-income households.
28. The interpretation of “Ordinary Kiwis” by the Board would appear to not reflect the fact that based on Transport Officials own assumptions, these policies would directly affect 42% of New Zealand Households and 36% of low-income households.
29. This car tax policy particularly affects those who can least afford it, and those persons who based on the industry and/or location they work or live in, cannot mitigate their emissions with a more efficient vehicle because it either does not exist yet, the infrastructure is not present or it is beyond the financial reach of those persons.
30. Furthermore, out of the top 10 models of vehicles popular in New Zealand, 7 of those falls into the category of attracting a tax or “fee”.
31. Minister Genter, in her Ministerial Foreward to the discussion document noted in our original submission, made clear that the Clean Car standard would apply to all new and used light vehicles entering the New Zealand Fleet, including all cars, SUVs, vans, utes, and light trucks of 3.5 tonnes gross vehicle mass or less.
32. We consider that this statement would directly reflect the types of vehicles that ordinary New Zealanders who work hard for a living purchase and use.
33. To conclude, on the basis of substantial new evidence provided, the Board’s interim decision that the costs would not be directed at “ordinary Kiwis” is incorrect and represents a misunderstanding or misinterpretation of the documents provided in support of our Appeal.
34. In conjunction with then paragraphs above, we can only further re-iterate the calculations provided in our original submission on this complaint. They reflect a real-world scenario of every-day New Zealanders who choose to purchase the cars they do, and in reference to pg 16 of the Regulatory Impact Statement, it notes the current challenges for electric vehicle uptake. Namely:
  - a. The Higher Upfront Cost of purchasing EVs (number 1 issue)

- b. Travel Range Anxiety
  - c. Availability of public charging infrastructure
  - d. A limited variety of EVs is available in New Zealand
35. If any Government was to decide to adopt a policy that affects 42% of all households in New Zealand, with 41% of those likely to pay a tax or “fee”, surely this would represent a direct cost to ordinary Kiwis? In the opinion of the National Party, it clearly does.
36. We also note that contrary to the narrative in the documents provided, the Labour-led Government has quietly shelved its own ambitions to reduce the CO2 impact of the Government fleet of vehicles. This following article refers:  
<https://www.stuff.co.nz/motoring/news/116395302/government-abandons-electric-vehicle-target-for-public-service-fleet>
37. With only 78 out of 15,473 vehicles in the Government fleet being electric, it would appear to the outside observer that the Labour-led Government is inflicting a Car Tax on everyday Kiwis, some 42% of households, while not ensuring its own house is in order.
38. Everyday Kiwis are suffering under an increased cost of living, higher rents, a slowing economy, and a Car Tax would further exacerbate that.
39. Your interim decision identifies the standards to which our advocacy advertising is held to account, and in this case upholding the complaint based on Principle 2 and Rule 2 (b) of the code. In the case truthful presentation, adverts must be truthful, balanced and not misleading. In the context of the additional information provided above, and the original calculations, based on official policy of the Government, which have been accepted and not challenged, it would be clear that under the code we have satisfied those requirements.
40. It is a clear fact that based on the Ministers own documents and commentary, and that of her Ministry, that costs would be passed onto the consumer in the form of higher vehicle prices. It is also a clear fact that a substantial portion of Kiwi households, some 42%, will be affected by these policies, and a large proportion would incur a fee.
41. On that basis, I would ask the Board to reconsider their decision and dismiss this complaint in its entirety.
42. We thank you for the opportunity to appeal the Board’s decision, and request that the information provided in support of this appeal be taken into account in a review of the interim decision made.

I look forward to your consideration of this matter and reply in due course.



## Appendix 5

### Complainants' Responses to the Appeal

#### Complainant J Lawson's Response to the Appeal

##### Initial Response from J Lawson

Thank you for inviting further comment. My only comment is that National's aim seems to be obfuscation. Their response has not addressed the core of my complaint, which was advertising \$6,000, rather than \$3,000.

##### Additional Response from J Lawson

I should have also mentioned that, under the heading of 'Translation of Cost to Consumer' on page 4 of the appeal, it says, "(Pg 47) – Social Impacts - "For both proposals, a key risk is where people require a larger vehicle such as a people mover for a large family, or a ute or van for a small business, and there is no affordable low emission model with the functionality they need on the market. In this situation, these people would have no choice but to purchase a higher emissions vehicle and may possibly be required to pay a fee."

That is not correct, as there are several low emission seven seaters available new and used. The cheapest such electric vehicle in New Zealand is the [LDV EV80](#), available as a cab chassis truck, a panel van or a mini bus, from \$49,990 plus GST, which is [cheaper than some diesel utes](#). By the time the legislation is in place, there are also likely to be these -

- Great Wall electric double cab ute. 2020
- Rivian R1T. 2021
- Nissan Navara and Mitsubishi Triton Plug in hybrids. 2022-25
- Tesla Pickup. 2021-22
- Toyota Hilux hybrid. Unspecified.
- Ford F150 electric. Unspecified.
- Ssangyong H100 electric ute. Around 2023.

#### Complainant A Currie's Response to the Appeal

The Complaints Board unanimously ruled the advertisement was in breach of Principle 2 and Rule 2(b) of the Advertising Standards Code.

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

**Rule 2(b)** 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.

### **The Appeal:**

The National Party has argued that the Complaints Board had not given sufficient weight to the Government's car tax policy in its totality (the Clean Care Discount and the Clean Car Standard) and the costs of the policies being passed onto consumers.

### **The Advertisement:**

The advertisement on the New Zealand National Party Facebook page is headed "Labour's Car Tax". To the left is a photo of Julie Anne Genter, Associate Minister of Transport with the text: "What they said "Small Fee" and to the right the text "What they did \$3,000 Now \$6,000". To the right of the graphic the text says "What hope does an ordinary Kiwi have for getting some relief from taxes and costs if the people running the Government think \$6000 is a small fee". The advertisement has a link to a press release by Simon Bridges with further comments about the policies.

### **The Finding:**

The Complaints Board agreed that the advertisement made an absolute claim which required substantiation.

The Complaints Board noted the Advertiser said the intent of the advertisement was to highlight the negative effect of both the Government's Clean Car Discount scheme and the Clean Car Standard scheme.

Having reviewed the LEV consultation document, the Complaints Board said there was no evidence the Clean Car Standard scheme would translate to a cost for the consumer as the advertisement claimed. The Board said the proposal was a penalty scheme for vehicle suppliers that failed to meet their emissions target. It said the initiative appeared to encourage suppliers to choose a fleet which balanced out high and low carbon emission vehicles. The Complaints Board said the substantiation provided by the Advertiser in this case was insufficient for the level of claim made in the advertisement.

The Board noted the reference in the advertisement to the cost being directed towards "ordinary Kiwis". It did not consider this was an accurate reflection of the supplier penalty and therefore the advertisement was likely to mislead consumers.

The National Party phrased the finding as follows:

1. "The Complaints Board said there was no evidence the Clean Car Standard Scheme would translate to a cost for the consumer as the advertisement claimed."
2. "The Board noted the reference in the advertisement to the cost being directed at "ordinary Kiwis". It did not consider this was an accurate reflection of the supplier penalty and therefore the advertisement was likely to mislead consumers."

### **Response**

The clear statement of fact made, twice, is that the “fee” payable is \$6000.00

The thrust of the Appeal is that the overall policies may increase the overall cost of a vehicle (paragraphs 14-16).

Even if accepted on its face, an increased cost of a vehicle does not amount to a “fee”.

The Appeal concludes (paragraph 24) that “the Board’s interim decision that costs would not be translated to the consumer as advertised in incorrect and represents a misunderstanding or misinterpretation of the documents provided in support of our Appeal.”

Again, the advertisement does not state the stated \$6000 are costs “translated to the consumer”. It states that it is a “fee”.

The Appeal also concludes (paragraph 33) that “To conclude, on the basis of substantial new evidence provided, the Board’s interim decision that the costs would not be directed at “ordinary Kiwis” in incorrect and represents a misunderstanding or misinterpretation of the documents provided in support of our Appeal.” The Appeal nowhere addresses the core issue that the advertisement implies that “ordinary” kiwis will pay a \$6000 fee. Ordinary kiwis cannot be said to all buy a top of the range vehicle, and even if they all did, they would not pay a \$6000 fee.

That claim is nowhere born out.

Nor, to address the third claim of the Appeal, did the advertisement claim that the overall tax burden would amount to \$6000. They said it was a “fee”. Nor is that claim, even if it were relevant, made out. The Appeal states (paragraph 35) that “If any Government was to decide to adopt a policy that affects 42% of all households in New Zealand, with 41% of those likely to pay a tax or “fee”, surely this would represent a direct cost to ordinary Kiwis? In the opinion of the National Party, it clearly does.” The opinion of the National Party on this matter is simply not relevant. A policy that “affects” 42% of all households in New Zealand, “with 41% of those likely to pay a tax or “fee” (i.e 41% of 42% being 17.22%) is again not a “fee”, an at 17%, even if that were accurate, is not reflective of ordinary New Zealanders. The argument in paragraph 35 mixes apples and oranges and tries to create an overall impression that a “fee” payable to ordinary New Zealanders results. It simply does not.

Paragraph 38 reflects the true character of the appeal: it is an assault on the climate policy at the root of the drive towards electric vehicles. It states that “Everyday Kiwis are suffering under an increased cost of living, higher rents, a slowing economy, and a Car Tax would further exacerbate that.” This is a political statement by the National Party attacking climate change policies and the process of the Advertising Standards Authority must not be used to advance a political cause.

## **Conclusion**

The grounds for an appeal are (paragraph 7.4 of the Rules of the Advertising Standards Authority Inc)

- 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 Chairperson of the ASCB has been misinterpreted to the extent that 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.

None of these grounds have been made out.

- a) There was no procedural irregularity
- b) There is no new evidence of substance, let alone evidence of sufficient substance to affect the decision
- c) Evidence was not misinterpreted
- d) The decision is not against the weight of evidence
- e) There are no natural justice grounds made out

Very simply, the Appeal by the National Party attempts to throw up enough chaff and attempts to make enough political arguments about policy, tax and costs to try to justify their claims. Those claims were simply false: that a fee of \$6000 would be payable by ordinary New Zealanders. Nowhere does the appeal make out that claim is anything but false.

It is crucial to New Zealand's democracy that fake news be kept out of New Zealand's political discourse. It has no place in our democracy. Political debate is essential, but it must be based on accurate facts, not false facts. The advertisement breached Principle 2 "Advertisements must be truthful, balanced and not misleading" and Rule 2(b) 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.

It is notable that the Appeal omits the following finding by the Complaints Board:

The Board said the proposal was a penalty scheme for vehicle suppliers that failed to meet their emissions target. It said the initiative appeared to encourage suppliers to choose a fleet which balanced out high and low carbon emission vehicles. The Complaints Board said the substantiation provided by the Advertiser in this case was insufficient for the level of claim made in the advertisement.

This is an accurate statement of fact. The proposal was a penalty scheme for vehicle suppliers that failed to meet their emissions target. It was not, as National tries to argue, some kind of tax or policy. It was stated as a fee.

The Appeal should be dismissed.