

<b>COMPLAINT NUMBER</b>	20/074
<b>ADVERTISER</b>	NZ National Party
<b>ADVERTISEMENT</b>	NZ National Party, Facebook
<b>DATE OF MEETING</b>	7 May 2020
<b>OUTCOME</b>	Upheld Advertisement to be Removed

### Summary of the Complaints Board Decision

The Complaints Board Upheld a complaint about the number of beneficiaries created during Labour's time in Government versus the number of jobs created during National's time in Government. The Complaints Board said the advertisement did not contain sufficient qualifiers to indicate the Advertiser was referring to a specific time period when making a broad claim that National had created "Nearly 10,000 jobs every month under National." The Complaints Board said this meant the advertisement was likely to confuse or mislead some consumers.

### Description of Advertisement

The advertisement on the New Zealand National Party Facebook page is headed "Labour is better at creating beneficiaries than jobs. National will get people joining the morning commute to work rather than the dole queue".

The red box says "1,000 more on the dole every month under Labour", with source information in fine print. The blue box says, "Nearly 10,000 more jobs every month under National" with the authorisation statement.

### Summary of the Complaint

The Complainant was concerned the advertisement is misleading to claim "Nearly 10,000 more jobs every month under National" when the fine print shows they are only actually referring to the last two years National was in power (September 2015- September 2017). The Complainant says the most likely interpretation of 'every month' would be the whole period of the National Party's time in Government.

### Issues Raised:

- Truthful Presentation
- Advocacy Advertising

### Summary of the Advertiser's Response

The Advertiser said it has not claimed it generated 10,000 jobs per month across its entire time in power and has clearly labelled the timespan used at the bottom of the graphic.

The Advertiser says it makes sense to compare the final two years under National as that is most comparable to the time period under Labour. To compare the entire nine years would require including the Global Financial Crisis years which would not be a reasonable comparison. The Advertiser says the use of the term 'Under National' does and should not suggest the entire time in power.

## Relevant ASA Codes of Practice

The Chair directed the Complaints Board to consider the complaint with reference to the following codes:

### ADVERTISING STANDARDS CODE

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

**Rule 2(b) Truthful Presentation:** Advertisements must not mislead or be likely to mislead, deceive or confuse consumers, abuse their trust or exploit their lack of knowledge. This includes by implication, inaccuracy, ambiguity, exaggeration, unrealistic claim, omission, false representation or otherwise. Obvious hyperbole identifiable as such is not considered to be misleading.

**Rule 2(e) Advocacy advertising:** Advocacy advertising must clearly state the identity and position of the advertiser. Opinion in support of the advertiser's position must be clearly distinguishable from factual information. Factual information must be able to be substantiated.

### Relevant precedent decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 19/465 Appeal 20/002 which was Not Upheld and 18/200 which was Upheld in Part.

The full versions of decisions since 2015 can be found on the ASA website:

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

**Decision 19/465 Appeal 20/002** concerned an advertisement on the National Party Facebook and Twitter Platforms about the relative fuel taxes under National versus Labour led Governments.

The Complaints and Appeal Boards were of the view that the hyperbole used in the graphic illustrations in the advertisement were mitigated by the presence of the actual figures used from a credible data source. The Boards noted the placement of the advertisement on the Advertiser's own social media platforms and the context of robust debate about fuel pricing at the time of posting.

**Decision 18/200** concerned an advertisement on the National Party Facebook page which compared the cost to Kiwi families over a range of measures to what they would have incurred if National had retained power.

The majority of the Complaints Board said three of the five statements were misleading due to insufficient substantiation provided by the Advertiser.

### Complaints Board Discussion

#### *Consumer Takeout*

The Complaints Board agreed the likely consumer takeout of the advertisement is that the National Party in Government was better at creating jobs than the current Labour Government, who creates more beneficiaries. The Board agreed consumers would expect the statistics quoted in the advertisement to substantiate the statement made that 1,000 more people are receiving the job seeker allowance every month while Labour has been in Government, while nearly 10,000 jobs were created every month while National was in Government.

*Is the advertisement advocacy advertising?*

The Complaints Board said the advertisement before it fell into the category of advocacy advertising and noted the requirements of Rule 2(e) of the Advertising Standards Code. This Rule required the identity of the advertiser to be clear; opinion to be distinguished from factual information and factual information must be able to be substantiated. The Advocacy Principles developed by the Complaints Board in previous decisions considered under Rule 11 of the Code of Ethics remain relevant. They state:

1. That section 14 of the Bill of Rights Act 1990, in granting the right of freedom of expression, allows advertisers to impart information and opinions but that in exercising that right what was factual information and what was opinion, should be clearly distinguishable.
2. That the right of freedom of expression as stated in section 14 is not absolute as there could be an infringement of other people's rights. Care should be taken to ensure that this does not occur.
3. That the Codes fetter the rights granted by section 14 to ensure there is fair play between all parties on controversial issues. Therefore, in advocacy advertising and particularly on political matters the spirit of the Code is more important than technical breaches. People have the right to express their views and this right should not be unduly or unreasonably restricted by Rules.
4. That robust debate in a democratic society is to be encouraged by the media and advertisers and that the Codes should be interpreted liberally to ensure fair play by the contestants.
5. That it is essential in all advocacy advertisements that the identity of the advertiser is clear.

The Complaints Board confirmed that political advertisements were not only acceptable but encouraged, as they were an essential and desirable part of the functioning of a democratic society.

The Complaints Board also observed that in a free and democratic society, differences of political opinion should be openly debated without undue hindrance or interference from authorities such as the Complaints Board, and in no way should political parties, politicians, lobby groups or advocates be unnecessarily fettered by a technical or unduly strict interpretation of the rules and regulations.

*Is the identity of the Advertiser clear?*

The Complaints Board agreed the Advertiser had met the identity requirements for advocacy advertising under Rule 2(e) of the Code. The advertisement was posted on the New Zealand National Party Facebook page, the identity of the Advertiser was clear and an authorisation statement from Simon Bridges, Leader of the National Party, was included.

*Is the advertisement stating a fact or opinion?*

The Complaints Board said the advertisement makes statement of facts about the number of job seekers claiming a benefit under the Labour Government versus the number of jobs created under a National Government. The Board said this required substantiation. The Complaints Board said while the Advertiser had provided substantiation in the form of the Ministry of Social Development Benefit Fact sheets and the Household Labour Force Survey, it was how the information was presented in the advertisement which needed consideration.

*Is the presentation of the advertisement misleading?*

The Complaints Board said there is nothing in the body of the advertisement to indicate a qualifier to the “every month under National” statement. The fine print with the source information, which appears on the Labour side of the graphic rather than the National side, is the only indication the “every month” statement for National refers to job creation figures during a specific two year period from 2015 Q3 to 2017 Q3, sourced from the Household Labour Force Survey.

The Complaints Board agreed that using the phrase “every month” in both the Labour and National statements was likely to be interpreted as every month that each party was in Government. The Complaints Board said the source information does not clearly qualify that the “every month” is for a particular period for each party, but rather only indicates where the data was sourced from.

*Comparison to precedent decision 19/465 Appeal 20/002*

The Complaints Board differentiated the advertisement before it from the advertisement subject to complaint in Decision 19/465 Appeal 20/002, which was Not Upheld by the Complaints Board and the Appeal Board. The advertisement in that case claimed petrol was more expensive under the current Labour Government than the average price during the nine years the National Party were in Government. The Complaints and Appeal Boards said the advertisement clearly showed the figures used, the basis for comparison and a credible data source, all of which prevented the different sampling timeframes and exaggerated graphic from being misleading. In particular, the comparison and qualifier was made clear by an asterisk under each bar graph stating the period of time that each price related to.

The Complaints Board said the advertisement before it, is making a bold statement, with broad claims which are not sufficiently qualified in the body of the advertisement. This was likely to make the advertisement confusing and misleading to some consumers

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

**Outcome**

The Complaints Board ruled the complaint was Upheld.

Advertisement to be removed.

**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](http://www.asa.co.nz). Appeals must be made in writing via email or letter within 14 calendar days of receipt of this decision.

## APPENDICES

1. Complaint
  2. Response from Advertiser
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### Appendix 1

#### COMPLAINT

I'm writing to complain about an advertisement from the National Party that appears on Facebook. I've attached the image, and here is a link to their ad:

<https://www.facebook.com/NZNATS/photos/a.527149817300618/3441358705879700/?type=3&theater>

As part of the ad, National claims credit for "nearly 10,000 more jobs every month under National." This statement is very inaccurate, making the ad highly misleading.

Using the same data source as National - Statistics NZ's Household Labour Force Survey - we can compare the number of people with jobs in New Zealand when National came to power in late 2008 against the same number from the period when they left office in late 2017. That period of time - the entire time National was in office - is what most people think of when they hear the phrase "every month under National."

Those numbers are:

- December 2008 quarter: 2.212m jobs
- September 2017 quarter: 2.588m jobs

The difference between these two figures, which National uses as the number of "more jobs", is 376,000. Eight and three-quarter years elapsed between those two measurements, which is 105 months. This gives a monthly average increase in the job figures of 376,000 jobs divided by 105 months, which is 3,581 more jobs per month. There's no reasonable way to infer that 3,581 is the same as the "nearly 10,000" National claimed.

Looking at the fine print in the ad, however, National says that its headline "every month under National" only refers to the period 2015Q3-2017Q3 (starting September 2015 and ending September 2017). There's no reasonable interpretation in which the phrase "every month under National" refers to only the last two years National was in power, but not the first seven years it was in power. That is intentionally dishonest.

This material is clearly designed to mislead. National knows full well it did not generate "nearly 10,000" jobs a month across its 105 months in power. If it had, it would have generated around a million more jobs when in office. It did no such thing.

I request that you rule this ad misleading, and require National to remove it.

### Appendix 2

#### RESPONSE FROM ADVERTISER,

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.

Furthermore, in very recent previous rulings the Chair 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 Chair 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.

As the complainant correctly identifies in their complaint, National has not claimed it generated 10,000 jobs per month across its entire time in power. In fact, the only way the complainant knows that is because it is clearly and explicitly labelled at the bottom of the graphic.

As well as being clearly labelled, it makes the most sense to compare the final two years under National because that is the period in the economic cycle that is most comparable to the time period under Labour. If we were to compare the entire nine year period under National then that would require including the Global Financial Crisis years, which would clearly not be a reasonable comparison with the period under Labour.

Using the term 'under National,' or 'under Labour' does not and should not suggest 'during the entire time National or Labour was in power.' Such a ruling would be unduly restrictive of advocacy advertising.

#### **FURTHER RESPONSE FROM ADVERTISER, NZ National Party**

September HLFS data referred to is attached also.

#### **“Nearly 10,000 more jobs every month under National”**

- The Sep 2017 HLFS (final HLFS under National) shows in the previous 2 years the total labour force grew from 2,485,000 (Table 1, cell G38) to 2,720,000 (Table 1, cell G46).
- That is an increase of 235,000 jobs.
- An average of 9,800 per month (“Nearly 10,000”).

#### **“1,000 more on the dole every month under Labour”**

- In Sep 2017, the jobseeker (“dole”) number was 120,726.
- In Dec 2019, the jobseeker (“dole”) number was 147,464.
- That is an increase (over 27 months) of 26,738.
- An average of 990 (rounded up to 1000).