

<b>COMPLAINT NUMBER</b>	20/474
<b>ADVERTISER</b>	Vote No to the End of Life Act
<b>ADVERTISEMENT</b>	Vote No to the End of Life Act, Print
<b>DATE OF MEETING</b>	2 October 2020
<b>OUTCOME</b>	Not Upheld No further action required

### **Summary of the Complaints Board Decision**

The Complaints Board did not uphold a complaint about the full-page print advertisement for Vote No to End of Life Act. This is because the statement about the increase in non-assisted suicides in The Netherlands was substantiated by the Advertiser in the context of an advocacy advertisement.

### **Description of Advertisement**

The full-page print advertisement for Vote No to End of Life Act appeared in the New Zealand Herald and other daily newspapers. The advertisement is headed “A life or death decision”. It has a column of text with the word Yes beside a box at the top of the advertisement and the word No beside a box at the bottom. The text includes the statement: “You may say yes without considering the conflict with suicide prevention or how the Act inadvertently says taking your own life is somehow ok as a response to suffering. Or how, as in the Netherlands, we might expect an increase in non-assisted suicide.” In the bottom left corner of the page is the statement: “Kill the Act, not the vulnerable” and the website Riskylaw.nz. The advertisement has a promoter’s statement.

### **Summary of the Complaint**

The Complainant said the reference to the Netherlands suicide rate implies that suicide rates went up after their assisted dying Act was enacted<sup>1</sup>. The Complainant said this is not supported by the evidence they found.

### **Issues Raised:**

- Social Responsibility
- Truthful Presentation
- Advocacy Advertising

### **Summary of the Advertiser’s Response**

The Advertiser provided substantiation for the claim including quotes referring to research and recent articles from Professor Theo Boer.

### **Summary of the Media Response**

The Media confirmed the advertisement is advocacy advertising because it promotes the views of an advocacy organisation on issues of current debate. It considered the likely takeout from the advertisement is that the advertiser considers that the proposed Act as currently drafted contains a number of flaws and that the advertiser supports a no vote in the

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<sup>1</sup> Termination of Life on Request and Assisted Suicide (Review Procedures) Act 2001 which took effect in 2002.

End of Life Choice Act referendum. The Media said the Advertiser's substantiation supported the statement. **Relevant ASA Codes of Practice**

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

### **Advertising Standards Code**

**Principle 1: Social Responsibility:** Advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society.

**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 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 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 Complaints Board noted its 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 Board will consider whether the advertisement includes statements of fact or opinion and decide whether any factual claims have been adequately substantiated by the Advertiser. The Complaints Board 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 Board referred to the ASA Guidance Note on Advocacy which says:

“Evidence may be cited in support of the opinion, but it should be clear it supports an opinion rather than being the full factual position. Evidence in support of an opinion should be clearly cited and readily obtainable. Academic studies are often cited as evidence. Such studies are treated as expert opinion rather than the full factual situation...the Board will not determine which of competing academic studies or other evidence is correct. The Complaints Board’s only role is to determine whether there has been a breach of the ASA Codes, taking into account the Advocacy Principles.”

The Complaints Board 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.

**Relevant precedent decisions**

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 20/358 which was upheld in part and 19/273 which was not upheld.

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

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

**Decision 20/358** concerned a brochure advertisement from the New Conservative Party. The two-sided brochure poses the question "Did you know?" and lists a number of statements, including "Babies can be lawfully and easily aborted up to full term", "Every New Zealander owes \$32,000 in Government debt" and "Drugged drivers already cause more deaths than drunk drivers." The Complaints Board upheld in part a complaint about a flyer for the New Conservative Party. The Board said the statement "Drugged drivers already cause more deaths than drunk drivers" was a factual statement, not an opinion, and it had not been adequately substantiated.

**Decision 19/273** concerned a full-page newspaper advertisement for Family First headed "We love them both". The "B" of the word "Both" is formed by the shape of a pregnant woman. Beneath this is the question: "ABORTION: What does New Zealand *really* think?"

Below this are ten different percentages relating to the responses provided by several polls held between 2011 and 2017. The text at the bottom of the ad says: “The full polling results can be viewed at [CHOOSELIFE.ORG.NZ/POLL](http://CHOOSELIFE.ORG.NZ/POLL)”. The Complaints Board did not uphold the complaint. The Complaints Board said the advertisement was not misleading, did not overstate the significance of poll results and was clearly an advocacy advertisement for Family First.

## Complaints Board Discussion

### *Consumer Takeout*

The Complaints Board agreed the likely consumer takeout was the proposed End of Life Choice Act lacked safeguards and that if it comes into force, suicide numbers will increase, as they did in the Netherlands.

### *Has the advocacy advertisement been adequately identified?*

The Complaints Board agreed the advertisement had met the identity requirements of Rule 2(e) and was an advocacy advertisement. The Board said the identity of the Advertiser, Vote No to the End of Life Act, a registered promoter, was clear through the promoter’s statement as was its position on the End of Life Choice Referendum.

### *Is the statement in the advertisement likely to mislead?*

The Board confirmed the statement it is reviewing said: “You may say yes without considering the conflict with suicide prevention or how the Act inadvertently says taking your own life is somehow ok as a response to suffering. Or how, as in the Netherlands, we might expect an increase in non-assisted suicide.” The Board said the reference to the increase in non-assisted suicide in the Netherlands is a factual claim and requires substantiation.

The Complaints Board considered the substantiation for the statement provided by the Advertiser and the Media. The Board agreed there was sufficient support to show that non-assisted suicide rates had increased in the Netherlands between 2007 and 2017. The Board said the very nature of advocacy advertisements meant the Advertiser could present specific data in its favour in order to make a political point. The advertisement did not breach Principle 2 or Rule 2(b) of the Advertising Standards Code.

### *Was the advertisement socially responsible?*

The Complaints Board agreed suicide is a sensitive issue and needs to be treated with care. The Board said the statement in the advertisement about non-assisted suicide in the Netherlands was substantiated and in the context of an advertisement opposing the End of Life Choice referendum, was not in breach of Principle 1 of the Code.

The Board agreed the End of Life Choice Referendum is a significant social issue and it is important the New Zealand public has context for the differing views on it, in order to be able to take an active part in the debate.

The Complaints Board unanimously ruled the advertisement was not in breach of Principle 1, Principle 2 and Rules 2(b) and 2(e) of the Advertising Standards Code.

## Outcome

The Complaints Board ruled the complaint was **Not Upheld**.

No further action required.

### 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). **NOTE:** Under the fast track process one month prior to the Election, appeals must be made in writing via email or letter within three (3) calendar days of receipt of this decision.

## APPENDICES

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

#### COMPLAINT

The advert is setting out reasons why someone might vote against the End Of Life Act in the referendum and says (towards the bottom) "You may say yes without considering..... Or how, as in the Netherlands, we might expect an increase in non-assisted suicide." This implies that suicide rates in the Netherlands went up after their assisted dying act was enacted. I cannot find any evidence of this searching online. In fact, the statistics I found online say that suicide rates declined from 2000 (the year enacted) until the financial crisis in 2008 when they began to rise again - here is a link: <https://www.cbs.nl/en-gb/news/2019/26/fewer-suicide-deaths-in-2018>

### Appendix 2

#### RESPONSE FROM ADVERTISER, VOTE NO TO THE END OF LIFE ACT

Professor Theo Boer has extensively researched and written on the link between euthanasia and suicide in the Netherlands. In clause 11 of an open letter on the subject written by 21 New Zealand medical and legal experts, Professor Boer concludes:

"In the Netherlands, non-assisted suicides have continued to rise in the last 10 years, against the trend of surrounding European countries which all show falling rates of suicides over recent times ... Dutch Professor and former long-serving member of a Dutch Euthanasia Review Committee, Theo Boer, notes that the "rise was all the more significant since in exactly that same period we made assisted dying possible for the categories of people that do commit suicide."

In a more recent piece, he concludes:

"The legalisation of assisted dying will not only lead to tens of thousands of cases of assisted dying – the Netherlands, with 17 million inhabitants, has between 6,000 and 7,000 cases of assisted dying yearly – but may well contribute to more people, not fewer, taking their own lives."

#### Evidence

[Letter to Members of the New Zealand Parliament](#) dated November 7<sup>th</sup> 2019.

[Legalising assisted dying can actually increase suicides](#) by Professor Theo Boer, Sept 13 2020

### Appendix 3

#### RESPONSE FROM MEDIA, NZME

We write on behalf of NZME (the Publisher) in response to the above complaint regarding Vote No to the End of Life Act's advertisement in the Herald on Sunday.

This advertisement was designed and submitted on behalf of the client, but accepted by NZME for publishing, as we believe it does not contravene ASA codes.

The ASA has identified Advertising Standards Code - Principle 2, Rule 2(b) and Rule 2(e) as potentially being relevant.

***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.

Firstly, we note that the advertisement is advocacy advertising because it promotes the views of an advocacy organization on issues of current debate<sup>2</sup>. The advertisement advocates a no vote in the upcoming End of Life Choice Act Referendum, by advertising to several features of the proposed End of Life Choice Act (the "Act") that the advertiser views as unsatisfactory. The identity and position of the advertiser is clear. The advertiser is a registered promoter for the End of Life Choice Referendum and the advertiser's website address is included in the advertisement.

The advertiser's position on this referendum is also clear: it is advocating a No vote in this referendum. Consequently, the advertisement meets the requirements of Rule 2(e).

Turning to the particular statement referred to in this complaint, "*You may say yes without considering ...how, as in the Netherlands, we might expect an increase in non-assisted suicide*", the advertiser referred to the following paper as substantiation for this statement:

- Letter prepared by 21 researchers and practitioners submitted to Parliament dated 07 November 2019: *'Re: The impact of assisted dying on non-assisted suicide rates in New Zealand – incomplete and potentially misleading advice provided to the Justice Select Committee by the Ministry of Justice and Ministry of Health Officials in the Departmental Report on the End of Life Choice Bill'*.<sup>3</sup>

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<sup>2</sup> Complaint 20/435 SAM (Smart Approaches to Marijuana) NZ Coalition, Say Nope to Dope, Print, No Grounds to Proceed.

<sup>3</sup> <https://carealliance.org.nz/wp-content/uploads/2019/11/Letter-re-Suicide-Rates-and-Assisted-Dying-2019-FINAL-pdf.pdf>

The advertiser also referred to the following empirical data:

- In the Netherlands, non-assisted suicides have continued to rise in the last 10 years, against the trend of surrounding European countries which all show falling rates of suicides over recent times.<sup>4</sup>
- In 1991, the (crude) suicide rate per 100,000 population for the Netherlands stood at 11.6, before dropping to a low of 8.4 in 2007 and then increasing steadily again to 11.2 in 2017 (a 33% overall increase in 10 years).<sup>5</sup>
- Dutch Professor and former long-serving member of a Dutch Euthanasia Review Committee, Theo Boer, notes that the “rise was all the more significant since in exactly that same period we made assisted dying possible for the categories of people that do commit suicide.”<sup>6</sup>
- Jan Latten, Head of the Dutch Bureau of Statistics, when presenting the 2017 Netherlands suicide figures, suggested that even speaking about assisted dying leads to more death wishes which in turn makes the underlying suicide rate worse.<sup>7</sup>

In view of the above, we do not consider that the advertisement was misleading or that it breached Rule 2(b).

In terms of Rule 2(e), we again note that the advertisement is clearly advocacy advertising; the advertiser’s identity is clear, as is the advertiser’s website address. Equally the position of the advertiser is clear.

The likely takeout from the advertisement is that the advertiser considers that the proposed Act as currently drafted contains a number of flaws and that the advertiser supports a no vote in the End of Life Choice Act Referendum.

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<sup>4</sup> OECD (2019), Crude suicide rates (indicator). Available at [https://www.oecd-ilibrary.org/social-issues-migration-health/suicide-rates/indicator/english\\_a82f3459-en#wrapper](https://www.oecd-ilibrary.org/social-issues-migration-health/suicide-rates/indicator/english_a82f3459-en#wrapper) (Accessed on 02 October 2019). See also <https://data.oecd.org/chart/5Hdm>, for a summary of the crude suicide rates for Austria, Belgium, France, Germany and the Netherlands between 1990 and 2015, printed as Appendix 1. (See also WHO age standardised rates printed as Appendix 2. Both the crude rates and the age-standardised suicide rates show a very similar pattern.)

<sup>5</sup> Statistics obtained from the Centraal Bureau voor de Statistiek and available at: <https://www.cbs.nl/engb/news/2019/26/fewer-suicide-deaths-in-2018>. It should be noted that the OECD figures for the Netherlands for the same period differ slightly from the Centraal Bureau statistics.

<sup>6</sup> See Professor [Theo Boer submission](#) to JSC Select Committee.

<sup>7</sup> [Euthanasia and Addiction: A Comment from the Netherlands](#), Wiley, 2018.