

COMPLAINT NUMBER	21/482
ADVERTISER	Department of Internal Affairs
ADVERTISEMENT	Three Waters Television
DATE OF MEETING	12 October 2021
OUTCOME	Not Upheld No further action required

Summary of the Complaints Board Decision

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.

Advertisement

The television advertisement for the Government's Three Waters campaign was presented in a cartoon style with the following voiceover: "Imagine Aotearoa without good water. That'd be rude as, eh? That's why we're working with councils to make sure it doesn't happen for real. So now, instead of them having to shoulder this burden, we're grouping them together, to keep everybody on the path to better all round water. So our trout will be happy, undies can still be togs, and best of all, us Kiwis can keep drinking straight from the tap, so how about that? Better water is better for everyone."

The animation included images of all the things mentioned in the voiceover and included green liquid coming from a "coughing" pipe, with a thermometer in its mouth. The text at the end of the advertisement said "Better water is for everyone - He Puna Wai, He Puna Ora." Also shown were the Three Waters and New Zealand Government logos.

Summary of the Complaints

There were four complaints about this advertisement. The Complainants were concerned the advertisement was misleading because:

- 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"

Full copies of the complaints are available in Appendix 1.

Issues Raised:

- Truthful Presentation

- Advocacy Advertising
- Environmental Claims

Summary of the Advertiser's Response

The Advertiser defended the advertisement and said it aims to build a greater awareness of the need for the three waters reform and to assist New Zealanders to support the best water services decisions.

The Advertiser said the advertisement asks New Zealanders to imagine New Zealand without good water. The Advertiser said there are over 30 documents and reports that outline the scale of the problem with New Zealand's three waters services and infrastructure.

The Advertiser noted there had been previous complaints about this advertisement, all of which had been ruled No Grounds to Proceed by the ASA. The Advertiser said of the present four complaints, only one identifies new grounds for complaint, under Rule 2h (Environmental claims). The Advertiser said should the proposed reforms proceed, they will deliver better health outcomes and protect the environment.

The Advertiser said the current advertisement is to be removed from air on 2 October 2021.

A full copy of the Advertiser's response is in Appendix 2.

Relevant ASA Codes of Practice

The Acting 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.

Rule 2(h) Environmental Claims: Environmental claims must be accurate and able to be substantiated by evidence that reflects scientific and technological developments.

Relevant Precedent Decisions

In considering this complaint the Complaints Board referred to two precedent decisions, Decision 21/363 and 21/418, both of which were No Grounds to Proceed.

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

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

Decision 21/363 concerned the original version of the television advertisement for Three Waters campaign which was presented in a cartoon style with the following voiceover: "Imagine Aotearoa without good water... What a stink as place that would be. Trout would be grumpy, boating no fun, and dirty ducks a sad sight to see. Mean-as manus wouldn't be mean, showers a complete waste of time, bathrooms would be just rooms, togs just undies, and our awa all filthy with slime. That's why we've got a plan, because we're water's biggest fan. So let's make it better than fine. Better water is better for everyone". The animation had images of all the things mentioned in the voiceover and included green liquid coming from a "coughing" pipe, with a thermometer in its mouth.

The Chair of the Complaints Board said the intention of the Three Waters and New Zealand Government advocacy advertisement was to promote the Government's initiative to reform the provision of water services throughout New Zealand. The Chair said the voiceover for the advertisement was not describing the state of water in New Zealand as it is currently, instead it was asking viewers to "*Imagine* Aotearoa without good water". The Chair said this suggestion encourages viewers to think about what could happen to the water supply in New Zealand if it is not well managed. The Chair noted that the standard of drinking water and water services in New Zealand varies from place to place.

The Chair said in the context of advocacy advertising the advertisement did not reach the threshold to be misleading or offensive or to cause fear or distress without justification.

Decision 21/418 concerned a slightly amended version of the Three Waters advertisement, the same version as that in Complaint 21/482. It included a reference to "working with councils" in order to ensure "good water".

The Chair of the Complaints Board said it appeared that the proposed reforms would see management for the country's 67 councils' storm, drinking and wastewater (the "three waters") moved into the hands of four regional entities, while ownership would remain in councils' hands. The Chair said planning for this proposed transition is what is meant by "working with councils". The Chair noted that there is a great diversity of opinion about the proposed reforms, especially amongst the country's different councils.

The Chair said in the context of advocacy advertising the advertisement was not misleading or offensive and did not cause fear or distress without justification.

Complaints Board Discussion

The Acting Chair noted that the Complaints Board's role was to consider whether there had been a breach of the Advertising Standards Code. In deciding whether the Code has been breached the Complaints Board has regard to all relevant matters including:

- Generally prevailing community standards
- Previous decisions
- The consumer takeout of the advertisement, and
- The context, medium, audience and the product or service being advertised, which in this case is:
 - Context: Government review of the delivery of water services in New Zealand
 - Medium: Television
 - Audience: Television audience
 - Product: Three Waters reform process

Does the advertisement fit the definition of 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 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 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.

Is the identity and position of the Advertiser clear?

The Complaints Board said the identity and position of the Advertiser was sufficiently clear for the advertisement to be considered as advocacy advertising. The Board took into account the inclusion of the Three Waters and New Zealand Government logos in the advertisement. The Board noted the Advertiser in this case is the Department of Internal Affairs, a Government

department. The Board confirmed the position of the Advertiser, supporting water services reform through the Three Waters proposal, was clear.

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the cartoon advertisement was the Government is supporting a process to change water services throughout New Zealand, to ensure there is continued access to a quality water supply. Water is an important resource that needs to be looked after. The Board noted the advertisement was part of a public awareness campaign drawing attention to this process and what it is expected to achieve.

Is the advertisement misleading? Does it make any environmental claims that have not been substantiated?

The Complaints Board agreed the advertisement was not misleading and did not make any general or environmental claims that had not been substantiated.

The Complaints Board discussed each statement in the voiceover for the advertisement in turn, to consider what the consumer takeout was and whether it was fact or opinion:

Imagine Aotearoa without good water.

The Complaints Board said this is a hypothetical statement, inviting consumers to “Imagine” a scenario. It is neither fact nor opinion.

That'd be rude as eh?

The Complaints Board said this was opinion and as such did not require substantiation.

That's why we're working with councils

The Complaints Board said this was a fact, which had been substantiated. The Board noted the Advertiser had provided information about a Joint Central/Local Government Steering Committee and a Heads of Agreement between the Crown and Local Government New Zealand, the association representing the interests of councils in New Zealand.

The Complaints Board noted that while this collaboration between central and local government has been occurring this did not mean that all Councils support the Three Waters reform proposal. The Board noted there is a great diversity of opinion about the proposed reforms, especially amongst the country's different councils.

to make sure it doesn't happen for real.

The Complaints Board said this is an aspirational statement, which is opinion about a possible future outcome and as such did not require substantiation.

So now, instead of them having to shoulder this burden, we're grouping it together

The Complaints Board said this statement refers to the Government's decision to pursue a package of reform to the current system for delivering three waters services and infrastructure. The Board noted the Government's intention to establish four statutory, publicly-owned water services entities from the 67 separate council-owned water services providers. The Board noted the Advertiser had provided evidence in support of this statement, including a Cabinet Minute dated 14 June 2021. The Board noted the advertisement included a map of New Zealand with the four proposed water regions identified.

The Complaints Board agreed the description of the Three Waters reforms in the advertisement was brief and did not address detailed aspects of the proposal, including any changes to the ownership of water assets. The Board said the advertisement was alerting

consumers to its proposal to reform water services and interested consumers can obtain further information from other sources, including the Department of Internal Affairs website.

to keep everybody on the path to better all-round water.

The Complaints Board said this is an aspirational statement, and an environmental claim, made in the context of advocacy advertising. It describes the Government's intention to provide safe, reliable and efficient water services. The Board said the Advertiser had provided sufficient information to support this statement. The Board noted there have been issues with water services in different parts of New Zealand, concerning water supply, water quality, and the disposal of wastewater. The Board noted that part of the brief for the "Government Inquiry into Havelock North Drinking Water" was looking at how to reduce the risk of outbreaks of this nature recurring.

So our trout will be happy,

The Complaints Board said this statement is hyperbole and humour and does not require substantiation. The Board said this statement did not encourage the cultivation of trout, which is considered by some to be a pest, as suggested by Complainant 3.

undies can still be togs,

The Complaints Board said this statement is hyperbole and humour and does not require substantiation.

and best of all, us Kiwis can keep drinking straight from the tap.

The Complaints Board said this is an aspirational statement which is opinion in support of a future outcome, and, as such, did not require substantiation.

So how about that?

The Complaints Board said this question serves to seek the involvement and support of the consumer, for the Three Waters reforms. It is neither fact nor opinion.

Better water is better for everyone.

The Complaints Board said this statement was opinion, and as such did not require substantiation. As a statement, in the context of this advertisement, it was also unlikely to be in dispute. The Board noted the comment from the Advertiser that the advertising campaign had been designed to create a sense of shared responsibility. The Board said water is generally recognised as an important part of a safe, healthy environment.

In Summary

The Complaints Board said the advertisement was not misleading, taking into account context, medium, audience and product and was not in breach of Principle 2 or Rules 2(b), 2(e) or 2(h) 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. 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.

APPENDICES

1. Complaints
 2. Response from Advertiser
 3. Response from Media
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Appendix 1

COMPLAINT 1

I wish to lay a complaint regarding your misleading add about dirty water For a start government have said that they are setting up four regions for all our waters This is only a proposal and at least 50% of our councils have said no or holted till government provides more. information. This is only a proposal and has not been actioned Councils will require to put this to a referendum to the rate payers I would also like to draw attention that no where in New Zealand anyone would be drinking sludge from their taps. And if they have issues all Councils take this issue very seriously. Please remove the misleading add from your line up.

COMPLAINT 2

I would like to complain about the Three Waters TV Commercial on T,V and the supporting print advertising. It is propaganda. This is government created propaganda on our screens and should be removed immediately. It is unfactual and very deliberately misleading. It should be called out as misleading propaganda and should be removed immediately. The creators and the organisations involved in producing this should be asked to apologise publicly to New Zealanders for attempting to mislead them. This TV ad tells the viewer that the government is working with Councils so that we can all have better drinking water. This is misleading on 4 fronts:

1. The TV ad says the government is working with Councils which implies Councils are supportive. Government is not working with Council. Nor are Councils supportive. The government asked Councils to handover their water assets and the Councils have said no. 'Asking' is not 'working'. This is deliberately misleading. The Mayors of many of the Council around New Zealand have made their view clear - that they have informed the government they don't want to proceed with Three Waters as they have serious issues with it on many fronts, including governance, flawed deal structure, flawed payment structure, flawed ownership structure, very serious to ratepayers water supply, unduly hurried timeframe that means Councils can't consult ratepayers, non-payment by government until 2024, problematic proposed new ownership that could fail ratepayers. The list is long.
2. The TV ad says it is about better water. This is misleading too. Three Waters is actually about ownership. Shifting ownership of New Zealand's water assets into government and Maori ownership. This is actually the goal of the Government's He Puapua plan, it is not about better water. The government should have stated the truth in the Three Waters advertising. Instead none of this is clarified in the TV ad or the print ad. It is completely misleading to only say that it is about better water. It is like saying smoking is cool without saying the negative health effects. The TV ad is trying to convince New Zealand consumers it is only about water quality, even though much of NZ has water quality. This is about ownership shifts to government and Maori and the TV ad must say that.
3. The TV ad is false and misleading via omission. It is like a cigarette company leaving off health warnings. The government and its Advertising Agency have used a friendly and child-like cartoon format like a children's book. When it says it is working with Councils, it should

say it has asked Councils to give up their rights to ownership of their water supply, without payment until 2024, with government and iwi making decisions on how the payment of assets can be used. Even the Mayor of Auckland, the city that accounts for half the households in New Zealand has publicly stated that he has no issue with water quality or systems in Auckland and does not support this changed ownership and plan put forward by the government.

4. The advertising agency, government. government ministries involved have created propaganda. I feel strongly that the Advertising Standards Authority needs to set out clear guidelines that make it illegal for deliberately misleading propaganda like this to ever come onto our screens again. The definition of propaganda is "information, especially of a biased or misleading nature, used to promote a political cause or point of view." The Three Waters TV Ad and Print Advertising ads clearly fall into this category. In this case, the misleading information is being used to promote the Government's other agenda and cause, He Puapua. They should have said this in the TV advertisement, and not created a cover up. The TV ad should be removed and remade with the truth clearly articulated if it needs to return to our screens. Three Waters should communicate clearly to New Zealanders and ratepayers, the very important, irrevocable changes to their water supply, the assets and the fact that this will affect the future of their water, forever. That: - Three Waters takes away ownership of the freshwater supply and assets from their Council and gives it to the government - Three Waters irrevocably shifts 100% of ownership of a Council's water supply to a new entity owned by the government, with 50% of this ownership of water assets and water supply given to Maori who will have governance over future water supply - Three Waters takes away the water supply and assets of organisations and regions like Auckland and Watercare, that DO NOT have problems with water. Regions that do not need 'better water and better water systems' – this is the opposite of what the TV ad currently says. Government and their agencies should NOT produce misleading advertising. This practice should be slammed and come down hard on. New Zealanders deserve better. Just because it is the NZ government and a government department who created the advertising, they and their agency are not entitled to produce misleading TV commercials. They should not be allowed to create advertising messages that deliberately mislead New Zealanders. This is a critical issue, it doesn't get more important than each city/town's water supply. They need to follow laws and regulations around advertising standards like any other organisation. The advertisement needs to also state truthfully the shift of ownership into 50% owned by Maori and iwi, and not by ratepayers any longer.

Additional Content provided by the Complainant

Thank you for taking the time to respond to my complaint. I remain unhappy with the response the ASA sent to me and note that you have had many, many complaints about this TV ad. In your note to me, you stated that if I considered my complaint raised different matters to those covered in the Decision, to let you know. Please see my complaints below including Rule 2E and also Rule 2H and Conflict of Interest. My complaint with Rule 2E was not covered by your judgement. And the breach of Rule 2H is NOT covered by your present judgement at all.

The Three Waters television advertising falls short of many of the Advertising Standards Authority's own rules and I do not think your original judgement assessed the television advertisement correctly. I also note, that your Chair used their own wide discretion to interpret the television advertisement, and did not interpret the rules as stated on the ASA's website to the public of New Zealand.

I read the judgement and believe the application of the rules is ad hoc and arbitrary with regard the Three Waters television ad. Your Chair's judgement even uses a previous Three Waters ad as its own precedent. *"The Chair referred to precedent decision, 21/363, regarding a similar advertisement for the Three Waters campaign, which was also ruled No Grounds to Proceed."*

How can a prior version of the same misleading advertisement being complained about, be used as a precedent?

Your website states that *“the purpose of the Advertising Standards Code is to ensure that every advertisement is a responsible advertisement. And that all advertising must be legal, decent, honest and truthful and respect the principles of fair competition, so that the public can have confidence in advertising.”* By the multiple omissions of fact in the Three Waters advertisement, and the implied mistruths, it is obvious that the advertisement is neither fair or truthful to the New Zealand public and that they should NOT have any confidence in the information it provides. It is hard to think a commercial organisation would be allowed to do this, so why has the Department of Internal Affairs and the Government been allowed to do so?

The Three Waters Advertising contravenes several of the ASA’s publicly stated rules:

Rule 2E – Advocacy Advertising

This rule says that advertisers must not suggest, (and therefore imply) their claims are universally accepted if there is a significant division of informed or scientific opinion. The Advertising Standards Authority must surely be aware that there is an enormous division of opinion with respect to the claims made in the Three Waters television advertising, and that those who disagree with those claims outweigh those who do.

The Councils of New Zealand have made their views very clear and they accurately reflect ‘significant division’.

As of March 2020, New Zealand had 1,954,000 households, of which nearly 30% are in Auckland. Auckland Council is on public record that it does not agree that Three Waters will provide it better water or that it is better for New Zealand. Like many Mayors around New Zealand have done, the Mayor of Auckland has publicly disagreed with Three Waters and his opinion is on public record via major daily newspapers. *“Auckland’s ratepayers have already invested billions in their water company - Watercare, and the Government’s three waters reforms don’t look promising, Mayor Phil Goff say* Please see the full story from June 30, 2021 with this link:

<https://www.stuff.co.nz/national/politics/local-democracy-reporting/300345728/auckland-mayor-phil-goff-refuses-to-buy-into-governments-three-waters-reforms>

How can the television advertisement claim, *“we’re grouping them together, to keep everybody on the path to better all-round water”*? This is misleading and untrue. The water companies are not being grouped together as that implies Three Waters has agreement from the Councils. But it doesn’t. Councils and mayors of cities and regions around New Zealand have publicly disagreed with the Three Waters reforms. Therefore the claims implied in the TV ad, that it is actually happening, are untrue.

Your website stats that Advertisers must also hold evidence to prove their claims and suggestions. The Department of Internal Affairs and Three Waters does not have evidence that it is better for water and that they are grouping Councils together. It is on public record that many of New Zealand’s mayors, via our newspapers, and on YouTube, are saying the opposite - that Three Waters is not better for New Zealand or their region.

Rule 2H – Environmental Claims

The Advertising Standards Authority's rule for environmental claims states that *"environmental claims must be accurate and able to be substantiated by evidence that reflects scientific and technological developments. The environment includes ecosystems and their constituent parts, including people and communities, natural and physical resources, and the qualities and characteristics of locations, places and areas."* An environmental claim means any statement, symbol or graphic that indicates an environmental aspect of a service, product, component or packaging, and includes references to sustainability, recycling, carbon neutrality, energy efficiency, use of natural products or impact on animals and the natural environment.

Therefore, the Three Waters television advertisement, its subject matter and its claims also contravene this Rule 2H on Environmental Claims by saying and showing the following claims and graphics:

"We're grouping them together, to keep everybody on the path to better all-round water. So our trout will be happy, undies can still be togs, and best of all, us Kiwis can keep drinking straight from the tap, so how about that. The animation included images of all the things mentioned in the voiceover, and included green liquid coming from a "coughing" pipe.

This wording and visual implicitly imply that Three Waters is better environmentally for New Zealand and people, and shows imagery to this effect. Yet Councils around New Zealand disagree publicly with this statement also, including Auckland Council, the largest in New Zealand, who are very satisfied already with the quality and safety of their water through Watercare.

More than that, the green liquid from a coughing pipe is an obvious misrepresentation and scare tactic which contravenes another of your rules. In this case, the graphic of the green liquid and coughing pipe are a scare tactic designed to induce fear. They are also making a false environmental claim about the service of Three Waters.

In Summary

I do not believe the existing 'No Grounds to Proceed' judgement by the Advertising Standards Authority is correct. I believe the TV ad breaches both Advocacy and Environmental Rules. The present judgement falls short, endorses propaganda and has set the bar very low for misinformation and untruths in New Zealand advertising. I require a further judgement from the ASA on all of the above. The people of New Zealand deserve this judgement to be revisited as the ASA has effectively endorsed a misleading, propaganda campaign.

COMPLAINT 3

My complaint relates to the television advertisement for the Government's "Three Waters" proposal. I note you have made previously rulings 21/363 & 21/418 but believe my submission raises other concerns. "Under Rule 2(e) Advocacy advertising of the Advertising Standards Code: ...Opinion must be clearly distinguishable from factual information..." "The ad is implying that the only or best way to improve on our drinking water is for councils to sign up to proposal; this is opinion or conjecture not proven fact but this is not made clear, this violates rule 2(e). 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. "The ad implies that by supporting the 3 waters proposal the public will receive better quality drinking water. This is opinion or conjecture not fact and therefore also unrealistic and so violates rule 2(b). "Rule 1 (i) Protecting the environment ...Advertisements must not

depict or encourage environmental damage or degradation.” The ad clearly encourages the cultivation of trout in the wild which is considered a pest by DoC who try to eradicate it as it is damaging to the indigenous fish. Clear Language I can't find the appropriate code so, bizarrely, maybe there isn't one but surely an ad should be in a clear language that enables the audience to understand it? This ad mixes two different languages, English and Maori; if the intention is to reach both language speaking audiences, then there should be two ads, one completely in English and the other completely in the Maori language. Please have the ad reworded appropriately. Although, I note, on previous complaints it has been ruled that these ads are not misleading or offensive I, and everyone I know, finds them so. There is a lot of misinformation being circulated regarding 3 waters and in a previous ruling the chair stated that the councils retained infrastructure ownership; this may be technically true but not in any practical sense as they will not be able to dispose of those assets nor can they do anything with them unless approved by the four entities within which they only have a 50% vote which means the other 50% has to agree ie councils have no real control in practical terms. I would be interested to know how many complaints there have been about these ads, is this information available?

COMPLAINT 4

The add is blatantly misleading in that it suggests that the amalgamation of the 3 waters has been agreed by councils and is happening without any public input. It also suggests that our water will be negatively effect if it doesn't go ahead which is also not true in fact as council will still manage water to standard required if it is incorporated in 3 water authorities or remain responsibility of councils.

Appendix 2

RESPONSE FROM ADVERTISER, DEPARTMENT OF INTERNAL AFFAIRS

Three Waters Reform Programme: Complaint 21/482

Thank you for your letter dated 21 September 2021 and for the opportunity to defend the four complaints you have received concerning the Three Waters Reform Programme public information and education campaign (campaign) and, specifically, our most recent 30 second television advert.

Details of the campaign

The intended audience of the campaign is the general public. It aims to build a greater awareness of the need for three waters reform and to assist New Zealanders to engage with and participate in supporting the best water services decisions for the communities they live and work in, both now and for future generations.

The campaign has been designed to create a sense of shared responsibility and to look at the issues from a New Zealand-wide perspective, centred around the message that 'better water is better for everyone', to emphasise that the challenge, and the solution, relies on all of us coming together to address the issue.

Specifically, the campaign asks New Zealanders to imagine a future without good water and seeks to find the sweet spot between using common tourism-type images of pristine rivers and lakes and confronting images that show actual pictures of the worst of New Zealand's water outcomes. It seeks to reframe water services, including wastewater and stormwater, from a system that people take for granted to a system that requires more care and attention to allow it to thrive for the greater good of New Zealand.

The reality is that, in many parts of New Zealand, our wastewater and stormwater discharges impact on our waterways, seeing beaches and swimming spots closed.

The animated approach was chosen to achieve maximum cut through in a space crowded with issues calling for New Zealanders' compassion and care and it translates easily across different demographics, from age groups to ethnicities. It takes a quirky approach to a dry and difficult subject matter.

Specifics of the television adverts

The current television advert (English and Te Reo versions) went live on 15 July 2021 and runs until 2 October 2021 on the following broadcast television networks:

- TVNZ
- Discovery New Zealand
- Sky
- Prime
- Maori Television.

The English version of the advert runs 75 per cent of the time on TVNZ, Discovery New Zealand, Sky and Prime. The Te Reo version of the advert runs 25 per cent of the time on TVNZ, Discovery New Zealand, Sky and Prime and 100 per cent of the time on Maori Television. The Te Reo version of the advert is fully captioned in English.

The television adverts are CAB rated as G for General: May be broadcast at any time.

The advert is also being shown across the following online platforms for the same period:

- TVNZ OnDemand (TV1, TV2 and Duke)

- TVNZ Live Stream (TV1, TV2 and Duke)
- ThreeNow (Three, Bravo, Choice and HGTV)
- YouTube.

The script of the television advert is as follows:

ENGLISH	TE REO MAORI
Imagine Aotearoa without good water.	Whakaarohia a Aotearoa mēnā kāore he wai pai.
That'd be rude as, eh?	Kātahi rā?
That's why we're working with councils to make sure it doesn't happen for real.	Koinā mātou i mahi tahi ai ki ngā kaunihera kia kore ai e pērā.
So now, instead of them having to shoulder this burden	Kei riro mā rātou tēnei taumahatanga e pīkau
we're grouping it together	kua whakarōpūtia e mātou
to keep everybody on the path to better all-round water.	kia kotahi tonu te huarahi ki te oranga o te wai.
So our trout will be happy.	Kia koa ai ngā ika.
Undies can still be togs.	Kia tarau kaukau anō ai ngā tarau roto.
And best of all, us Kiwis can keep drinking straight from the tap.	Ā, ko te painga atu, ka taea tonu te inu i te kōrere.
So... How about that?	Nā... Pēhea tērā?
Better water is better for everyone.	He puna wai, He puna ora.

The digital media file for the television adverts is available here: <https://www.webcargonet.net/sPDpr3EJZD/>; the password is 3Waters. This link is current until 31 October 2021. Please advise if you need the Department to extend this date.

The media schedule and spot lists are attached to this letter.

Specifics of the print advert

The print advert identified in one of the complaints was placed during the week beginning 7 July 2021 in the following mastheads:

- New Zealand Herald
- Waikato Times
- Dominion Post
- The Press
- Otago Daily Times.

The text in the print advert is the same as the script for the television advert. The print advert is available here: <https://www.webcargonet.net/sPDpr3EJZD/>; the password is 3Waters. This link is current until 31 October 2021. Please advise if you need the Department to extend this date.

Advertising Standards Code – Principle 2, Rules 2(b), 2(e) and 2(h)

In addressing the details of the complaints to be put before the Advertising Standards Complaints Board you have identified the relevant sections of the Advertising Standards Code (Code) to be Principle 2, Rules 2(b), 2(e) and 2(h).

Principle 2 of the Code states that advertisements must be truthful, balanced and not misleading.

Rule 2(b) Truthful presentation and Rule 2(h) Environmental claims

The Department is confident that the Code has been met. With respect to Rule 2(b) the Code states that *“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.”*

With respect to Rule 2(h) the Code states that *“environmental claims must be accurate and able to be substantiated by evidence that reflects scientific and technological developments.”* As previously mentioned, the advertisements ask New Zealanders to imagine New Zealand without good water rather than seeking to document the current state of our Three Waters system.

By way of evidence, in mid-2017 the Government launched the [Three Waters Review](#) which considered how to improve the regulation and supply arrangements of drinking water, wastewater and stormwater (three waters) to better support New Zealand’s prosperity, health, safety and environment. The Review ran in parallel to the latter stages of the [Government Inquiry into Havelock North Drinking Water](#), which was set up following the campylobacter outbreak in 2016. Up to 5500 people were ill as a result and four people are thought to have died from associated causes.

The initial findings of the Review were consistent with many of the Havelock North Inquiry’s findings and raised broader questions about the effectiveness of the regulatory regime for the three waters, and the capability and sustainability of water service providers.

In January 2020, [Cabinet considered advice on improving New Zealand’s three waters service delivery and funding arrangements](#). Paragraph 2 of the Cabinet paper reads: *“Three waters infrastructure and services are lifeline utilities that provide essential services to communities. A lack of regulatory oversight, infrastructure underinvestment and capability constraints have meant that, in many parts of the country, consumers cannot be certain their water is safe to drink, or that the three waters system is contributing to good environmental or regional development outcomes.”*

In July 2020 the Government launched the Three Waters Reform Programme to reform local government three waters service delivery arrangements. This reform programme builds on the progress made through the Review and establishment of Taumata Arowai, the newly established drinking water regulator.

There are more than 30 documents and reports on the Department’s [Three Waters Reform Programme](#) website that outline the scale of the problem with New Zealand’s three waters services and infrastructure.

In addition, and on most days, many New Zealanders can read articles either online or in their local newspaper about ongoing problems like persistent boil-water or do-not-drink notices because of pathogens in the drinking water or network failures like burst pipes in our streets and raw sewage spilling onto our beaches and into our rivers. These articles are further evidence New Zealand’s three waters services are in trouble.

The Department has used the evidence outlined in the many reports prepared as part of the Three Waters Review and covered almost daily in the media to scope the campaign. The evidence directed the Department to the information in the advertisements. The Department is comfortable that the evidence provides a robust framework on which to base the campaign.

Rule 2(e) Advocacy advertising

The Department firmly believes that the Code has been followed to the letter. The Code states that *“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 advert asks New Zealanders to imagine New Zealand without good water and informs the audience that the Government is working with councils to ensure this imagined future doesn’t become a reality.

Further, and as required by the Code, the adverts clearly identify that they are New Zealand Government advertisements and the adverts clearly direct the public to reliable, evidenced-based and peer reviewed information that outlines the case for change and the Government’s proposal.

As a matter of record, the creative agency that developed the campaign presented the key concepts, characters and the developing script to the Three Waters Reform Joint Central/Local Government Steering Committee. In response to feedback from local government about the campaign, key local government representatives were also shown the final video for the second television advert and script changes were made after working with them.

Previous complaints

The Advertising Standards Authority has previously considered seven complaints about television advert two (Complaint 21/418). At that time, Complaint 21/418 was considered under the following provisions of the Code:

- Principle 1: Social Responsibility – Advertisement’s must be prepared and placed with a due sense of social responsibility to consumers and to society.
- Rule 1(c): Decency and Offensiveness – Advertisements must not contain anything that is indecent, or exploitative, or degrading, or likely to cause harm, or serious or widespread offence, or give rise to hostility, contempt, abuse or ridicule.
- Rule 1(g): Fear and Distress – Advertisements must not cause fear or distress without justification.
- 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.

In ruling on Complaint 21/418 the Chair of the Advertising Standards Authority Complaints Board acknowledged the concerns of the complainants' but, ultimately, ruled that there were no grounds for any of the seven complaints to proceed. Unsurprisingly, the Department supports the Chair's previous ruling.

Of the four new complaints, only one identifies new grounds, being Rule 2(h). As evidenced above, the Department is satisfied that, should the proposed reforms proceed, New Zealanders will experience a three waters system that will deliver both better health and wellbeing outcomes for our communities and protect our environment for generations to come.

Summary

The Department acknowledges the complaints made about the current television advert. Like the Chair identified in Complaint 21/418, there is a great diversity of opinion about the proposed reforms, especially amongst the country's different councils.

The Department is satisfied that our Three Waters Reform Programme public information and education campaign is truthful, balanced and not misleading and that our advert complies with all aspects of the Code. That said the current advert is scheduled to be removed from air on 2 October 2021.

ADDITIONAL INFORMATION FROM ADVERTISER, DEPARTMENT OF INTERNAL AFFAIRS

You have asked the Department to identify particular references that provide the evidence that directed the Department to the information in the adverts.

Please see the following table for specific references:

ADVERT SCRIPT	DOCUMENT NAME	PAGE NUMBER	RELEVANT TEXT
	Report of the Havelock North Drinking Water Inquiry: Stage 2 and released in December 2017	This is a 296-page report	The Whakataki on page 5 reads: "The information regarding the drinking water of the Heretaunga has now been provided and discussed by the interested parties with the Inquiry. Now it is time to report on what steps should be taken to ensure that a gastroenteritis outbreak does not happen again. The problems we have examined are not limited to Heretaunga but are also evident in other parts of Aotearoa. All are agreed that drinking water is taonga. But there are

			<p>many risks or threats to drinking water that must be eliminated or mitigated.</p> <p>Improvements are urgently required to the regulatory system and changes need to be made by drinking water suppliers and others engaged in the delivery of safe drinking water to the public. This report contains our recommendations on these important matters. Action is now required. The risks of doing nothing are just too high.”</p>
	<p>Cabinet Paper: Future state of the three waters system: Regulation and service delivery and dated November 2018</p>	<p>Page 1, paragraph 2</p> <p>Page 1, paragraph 3</p> <p>Page 1, paragraph 4</p>	<p>“The best evidence available indicates there are system-wide challenges facing the three waters, and the response will need to be system-wide, from source to tap and back again.”</p> <p>“In many parts of the country, communities cannot be certain that drinking water is safe. The events that led to the Havelock North contamination, along with the findings of the subsequent Inquiry, have demonstrated that the existing system does not adequately safeguard against the risk of catastrophic contamination incidents, or drive improving compliance with the drinking water standards. The Inquiry into Havelock North Drinking Water observed there is little understanding amongst the New Zealand public about the large numbers of people who</p>

			<p>become ill every year by consuming unsafe drinking water.”</p> <p>“Council wastewater systems are facing similar system-wide challenges. Wastewater plants are impacting on freshwater and coastal water quality, and sewage overflows are occurring at a frequency that is no longer acceptable for communities, particularly for Māori.”</p>
	<p>Annual Report on Drinking-water Quality 2018-2019, prepared by the Ministry of Health and released in 2020</p>	<p>This is a 101-page report; page 24 onwards is <i>Appendix 1: Water Supply Compliance</i></p>	<p>The appendix provides information on each water supply in New Zealand and whether it complied with the relevant sections of the Health Act 1956 and the relevant (bacterial, protozoal or chemical) standards within the Drinking-water Standards for New Zealand 2005. For all supplies there is information about the supply’s source water, its routine disinfection processes and any boil-water notices put in place during the year.</p>
	<p>Cabinet Paper: Three waters service delivery and funding arrangements: Approach to reform and dated 28 January 2020</p>	<p>Page 1 of the Cabinet paper, paragraph 2</p>	<p>“Three waters infrastructure and services are lifeline utilities that provide essential services to communities. A lack of regulatory oversight, infrastructure underinvestment and capability constraints have meant that, in many parts of the country, consumers cannot be certain their water is safe to drink, or that the three waters system is contributing to good environmental</p>

			or regional development outcomes.”
	Transforming the system for delivering three waters services: The case for change and summary of proposals and dated June 2021	This is a 42-page summary	This document summarises the case for reforming service delivery arrangements and explains the key features of the Government’s proposed system for water service delivery.
“That’s why we’re working with councils to make sure it doesn’t happen for real.”	Joint Central/Local Government Three Waters Steering Committee Terms of Reference and dated June 2020	Page 1, paragraph 1	“This Terms of Reference sets out the mutual intentions and understanding of representatives from the Department of Internal Affairs, Treasury, Local Government New Zealand and the New Zealand Society of Local Government Managers in forming a Steering Committee that will work closely to support a programme of reform for the delivery of three waters services.”
	Heads of Agreement between the Crown and Local Government New Zealand for Partnering Commitment to Support Three Waters Service Delivery Reform and dated 13 July 2021	Page 2, paragraph B	“LGNZ is an incorporated society that represents the national interests of local government in New Zealand ... ”
		Page 2, paragraph C	“Since May 2020, the Crown and LGNZ have worked collaboratively to consider the interests of central and local government in relation to the Three Waters Reform Programme.”
		Page 2, paragraph D	“The Crown and LGNZ wish to continue their interests-based partnering relationship: a) to enable LGNZ’s ongoing role in assisting with the interface between the Crown and the

			<p>local government sector in connection with the Three Waters Reform Programme (including supporting the Three Waters Reform Programme objectives and supporting the sector through its implementation and transition); and</p> <p>b) to strengthen the important relationship central government has with local government to continue to work together in relation to the Three Waters Reform Programme ... ”</p>
“we’re grouping it together”	<p>Cabinet Paper One: A New System for Three Waters Service Delivery and dated 14 June 2021</p> <p>Cabinet Minute One: A New System for Three Waters Service Delivery and dated 14 June 2021</p>	<p>Page 18, paragraph 99</p> <p>Page 6, paragraph 24</p>	<p>“Having weighed up all of the factors, considered the supporting analysis, and discussed this matter with other Three Waters Ministers, my preferred approach is for there to be four water services entities.”</p> <p>“[A]greed to create four waters services entities in legislation”</p>

You have also asked the Department to *enlarge on what “we’re grouping it together means”, in the voiceover?*

With respect to the term “we’re grouping it together”, this refers to the Government’s decision to pursue a package of reform to the current system for delivering three waters services and infrastructure. Specifically, it refers to the core component of the Government’s decision to establish four statutory, publicly-owned water services entities from 67 separate council-owned water services providers to provide safe, reliable and efficient water services. Page 2 of the report [Transforming the system for delivering three waters services: The case for change and summary of proposals](#) and dated June 2021 outlines this in more detail. Part B of the [Cabinet Paper](#), which begins on page 13 at paragraph 69, outlines the establishment of the new water services entities. Paragraph 99 on page 18 outlines the approach to create four new water services entities in greater detail.

Paragraph 24 of the Cabinet Minute [A New System for Three Waters Service Delivery: Paper One](#) and also dated 14 June 2021 states: “agreed to create four water services entities in legislation”.

I trust this additional information assists the Complaints Board in their deliberations.

Appendix 3

RESPONSE FROM COMMERCIAL APPROVALS BUREAU

Re: Three Waters - Television – Complaint 21/482 (Key number: DIA0002 30 2; Classification: G)

We have been asked to comment on the complaints that the above commercial is in breach of the Advertising Standard Code rules 2b (truthful presentation) and 2h (environmental claims).

Our understanding of why the complainants believe this commercial to be misleading is that, in their opinion, it implies that local councils are supportive of the Government’s Three Waters proposal when, in reality, the majority of local councils are opposed to the proposal.

The exact wording of the commercial is:

Imagine Aotearoa without good water. That’ll be rude as eh? That’s why we’re working with councils to make sure it doesn’t happen for real.

So now, instead of them having to shoulder this burden, we’re grouping it together to keep everybody on the path to better all-round water. So our trout will be happy, undies can still be togs, and best of all, us Kiwis can keep drinking straight from the tap. So how about that?

Better water is better for everyone.

It is our understanding that the Government’s Three Waters proposal is still in the consultation phase and that councils will only formally state their position after the 1st of October.

In our view, the phrase “*working with councils*” does not necessarily imply that all councils support the proposal and could be reasonably understood as meaning “*consulting with councils*”.

The complainants’ second objection is that the commercial claims that the Government’s Three Waters proposal will lead to better environmental outcomes has not been substantiated. It is also argued that the Advertiser is denigrating local councils by implying that, without the proposed consolidation, Aotearoa will not have “good water” in the future.

CAB approved this commercial under the ASA’s advocacy rules and principles which allow for robust debate providing that the advertiser is clearly identifiable and that opinions are distinguishable from factual information.

In our opinion, it will be clear to the viewing public that the Government are advocating for this change because they expect it to lead to better environmental outcomes. No matter how good a model or prediction is, a future outcome can never be a fact.

I look forward to hearing the Board’s decision.