

COMPLAINT NUMBER	22/128
ADVERTISER	Hobsons Pledge Trust
ADVERTISEMENT	Hobson's Pledge Trust YouTube
DATE OF MEETING	14 June 2022
OUTCOME	Not Upheld No further action required

Summary of the Complaints Board Decision

The Complaints Board did not uphold a complaint about a Hobson's Pledge Trust YouTube advertisement which included the phrase "...Soon in Rotorua, a voter on the General Roll will have only 58% of the say of a voter on the Māori Roll". A majority of the Board said in the context of advocacy advertising, it did not reach the threshold to be offensive or misleading and was not in breach of the Advertising Standard Code.

Advertisement

The Hobson's Pledge Trust YouTube advertisement was a 30-second video opposing the Rotorua District Council (Representation Arrangements) Bill. The video showed photos of politicians such as Jacinda Ardern and Tāmāti Coffey. The voiceover said "... the Labour Party are undermining our democracy by rushing through a Bill to end the fundamental principle of 'one person, one vote'. Soon, in Rotorua, a voter on the General Roll will have only 58% of the say of a voter on the Māori Roll. Your Council will be next. This Government is hell bent on eroding our democracy with racism and division". The final screen showed the URL "www.ProtectYourVote.nz", the Hobson's Pledge Trust logo and the text "Authorised by Hobson's Pledge Trust".

Summary of the Complaint

There were four complaints about this advertisement. The Complainants were concerned the advertisement used scaremongering and shock tactics, incited racism and was misleading, by oversimplifying a complex issue and not providing substantiation for claims made. One of the Complainants said the name and position of the Advertiser was not clearly identified. A copy of the four complaints is in Appendix 1.

Issues Raised:

- Social responsibility
- Decency and offensiveness
- Truthful presentation
- Advocacy advertising

Summary of the Advertiser's Response

The Advertiser said the advocacy advertisement was an expression of free speech, on an important political issue. The Advertiser said it was opposed to a Bill which would significantly dilute the power of non-Māori voters in the election of the Rotorua Council.

The Advertiser provided substantiation for the claim that those on the general roll would have 58% of the say of those on the Māori roll. This is outlined in point 32 of their response.

The Advertiser said the advertisement ran from 13 April to 23 April 2022. On 21 April the Attorney General's NZ Bill of Rights Report on the Bill was released and the Labour Party paused the Bill's progress.

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

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 1: Social Responsibility: Advertisements 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.

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 three precedent decisions, Decision 21/402, which was Upheld and 22/145 and 21/511, 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 21/402 concerned a booklet advertisement for 1Law4All, calling for "one nation and not separatism or tribalism" and "the repeal of ALL race-based laws". There were six complaints about this advertisement. The Complainants were concerned the booklet was offensive and misleading because it contained harmful stereotypes designed to perpetuate racism, and historical information which had not been substantiated. Specific concerns included the description of Māori as "Stone Age" people and the use of the term "half-caste". The Complainants also said the booklet did not clearly separate fact from the author's opinion.

The Complaints Board said some content in the booklet was offensive and misleading. The Board said while a more liberal interpretation of the Code applied under Rule 2(e) Advocacy advertising, this did not save the advertisement.

Decision 22/145 concerned two Hobson's Pledge Trust newspaper advertisements which depicted key Ministers and the Prime Minister as characters from Star Wars.

The Chair of the Complaints Board said the Star Wars theme was used to highlight key Ministers with the Prime Minister, their leader, portrayed as the "villain" in the scenario. She

said the race and gender of the members depicted were incidental to the message. Rather, she said, the Labour Ministers featured in the advertisement were responsible for implementing the policies objected to by Advertiser. She said the Advertiser was entitled to express their opinion and had met the requirements for advocacy advertising set by the Advertising Standards Code. In the Chair's view, the advertisements were unlikely to cause serious or widespread offence to most consumers.

Decision 21/511 concerned a television advertisement from the New Zealand Taxpayers' Union advocates against the Government's Three Waters reforms.

The Chair of the Complaints Board confirmed the advertisement was an advocacy advertisement and the Advertiser's identity and position on the issue was clear. The Chair said it was clear the statements in the advertisement reflected the Advertiser's interpretation of and opinion about the Government proposal on water reform.

Complaints Board Discussion

The 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: The Rotorua District Council (Representation Arrangements) Bill had recently been introduced into the House
 - Medium: YouTube
 - Audience: Recipients of the YouTube advertisement
 - Product: Political advocacy

Adjudicating on Advocacy Advertising

The Chair noted that advocacy advertising presents some of the most challenging advertising adjudicated on by the Complaints Board. It is usually characterised by parties having differing views that are expressed in robust terms. This results in strong objections from complainants and an equally strong defence from advertisers.

Through the requirements of the Advertising Standards Codes of Practice and the Advocacy Principles, the Board supports issues being openly debated and endeavours not to apply a technical or unduly strict interpretation of the rules and guidelines.

Complainants sometimes ask the Board to in effect decide which side in an advocacy debate is correct. The Complaints Board has consistently declined to have a view on the merits of either side in an advocacy debate. The Complaints Board's only role is to determine whether there has been a breach of our Codes.

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.

Consumer Takeout

The Complaints Board agreed the likely consumer takeout of the advertisement was under the proposed Bill voters on the general roll in Rotorua would only have 58% of the votes that those on the Māori roll would have, and in the Advertiser's opinion, this is eroding democracy.

The Complaints Board noted the progress of the Bill through the House of Representatives had been paused on 22 April 2022, after the [Report](#) of the Attorney-General raised concerns regarding the Bill's consistency with the New Zealand Bill of Rights Act 1990. In his report the Attorney-General said "I have concluded the Bill limits s 19 (freedom from discrimination) and, on the information available to me, cannot be justified under s 5 of the Bill of Rights Act."

Was the advocacy advertisement adequately identified?

The Complaints Board agreed the advertisement met the identity requirements of Rule 2(e) of the Advertising Standards Code. This is because the identity and position of the Advertiser were adequately identified. The Board noted that the advertisement included the Hobson's Pledge Trust logo and the text "Authorised by Hobson's Pledge Trust". It also included the website address for those unfamiliar with the Trust.

Was the advertisement misleading?

A majority of the Complaints Board said the advertisement was not misleading, in the context of advocacy advertising. This is because the Advertiser had provided adequate substantiation for the claims made in the advertisement. The Board noted the Advertiser had provided an explanation for how it calculated the "58%" referred to in the advertisement. The Board said while this explanation might be difficult for some consumers to understand, it was still adequate substantiation. The majority said when the Advertiser referred to the Government being "hell bent on eroding our democracy with racism and division" and the possibility their view that "Your Council will be next" it was expressing a political opinion, a right which is protected under the Bill of Rights Act 1990.

A minority disagreed. The minority said it was misleading to say that the Government was "hell bent on eroding our democracy with racism and division" and that "Your Council will be next". The minority said this was not a fair or accurate summary of the Government's position.

In accordance with the majority, in the context of advocacy advertising, the Complaints Board ruled the advertisement was not misleading.

Was the advertisement likely to cause serious or widespread offence?

A majority of the Complaints Board said the advertisement did not reach the threshold to cause serious or widespread offence. The majority said the advertisement was advocating a certain political perspective, in opposition to a particular Bill. The majority said while the advertisement used strong and even shocking language to get its message across, this was provided for under the rules for advocacy advertising.

A minority disagreed. The minority said the advertisement was likely to cause serious offence, especially to Māori. This is because it suggests that the politicians who support this Bill are racist. An example of this is the phrase "This Government is hell bent on eroding our democracy with racism and division". The minority said the advertisement incited division, and this could cause harm or contempt for some people.

In accordance with the majority, the Complaints Board ruled the advertisement had not met the threshold to cause serious or widespread offence.

Was the advertisement socially responsible?

A majority of the Complaints Board said the advertisement was socially responsible. This is because it did not reach the threshold to be misleading or offensive, in the context of advocacy advertising.

A minority disagreed. The minority said the advertisement was not socially responsible because it was misleading and offensive.

In accordance with the majority the Complaints Board said the advertisement was socially responsible, taking into account context, medium, audience and product and was not in breach of Principle 1, Rule 1(c), Principle 2, Rule 2(b) or Rule 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. 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. Complaint
 2. Response from Advertiser
-

Appendix 1

COMPLAINTS

There were four complaints about this advertisement:

Complaint 1:

The advertisement linked is currently being shown on YouTube, as at 24/04/2022. We saw this twice within twenty minutes (~4.30pm) on gaming videos. This advert is a misleading and fearmongering attack ad. It engages in exaggeration and hyperbole without being clear as to which information is being exaggerated, they provide no reference for the "facts" presented in the advert, they use images and text to cause fear and produce shock in the viewer, and the advert is misleading through false representation of data. The advert does not clearly state the position of Hobson's pledge, with the only reference to them being a very short still image with their name and logo covering less than a third of the screen at the very end of the video. It relies on the viewer to already recognise Hobson's pledge as an organisation to understand their bias (unreasonable given their niche status).

Complaint 2:

Protectyourvote.nz, video shown on Youtube, ~4am, 24/04/22 Advertising/petitioning against government policy in ways that are borderline seditious, and almost certainly racist.

Complaint 3:

I saw the ad in question at approximately 6:20pm on 25 April 2022. It was on youtube, and although I did not record it or take a screenshot I found a copy of it uploaded by the advertiser (Hobson's Pledge). My complaint relates to the statement that in Rotorua, a voter on the general roll will only have 58 per cent of the say of someone on the Maori roll. It is unclear how this has been calculated, but it would seem at best to be a gross and misleading oversimplification of the complexities of representative democracy in order to scaremonger and receive political and financial support.

Complaint 4:

This ad is playing often before playing chosen videos on Youtube. Also found on their official channel here:

<https://www.youtube.com/watch?v=wSEX8ZW3Ags> Chanel page here:

<https://www.youtube.com/channel/UCPOCUUwY7RZytfZ4DIV4Q>

I have reported the Ad to Google/Youtube also via their own reporting systems (support ticket [6-9530000032205]) but as it pertains to New Zealand and has been published by New Zealanders i thought I'd also report it here. They even have an 'official' website: <https://www.protectyourvote.nz> the ad is not only trying to stoke racism toward Maori but it is also factually incorrect.

Appendix 2

RESPONSE FROM ADVERTISER, HOBSON'S PLEDGE TRUST

Response re: Hobson's Pledge Digital Marketing – Complaint 22/128

1. This letter responds, as requested, to Complaint 22/128 (“**the Complaint**”) that is identified in the ASA Complaints Board’s letter to Hobson’s Pledge Trust, dated 17 May 2022 (“**the Complaint Letter**”)¹.
2. The Complaint relates to a 30 second advertisement that was run only online, raising issues about a Bill that would adversely impact on the extent of the say that non-Māori voters in Rotorua would have on the election of their local Council, and the wider ramifications that could have (“**the Ad**”).
3. The Complaint is defended. The advertiser does not wish to settle the complaint, by removing or amending the Ad. This was an advocacy advertisement for the purposes of the ASA Code, and is protected political speech (freedom of expression). The advertiser stands by the Ad. It says the complaint should be dismissed.
4. By way of a road map, this response comprises:
 - 4.1. an Overview of the response to the Complaint (Part I), followed by The Advertiser’s response in more detail (Part II);
 - 4.2. three schedules, with Schedule 1 providing an overview of the Ad, Schedule 2 providing an overview of the individual complainants’ complaints and Schedule 3 providing information requested by the ASA in its response guidelines; and
 - 4.3. two digital files comprising copies of the Ad (identified further below), and a Appendices A-J, comprising copies of relevant documents.

(NB. The information in the Schedules and digital files provided by the Advertiser have not been included in this decision).

I. OVERVIEW:

5. In summary, ***the advertiser maintains that the complaint should not be upheld***, for the following reasons:
 - 5.1. the Ad is an expression of free speech, on an important political issue, which is protected speech under section 14 of the New Zealand Bill of Rights Act 1990 (“**NZBoRA**”);
 - 5.2. the ASA’s Guidance Note on Advocacy Advertising (“**Advocacy Ad Guidance**”) recognises that, in the context of section 14 of NZBoRA, a more liberal approach to the Code applies to advocacy issues, such as political advertisements – for example: “... *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.*”;

¹ The Advertising Standards Authority (“**ASA**”) has received and accepted (for further consideration) a Complaint about an on-line advertisement by the HPT, to be considered by the ASA Complaints Board.

- 5.3. in terms of whether the Ad breached the Advertising Standards Code (“**the ASA Code**”) - regrettably the complainants have not been particularly specific about important aspects of their complaints, but the Complaint Letter says Principles 1 & 2, and Rules 1(d), 2(b) and 2(e) are at issue, so we have proceeded on that basis;
- 5.4. the Ad is a short 30-second on-line advertisement robustly opposing the Labour Party advancing a Bill, namely the Rotorua District Council (Representation Arrangements) Bill, which would significantly dilute the power of non-Māori voters in the election of the Rotorua Council;
- 5.5. the Ad is the sort of political speech which s14 of the NZBoRA protects, and to which the Advocacy Ad Guidance recognises more liberal (less exacting) approach should apply;
- 5.6. in any case, the Ad is presented in clear, responsible and truthful terms, in accordance with the ASA Code and the relevant ASA Principles, Rules and Guidelines, particularly when a more liberal approach is taken per that Guidance; and
- 5.7. in that regard the three main supporting factual reference points are:
- a the terms of the draft Bill;
 - b public/official information about the relevant Rotorua voter roll numbers; and
 - c a report by the Attorney identifying essentially the same NZBoRA concerns with the draft Bill (and to an extent the subsequent decisions to slow the Bill’s progress).

II. THE ADVERTISER’S RESPONSE, IN MORE DETAIL:

The Ad:

6. The Ad is a 30 second on-line advertisement, which ran only on YouTube (13-28 April 2022) and Facebook (23-28 April 2022). It comprises a voiceover, in some cases with text boxes repeating the words (depending on the user’s settings), running over a series of images (photographs, short video clips, signboards and some digital effects). Because the Ad ran only online, on YouTube and Facebook, the presentation of the Ad in those particular formats only is in issue, and that includes some important references to HPT. A file comprising that Raw Ad (as moving image) will be provided separately with this letter.
7. A summary of the Ad, in table form, appears as Schedule 1 to this response, identifying each “frame” as “F1”-“F11”. The voiceover script (which should be considered in the context of the full Ad, including images) is as follows:
- “In the middle of the Omicron outbreak, the Labour Party are undermining our democracy by rushing through a Bill to end the fundamental principle of one person, one vote. Soon, in Rotorua, a voter on the General Roll will have only 58% of the say of a voter on the Māori Roll. Your council will be next. This Government is hellbent on eroding our democracy with racism and division. Together, we can stop them. Take back control at protectyourvote.nz.”*
8. In short, the Ad:
- 8.1. raises HPT’s concerns about the Labour Party’s approach, in a Bill that gives disproportionately less (the Ad says 58% less) say to General Roll voters relative to Māori Roll voters regarding Rotorua local Council elections;

- 8.2. says the Labour Party is undermining the “one person, one vote” principle and undermining the democratic process, on racist and divisive grounds²; and
- 8.3. raises concerns that this could happen elsewhere too, and invites help to stop the law being passed; and
9. Also, the Ad clearly identifies HPT as the advertiser, because:
- 9.1. In the basic raw form of the Ad (which never ran as an advertisement in just that raw form) the final still frame signboard image, which runs for several seconds, clearly identifies HPT by logo together with the words HOBSON’S pledge and the words “Authorised by Hobson’s Pledge Trust”, as well as including a www.ProtectYourVote.nz reference that links to a website containing further details (which again refers to HPT by name) (the “**Raw Ad**”).
- 9.2. But the Ad only ran as an advertisement on Facebook and YouTube, in a form complying with their respective advertising requirements. The paid Ads run each always included additional prominent/clearly displayed standard HPT references which are visible on and/or around the Raw Ad image, throughout the Ad. For Facebook that will involve displaying the information in accordance with its Advertising Transparency site, and for YouTube that involves their equivalent advertising backend. In effect this amount to the following (in various version/iterations) additional references to the logo and/or Hobson’s Pledge running with the Raw Ad on both the Facebook and YouTube format:
- a On FaceBook advertising: (i) images comprising the paid Raw Ad appear with a blue circle containing the HPT logo and the words “HOBSON’S pledge”, adjacent to the words “Hobson’s Pledge”, immediately below which appear the words “Sponsored” and “Paid for by Hobson’s Pledge”, all of which appears in the band that forms part of the presentation of the Ad above the Raw Ad image; and (ii) in the band below the Raw Ad image, the domain name “www.protectyourvote.nz” and name of the website “Protect Your Vote” appear, along with a button saying “Sign Up”.
 - b On YouTube advertising, images comprising the paid Ad appear with: (i) a blue circle or square containing the HPT logo, adjacent to the words “Hobson’s Pledge”, which forms part of the presentation of the Ad in a band below the Raw Ad image; or (ii) in some cases just a blue square containing the HPT logo; and (iii) the HPT logo appears *in* the bottom right corner of every image throughout the Ad.
 - c For ease of reference the above HPT references are identified all together as the “**YouTube/Facebook HPT Branding**”.
- 9.3. The paid advertisement did not, so far as the advertiser is aware, ever run just in its Raw Ad form without the relevant YouTube/Facebook HPT Branding. However, to complete the narrative it is noted that, in accordance with television advertiser’s legal/contractual requirements for broadcasting advertisements, the Raw Ad was approved by the Commercial Approvals Bureau (“**TV CAB**”),

² For completeness, the issue identified relates to a Local Bill that is before the House of Representatives, originating from the Labour Party Rotorua Mayor and Rotorua councillors, sponsored by the Labour list MP Tamati Coffey (notwithstanding that he is not the sitting Rotorua electorate MP), supported in the debates on the first reading in the House of Representatives by various Labour MPs including Mr Coffey, as well as one Green MP, and supported through the first reading of the Bill by Labour Party and Green Party MPs (see the Hansard public record, on the Bill Digest, on the Parliamentary website at https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20220406_20220406_20 - Appendix “K”) which broadly comprised the government of the day (as that would be understood by the public). In that context, both the Labour Party and the government were behind the Bill.

reference HPT 30 001. TVCAB's website³ explains its role: "*CAB's purpose is to protect the reputation of broadcasters and minimises compliance risks for advertisers by vetting all television ads before they can be broadcast. Without CAB's approval a commercial will not be broadcast in New Zealand.*" TVCAB initially did not grant that approval as they required changes to the final signboard page, which they approved when the HPT logo and the words "HOBSON's pledge" and the words "Authorised by Hobson's Pledge Trust" were included on that final signboard page. (For completeness copies of the relevant email exchange, together with copies of the final page image that was not approved and the final page that was approved, appear as Appendices "F", "G" and "H" respectively.) But the Ad was never broadcast on television, in the Raw Ad form or otherwise, as it was superseded by events (see below, at paragraph 10).

9.4. Still images of examples of YouTube and Facebook presentations of the Ad, including the relevant YouTube/Facebook HPT Branding, and other HPT references as noted above (the HPT logo, the brand Hobson's Pledge, and the reference to HPT in full), appear in the Appendices, with a YouTube mobile iteration identified as Appendix "I" and Facebook image as Appendix "J", respectively.

- a As noted above, a copy of the Raw Ad (i.e., moving images) will be provided in a separate file with this response.
- b The Facebook post can be seen at this URL:
<https://www.facebook.com/1281262645251755/posts/5274619962582650/?app=fbl>
- c A copy of the YouTube Ad (i.e., moving images) will be provided in a separate digital file with this response.

10. Finally, as it happens the Ad is no longer current. It relates to a Bill that had its first reading on 6 April 2022. The Ad ran from 13 April 2022 (Facebook)/23 April 2022 (YouTube). But (as we cover in more detail below) on 21 April 2022 the Attorney General's NZ Bill of Rights Report on the Bill effectively reached similar conclusions to HPT about the Bill, and following that, on 28 April 2022, the Labour Party "paused" the Bill's progress⁴. In that context the Ad was not broadcast on television and from 28 April 2022 it was no longer run as a paid advertisement.⁵

The advertiser - Hobson's Pledge Trust:

11. HPT (Hobson's Pledge Trust) is a well-known political advocacy organisation, or a pressure group or lobby group. HPT stands for "one law for all" or "equal citizenship". Its view is that differentiating between citizens based on their race is racist and it opposes such differentiation.

12. HPT's position is set out on its website, at hobsonspledge.nz.

- a The HPT Home-page uses the tagline "*moving forward as one*". It elaborates as to HPT's views on: "*the foundation that all of us will be assured the same rights before the law*"; a "*focus on what unites us as a*

³ <https://commercialapprovals.co.nz/who-we-are/the-cab-story/>

⁴ In that context, for completeness, the Attorney-General's Report resulted in a situation in which the Labour Party said it could not support the Bill in its present form, and on that basis the Labour Party Mayor of Rotorua, and the Labour Party MP sponsoring the Bill, announced and supported the Bill being paused while these issues are addressed. This is covered in more detail, below.

⁵ As such, it is not clear that any copies that remain available on-line would be treated by the ASA as advertisements. However, we wish to defend the Complaint with reference to the Ad that was run previously, as a matter of principle and because similar Ads may follow as the Bill progresses further.

nation and overcome the challenges that would seek to divide us”; advocating “for equality and unity”; focussing on “build[ing] awareness and to prevent legislation, policy and regulations that will differentiate New Zealanders based upon their ethnicity or ancestry” and moving “forward as one”.

- b The final words on HBT’s About Us” page summarises its position this way: *“Our objective is a Government which will commit to eliminating all traces of racial preference from New Zealand’s governance.”*

12.2. HPT is well known in New Zealand. Its leadership includes Don Brash, former Governor of the Reserve Bank, and former leader of both the New Zealand National Party and the ACT New Zealand Party.

The Complaint:

13. The Complaint relates to four individual complainants, which the ASA has numbered 1-4. This response refers these complainants as “**C#1**” – “**C#4**”. The four individual complaints raise numerous issues, without reference to specific ASA Principles (referred to herein a “**P1**”, etc), Rules (referred to as “**R1(a)**”, etc) or Guidelines. A summary of their individual specific complaints appears in Schedule 2, in which we have given each individual issue/complaint reference: “**C#1-A**” – “**C#4-O**”. We endeavour to address each of the individual complaints in the analysis that follows, using those references.

The provisions of the ASA Code and associated guidelines and guidance:

14. The Complaint Letter identifies what are said to be the Principles and Rules in the ASA Code that are relevant to the Complaint. We proceed on that basis.

14.1. The identified Principles and Rules are as follows:

- a *P1: “PRINCIPLE 1: SOCIAL RESPONSIBILITY”, “Advertisements must be prepared and placed with a due sense of social responsibility to consumers and to society.”*
- b *R(1)(c): “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.”*
- c *P1: “PRINCIPLE 2: TRUTHFUL PRESENTATION”, “Advertisements must be truthful, balanced and not misleading.”*
- d *R(2)(b): “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.”, and “Obvious hyperbole identifiable as such is not considered to be misleading.”*
- e *R(2)(e): “Rule 2 (e) Advocacy advertising”, “Advocacy advertising must clearly state the identity and position of the advertiser.”, and “Opinion in support of the advertiser’s position must be clearly distinguishable from factual information.”, and “Factual information must be able to be substantiated.”.*

14.2. The relevant ASA Guidelines and Guidance:

- a The Guidelines in the ASA Code that are relevant to those particular Rules need to be considered where necessary.

- b So does the separate the Advocacy Ad Guidance identified earlier. This is important for political ads, so it is dealt with separately, below.

NZBoRA - the New Zealand Bill of Rights Act 1993

15. Section 14 of NZBoRA says:

“Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.”

16. In relation to political matters, and matters which go to the essence of our democracy, this is a freedom of such gravitas that it should rarely be displaced. The freedom to speak truth to power and to ventilate perspectives is a critical component of our democracy.

17. This freedom of speech is important not just so that a range of views and perspectives can be heard, but also because “sunlight is the best disinfectant”. These freedoms apply universally, not just to views aligned with, say, the government of the day. Democratic processes are strengthened by sunlight. As the great libertarian John Stuart Mill put it, in *“On Liberty”*⁶

“... the peculiar evil of silencing the expression of an opinion is that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth; if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth produced by its collision with error.”

18. NZBoRA also establishes other rights to, for example, “equal suffrage” (albeit only expressly so far as government elections - s 12), to freedom of thought, conscience, religion (s13), and the right to freedom from discrimination (s19). Pursuant to s19(2) of the NZBoRA: *“Measures taken in good faith for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination that is unlawful by virtue of Part 2 of the Human Rights Act 1993 do not constitute discrimination.”* (s19(2), NZBoRA). Furthermore, pursuant to s21(1) in Part 2 of the Human Rights Act 1993, *“race” and “ethnic or national origins, which includes nationality or citizenship” “prohibited grounds of discrimination”. So steps taken in good faith to resist discrimination on race or national origins grounds in terms of s19(2) are not discrimination, so s14 will apply.*

Recognition of s14 NZBoRA in the Advocacy Ad Guidelines

19. The Advocacy Ad Guidelines identify the central role of s14 NZBoRA in respect of advocacy ads:

- 19.1. Neither R2(e) nor the Guidelines to R2(e) in the ASA Code defines Advocacy Advertising, but the Guidance contains a “Definition of Advocacy Advertising”, which is (materially) as follows:

“Definition of Advocacy Advertising

⁶ John Stuart Mill *On Liberty* (Penguin Books, London, 1974) at p 76. The work was originally published in 1859.

Advocacy Advertising is often characterised by parties having different views that are expressed in robust terms. This is especially so when there is proposed legislation or a referendum on an issue. ...”

The Guideline then sets out ASA Code R2(e) and relevant Guidelines.

- 19.2. Significantly, the “Advocacy principles” identified in the Guidance reference s14 of the NZBoRA:
- a *“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....”*
 - b *“3. That the Codes fetter the right 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.”*
 - c *“4. That robust debate in a democratic society is to be encouraged by the media and advertiser and that the Codes should be interpreted liberally to ensure fair play by the contestants.”*

- 19.3. As to the “Application of Rule 2(e)” the Guidelines identify that:

“To assist consumers and advertisers and taking into account the advocacy principles and recent precedent decisions, the ASA has agreed, where advertising meets certain conditions, a more liberal interpretation of the Code is appropriate. This allows all sides to advocate their position – clearly identified – and avoid a technical interpretation of potential breaches.”

- 19.4. As to “Evidence”, s14 NZBoRA are captured as follows:

- a *“The role of the Complaints Board in advocacy advertisements is to ensure there is fair play and the right of free expression is not unduly restricted. Accordingly, the Complaints Board liberally interprets the Codes and tries not to be concerned with minor or technical breaches.”*
- b *“Complainants sometimes ask the Board to in effect decide which side in an advocacy debate is correct but the Board has consistently declined to have a view. Similarly, 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.”*

- 19.5. The final element of the Advocacy Ad Guidance clarifies that :

“For a more liberal interpretation of the Codes to apply to advocacy advertisements, the following is required:

- ***[1] The identity of the advertiser must be obvious and easily recognised. [...]***
- ***[2] It must be clear in the advertisement what view the advertiser advocates and ideally this should be clear in their identity. [...]***
- ***[3] Advertorial style advertisements must be clearly labelled ‘Advertisement’ or ‘Advertorial’. [...]***

19.6. In effect, the Advocacy Ad Guidance identifies the fundamental importance of free, frank and robust debate on important political issues, and of ensuring that political advocacy organisations are able to communicate genuinely held views matters of public importance freely, without fear of censorship based on technical breaches of the Code. When this applies, it applies to all issues under all aspects of the Code. The Guidelines also recognizes that with that freedom comes responsibility, and that political debate and discourse does not benefit from information or opinion that cannot be verified or tested to the extent established in the ASA Code, in terms of its factual content or its source (including its position).

The Ad is Advocacy Advertising, to which a more liberal/less restrictive approach applies.

20. The Ad squarely satisfies the definition of Advocacy Ad, complies with the Advocacy Ad Guidance criteria for a more liberal and rights conscious application of all aspects of the ASA Code, in line with the requirements of s14 NZBoRA.
21. The Ad is an Advocacy Ad, as defined, because it clearly advocates against the implementation of the “proposed legislation” (the Bill), in robust terms. HPT is offering a view that strongly differs from that of the Labour Party/government that was supporting the progress of the proposed legislation comprised in the Bill⁷.
22. If, and to the extent that it is necessary, to comply the specific provisions of R2(e) and the associated Guidelines, it does so – see paragraphs 39-40 below.
23. The relevant Guidance criteria for an Advocacy Ad to qualify for a more liberal approach are satisfied:

[1]: the identity of the advertiser is obvious and easily recognised.

23.1. As outlined already, in the Raw Ad HPT’s logo and name appear prominently on the final page for several seconds, together with a link to an issue-specific page that again clearly identifies HPT, and the on-line versions of the Ad that have been run appear in all cases with the relevant YouTube/Facebook HPT Branding (other HPT logo and/or to Hobson’s Pledge references), which display prominently and clearly with or in fact in the Raw Ad presentations at all times throughout such Ads.

23.2. The complaint C#1-E (see Schedule 2) is critical about the reference to Hobson’s Pledge being a short image with the name/logo covering less than 1/3 of the screen at the end of the video. We maintain that, for the reasons outlined, HPT identity is sufficiently obvious and easily recognised, there (at the end of the Raw Ad image) and including the displayed YouTube/Facebook HPT Branding.

23.3. But the Guidance relating to less well known advertisers is not relevant here. HPT is a well-known and well-established organisation, with a well-established position on issues of equality before the law. Also:

- a the suggestion that additional information such as a website link might be provided is permissive not mandatory;

⁷ It is unimportant that the four or five examples given in the full definition (abortion, fluoridation etc) do not happen to identify the particular issue covered by the Ad. It is clear from the definition, without reference to the examples, that it applies.

- b the Ad includes a reference to a further web-page that provides additional information about HPT's position regarding the Bill, including an express acknowledgement that the website too is authorised by HPT; and
- c in any event HPT's website and other material is readily identifiable on-line too, and more than sufficient for these purposes.

[2] *The Ad clearly states the position of the advertiser:*

23.4. HPT's position on the Bill is clear from the Ad. The text is set out above, in paragraph 7 above. HPT considers that: the Bill should not be enacted because it would undermine the one person one vote principle, giving one group of voters greater say than another, and with race defining those voters that would have less say. On that basis, it urges viewers of the Ad to express political opposition to the Bill. It then refers to the www.ProtectYourVote.nz website, which provides further information, including on how to make submissions to the relevant Select Committee.

23.5. Furthermore, to the extent that the requirements say "ideally this should be clear in their identity": (i) again this is not a mandatory requirement; (ii) this cannot be applicable where an entity like HPT takes an advocacy position on more than one issue (HPT is in this respect no different from a political party that puts up candidates for election, or the government, which will take an advocacy position on multiple issues) and (iii) anyway HPT's broader position is sufficiently clear from its (Hobson's Pledge Trust) name, and the associated narrative.

23.6. In this context, C#1-D and C#1-F (Schedule 2) complain that the Ad does not state the position of Hobson's Pledge, and that it relies on the viewer to recognise Hobson's Pledge and its alleged bias. Ironically, this particular complainant complains *both* about the way the content is portrayed (C#1-A, C#1-B and C#1-C) which clearly identifies HPT's position, *and* that HPT's position is not sufficiently stated. Again, for the reasons covered already, HPT's position is made clear in the Ad

[3] *The Ad is not an advertorial style advertisement (which would need to be labelled as such).*

23.7. This is not a product advertorial, there has been no suggestion that this is an Advertorial or that R2(a) applies, and to the contrary clearly this is an Advocacy Ad to which R2(e) applies.

24. That said, we maintain that a liberal and less exacting approach should be taken to the consideration of this Complaint *simply* because it is a political Ad, to which s14 and s19(2)⁸ NZBoRA apply.

24.1. We say that approach should apply the consideration as to whether the Complaint satisfies the Advocacy Ad Guidance requirements and identified criteria, as well as to compliance with the other provisions of the ASA Code. In that context, the Ad is clearly – in substance and form – a political ad and an advocacy ad, and any assessment of whether the Ad satisfies the criteria identified in the Guidance should be carried out consistently with the liberal

⁸ HPT is taking a stand in good faith against a Bill that discriminates against non-Maori voters affected by the Bill. HPT's purposes are clear. In that context, the Ad does not constitute discrimination – to the contrary. HPT maintains that its position, reflected in the Ad, assists and advances the position of all New Zealanders, as it maintains all New Zealanders will be disadvantaged by discrimination in the Bill (including the non-Māori most directly disadvantaged by the Bill) on the basis of race or ethnicity.

approach that should apply and should not be caught up in “technical” points. Again, the Principles identified in the Guidance include in principle 3 that “*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.*”

- 24.2. Also we say that, irrespective of the criteria in the Advocacy Ad Guideline, where (as here) the Ad is plainly and self-evidently political self-expression addressing political issues then, absent good reasons to the contrary, the more liberal/less exacting approach should apply anyway. We say that there is no good reason to stifle freedom of expression here. The Ad is protected speech under s14 NZBoRA, including pursuant to s18(2) NZBoRA.
25. However, to be clear, our primary position is that *a liberal and less restrictive approach must be applied with respect to the assessment as to whether the Ad complies with the ASA Code as whole* (not just R2(e) and associated guidelines), including any assessments with respect to P2, R2(b), P1 and R1(c) in respect of this Complaint. On that basis, we maintain that the Ad in its present form as run complies with the Advocacy Ad criteria.

The Ad is truthful, not misleading and is substantiated

26. The central issue that comprises the substance of the Ad (the “takeaway”) relates to the Labour party making law changes that would significantly reduce the say that General Roll voters in Rotorua have relative to Māori Roll voters in Rotorua, with respect to Council elections.
27. The Ad identifies that General Roll voters would have 58% of the say of Māori Roll voters, which provides context and illumination for the substance of the Ad, but the Nub of the Ad is the proposition that General Roll voters have (materially) less say.
28. The substance of the complaints in that regard appear to suggest that the Nub of the Ad was not truthful, or was misleading (through the representation of data), that it is unclear how the calculations were done or that they are an oversimplification, and that they are factually incorrect.
29. With reference the complaints as identified in Schedule 2, this is raised by the following complaints: C#4-O (factually incorrect); C#1-A (misleading/misleading through false representation of data); C#1-B (exaggeration & hyperbole – not clearly identified); C#3-J (unclear how the 58% of the say has been calculated); and C#3-K (the calculation is at best a gross and misleading over-simplification).
30. These claims appear to seek to trigger P2 (Advertisements must be truthful, balanced and not misleading”), R2(b) (as to Truthful presentation) and aspects of R2(e) (aspects of the Advocacy advertising rule requiring that factual information must be able to be substantiated).
31. We maintain that where, as here, the substance of the claim can be substantiated and shown to be sufficiently truthfully presented, associated issues that could otherwise arise under P2, R2(b) and R2(e) including any claims of misrepresentations are also addressed, particularly if a more liberal/less technical approach applies under the Advocacy Ad Guidelines.
32. The substance of the Nub of the Ad, as well as the 58% figure used (in so far as it is necessary to defend that detail too), is established by:
- 32.1. The information in the Ad, and in the further detail on the www.ProtectYourVote.nz website page (Appendix, E).

- 32.2. The Rotorua District Council (Representation Arrangements) Bill (“the Bill”) (Appendix, A), which provides for Rotorua Council Members to be elected as follows:
- a 3 members, elected by Roll voters (s10(1)(a));
 - b 3 members, elected by General Roll voters (s10(1)(b));
 - c 4 members and the mayor, elected by all voters (both Rolls) (s10(1)(c)&(d)).
- 32.3. The proportions of Rotorua voters for the Māori electoral ward (Te Ipu Wai Taketake) (21,700), the General electoral ward (Te Ipu Wai Auraki) (55,600) and the at large seats (voted for by all voters (77,300), which are identified in the Local Government Commission Rotorua District Council Representation Review⁹ (Appendix, B).
- 32.4. On the basis of the terms of the Bill and that Voter data:
- a the Bill very significantly reduces the value of General Roll votes relative to Māori Roll votes because for 6 of the total of 11 Council roles 21,700 Māori Roll voters have same voter power as 55,600 General Roll voters, with each group electing 3 members, such that:
 - approximately 28 % of the voters (21,700 Māori Ward/77,300 in total) would be electing the 3 Māori Ward Councillors; and
 - approximately 72% (55,600 General Ward/77,300 in total) would be electing the 3 General Ward Councillors; and
 - b although the voting for 5 of 11 other Council roles counts votes from both Rolls equally (effectively on person one vote), the significantly disproportionate approach regarding the other 6 of 11 Council roles voted for by the separate Wards substantially reduces the overall impact of a General Ward vote, giving those voters substantially less say than Māori Ward voters; and
 - c the approach that the Ad took in identifying that a General Roll vote would have 58% of the say a Māori Roll vote would have in the election of the Council as a whole, weighing up the *overall effect of all* of the Rotorua Council voting (10 members and the mayor – together 11 “councillors”) – on that basis:
 - the votes of each of 21,700 Māori Ward voters elect:
 - 3 Māori Ward councillors, at ratio of 3/21,700, or *0.000138249* councillors per vote;
 - 5 others (4 General Ward councillors and 1 mayor), at a ratio of 5/77,300, or *0.00006468* councillors per vote; and
 - *a total of 0.000202932* (i.e., 0.000138249 + 0.00006468) **councillors per Māori Ward vote**;
 - each of 55,600 General Ward voters elects:
 - 3 General Ward councillors, at ratio of 3/55,600, or 0.0000539568 councillors per vote;

⁹ The Local Government Commission (Mana Kāwanatanga ā Rohe) Determination of representation arrangements for the election of the Rotorua District Council to be held on 8 October 2022. See the second column of the tables at paragraphs 9 and 16, with these Council proposed ward figures based on the Tatauranga Aoteroia Stats NZ 2020 electoral population estimates. These figures are the same figures that are also identified at paragraph 17 of the A-G’s Report (see below).

- 5 others (4 General Ward councillors and 1 mayor), at a ratio of 5/77,300, or 0.00006468 councillors per vote; and
- a total of **0.00011864** (i.e., 0.0000539568 + 0.00006468) **councillors per General Ward vote;**
- **so, overall:**
 - each General Ward vote elects **0.00011864 councillors whereas** each Māori Ward vote elects **0.000202932 councillors;**
 - as a ratio, each General Ward vote elects 0.5846351 (i.e., 0.00011864/0.000202932) of the number counsellors that each Māori Ward vote elects; and
 - that gives each General Ward vote 58% of the say of a Māori Ward vote.

32.5. In summary, the central claim is accurate, based on the wording and effect of the Bill and publicly available voter registration information.

33. Also, since the Ad first ran, there have been two key developments:

33.1. The Attorney-General, the Honourable David Parker (Senior Law Officer of the Crown, a senior government Minister Crown and Labour Party member) has provided a report to the House of Representatives on the Bill¹⁰ (“**the A-G’s Report**”) (Appendix, “C”) on terms that confirm the key facts underpinning the Ad:

- a identifying the representative arrangements in the Bill¹¹, and the number of GEP and MEP votes¹², on terms that mirror the outline above;
- b identifying that that the Bill:
 - *“creates a disadvantage for non-Māori because the proposed representation arrangements in cl 10 would lead to disparity in representation between the Māori ward and the general ward”, “whereby the number of elected Māori ward members and general ward members would not be proportionate to the respective Māori Electoral Population (MEP)¹³ and General Electoral Population (GEP)¹⁴”; and*
 - *“...creates a disparity in the number of people represented by each ward Council member. The proposed representation arrangement would make the number of Council members for the Māori ward disproportionately higher than the number of Council members for the general ward, in comparison to their respective populations. This discriminates against electors who are on the General roll (and, as outlined above, those who are non-Māori and cannot change rolls in future).”¹⁵; and*
- c identifying the extent of the ramifications of such issues:
 - *“In a representative democracy, it is important to maintain approximately the same level of representation for everyone. The proposed arrangements in the Bill would make the number of council members for the Māori ward disproportionately higher than the number of council members for the general*

¹⁰ 21 April 2022 Report of the ATTORNEY-GENERAL [the Honourable David Parker] under the New Zealand Bill of Rights Act 1990 on the Rotorua District Council (Representation Arrangements) Bill (the Attorney General’s Report).

¹¹ Paragraph 6, A-G’s Report.

¹² Paragraph 17, A-G’s Report.

¹³ Paragraph 29, A-G’s Report.

ward in comparison to their respective populations. As the disadvantaged group is those on the General roll, changing representation arrangements away from proportional representation therefore creates a disadvantage for non-Māori as they cannot in future elect to change rolls.”¹⁴.

- *“This proposed arrangement detracts from the key constitutional principle of equal representation in a representative democracy.”¹⁵;and*
- d concluding that *“the Bill appears to limit the right to be free from discrimination affirmed in s 19 of the Bill of Rights Act and [based on the information available] cannot be justified under s 5 of that Act”.*

33.2. In light of the A-G’s Report the Rotorua District Council and the Labour Party MP sponsoring the Bill, and thus the Labour Party and “the government”, have effectively suspended the progress of the Bill, to allow more time to work through these issues (i.e., the issues arising from the A-G’s Report, which are same issues the Ad covers). This was confirmed in a 28 April 2022 “Statement from Mayor Chadwick on pausing of Local Bill process” (Mayor Chadwick being a Labour Party member), which included a statement from the Labour MP Tamati Coffey, the Bill’s sponsor (Appendix, “D”), which reports that:

- a Mayor Chadwick supported the Council’s decision to pause the Bill, saying: “The pause enables everyone to get the discussion around the Bill right.”
- b Mr Coffey said:
- c *“I support the Rotorua District Council’s decision to press pause on their Bill in order to review the Bill of Rights analysis.”*
 - *“As sponsor of this Local Bill, I will be seeking the support from the Māori Affairs Committee to suspend submission hearings while possible amendments are being considered. As is standard with a Local Bill, which I was sponsoring on behalf of the Rotorua District/Lakes Council, a Bill of Rights analysis is not undertaken until the Bill appears at Select Committee, as opposed to all other Bills where it occurs before the First Reading. Once receiving the advice from the Attorney General, it was clear that more information was needed, and a suspension will now be undertaken to respond to the Attorney General’s Bill of Rights analysis and consider other concerns this Bill raises.”*

34. On that basis (with or without the additional points arising since the Ad began to run) we can substantiate the Nub of the Ad, and demonstrate that it is a truthful presentation that is not a misrepresentation. In particular:

- 34.1. the Bill gives non-Māori less say than those on the Māori Roll as to the election of their Rotorua Council;
- 34.2. those on the General Roll have 58% less say than those on the Māori Roll (if and to the extent that this too needs to be substantiated at that level of detail); and
- 34.3. this has that disproportionate effect based on race, because non-Māori can only be on the General Roll, whereas Māori can choose to be on either roll, including the Māori Roll on which they would have more say.

¹⁴ Paragraph 19, A-G’s Report.

¹⁵ Paragraph 30, A-G’s Report.

35. In addition, as this is Advocacy Advertising, a less exacting standard applies. Pursuant to R2(e) “Factual information must be able to be substantiated”, and the Guideline in the ASA Code requires that “*Evidence... in support of factual information must be appropriate and robust and must be readily available and obtainable*”. But applying the Advocacy Ad Guidelines, and in recognition of the importance of freedom of expression on these sorts of issues, a liberal and non-technical approach is required. In that context, we say that any requirement for “balance” (or anything along those lines) is not required (as the balance for political speech will come from others presenting different positions), and that the focus should be on the substance of the Ad, not the detail such as (for example) the 58% figure (although we maintain that is compliant and defensible anyway). In that context, the Complaint is by some margin not sustainable in P2, R2 (b) or R2(e) “truthful presentation” or “misrepresentation” terms.
36. We will also comment specifically on C#3-J and C#3-K (Schedule 2).
- 36.1. The first (C#3-J) suggests that it was unclear how the “58% of the say” statement has been calculated. There was no obligation to include that detail in the Ad. Anyway, this has been calculated in a way that meets the truthful presentation obligations, to the extent that applies (as above).
- 36.2. That same complainant also suggests (C#3-K) that the statement would at best be a gross and misleading oversimplification of the complexities of the representative democracy. With respect, again, it is not accepted that the use of this useful even-handed truthfully presented figure is misleading or an oversimplification. To the contrary the data point served to usefully illustrate the nub of the issue. Again, the Ad complies, for the reasons already covered.
37. On that basis we maintain that the more liberal Advocacy Ad Guidance is more than satisfied here, and that there are no breaches as to truthful presentation, or any of the other similar allegations regarding the Nub of the Ad.
38. Finally, and for completeness on this “truthful presentation” aspect, we note again that the four complainants have not been particularly specific as to what they say is not true, or misleading. We have addressed above the truthfulness issues raised by individual complainants, and the issues that we perceive comprise the essence of the Ad and of this aspect of the Complaint. We have not sought to go into every aspect of the remainder of the Ad, as it is not our role to speculate further as to what the complainants might mean, and because we do not perceive that such issues are raised in the Complaint. To be clear, we maintain that: (i) the Complaint could not properly be upheld on grounds which neither the Complaint nor individual complainants have specifically identified; (ii) other issues would need to be traversed if other truthful presentation issues are contemplated; and (iii) if there is any suggestion that the Complaint raises other issues, then we would (as a matter of natural justice and fairness) at least expect an opportunity to respond.

The ad otherwise complies with the other R2(e) requirements

39. As well as comprising the provision to which the Advocacy Ad Guidance attached (covered in Substantive issue #1), and the requirement that factual information should be substantiated (covered in the preceding section of this response), R2(e) includes its own compliance requirements. Most of this has been covered already but, in brief, in R2(e) terms (and for the avoidance of doubt):
- 39.1. the Ad clearly states the identity and position of HPT;

- 39.2. to the extent that opinion in support of the advertiser's position needs to be clearly distinguishable from factual information, that either does not apply or has been complied with:
- a the Ad does not rely on opinions (experts/studies etc) to support of HPT's position, it simply relies on the facts (the Bill and electoral data) to support its view/position, so strictly there is no necessity to distinguish supporting opinions in this way; and
 - b in any event, to the extent the Ad deals with facts and offers opinions, they are sufficiently separated, such as (for example) the statement that this Government seems "*hellbent on eroding our democracy with racism and division*". That is clearly an expression of HPT's opinion as to where the government is heading, and would be understood as such by any reasonable viewer. That opinion is based on a statement of fact, being that if the Bill was to become law "a voter on the General Roll will have only 58% of the say of a voter on the Māori Roll" in respect of the election of the Rotorua District Council. That statement of fact can be substantiated, as is discussed above, in response to the substantive complaints and the truthful presentation of the nub of the Ad; and
- 39.3. again, as noted already, the factual information is able to be substantiated.

40. In this context, complaint C#1-D (in Schedule 2) suggests that the Ad does not state the position of Hobson's Pledge, complaint C#1-F suggests the Ad relies on the viewer to recognise Hobson's Pledge as the organisation to understand their bias etc, and again complaint C#1-E has complained about the extent of the references to Hobson's Pledge. With all due respect, much of the Complaint expresses opposition to the position that Hobson's Pledge is clearly taking in the Ad, which has been covered already, and which we maintain is sufficiently clear. Similarly, for the reasons covered already, we maintain that HPT has been more sufficiently identified as the Advertiser.

The Ad was prepared and placed with a due sense of social responsibility

41. As with the truthful presentation issues, the complainant's lack of specificity is unhelpful. In this context, we have sought to focus on the Principles and Rules identified in the Complaint Letter, and to work back from that to identify where (beyond the "truthful presentation" issues) particular complaints could be raising either P1 issues. (We have also taken a similar approach, in the following section, to possible R1(d) issues.)
42. On that basis, the issue here is whether, per the general Principle P1, the Ad had been prepared with a due sense of social responsibility to consumers and society.
43. This issue is inextricably linked in with the issues covered already as to the impact of the Advocacy Ad Guideline on the approach that applies, and as the truthful presentation of the Ad. Fundamentally, we maintain that where there is political speech of this nature, which (sufficiently) complies with the obligations as to truthful presentation under Principle 2 and the relevant Rule 2 rules, that will *generally* also be socially responsible: i.e., prepared with a due sense of social responsibility to society (and "consumers" if that is relevant here).
44. In that context, we maintain that it will generally *not* be socially irresponsible, in the sense required by P1, particular in the context of a more liberal approach to the application of the ASA Code per the Advocacy Ad Guidance, to:

- 44.1. raise concerns about the effect of a Bill, based on the Bill and electoral data, which it transpires were largely echoed by the A-G's Report (that emerged about ½ way through the short currency of the Ad);
- 44.2. address/raise the issues covered in the Ad, on the basis outlined in this response in so far as it relates to the various "truthful presentation" issues; and/or
- 44.3. to put information on the table in relation to political matters that are of importance to all New Zealanders, irrespective of which Roll they are on.
45. Against that background, the next question is whether the material presented or (more likely) the way in which it was presented crosses the line in terms of social responsibility. We say it does not, particularly in view of the more liberal/less exacting approach that applies to Advocacy Ad, but we will address the specific issues raised by the four complainants:
- 45.1. C#1-B suggests that this is "fearmongering", an "attack ad" and that there is "use of images to cause fear and shock". With all due respect, the complaint itself is hyperbole (one of C#1's other concerns). The Ad is a political Ad, and it makes political points strongly. It encourages those who see the Ad to understand the essence of the issue, and to be concerned about it, and to take a political position. It identifies the proponents of the Bill and is critical of their policy and approach. But it does not attack anyone, and comprises legitimate political speech that – particularly in the context of the more liberal approach that applies to Advocacy Ads – we maintain falls on well short of sustaining these claims.
- 45.2. C#2-G suggests this is advising against government policy. In itself this is broadly correct, in that the position HPT is taking is in opposition to the Bill that the Labour Party/government was supporting and promoting in the House. But expressing a position on political matter, where there will be differences of opinion, is not socially irresponsible in a free and democratic society.
- a To the contrary this sort of difference of opinion is precisely the sort of robust debate that is protected under the NZBoRA, and that the Advocacy Principles in the Advocacy Ad Guidance refer to when they record (for example) that:
- "3. ... 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 advertiser..."*
- b Political advertising that is contrary to the government's view, or anyone else's view, is not for that reason contrary to the "social responsibility" principles.
- 45.3. In C#2-H, complainant C#2 goes on to say that this contradiction of the government is "borderline seditious". This is an extrapolation of the previous point, taken to the extreme. We maintain that it is not seditious to offer views that are contrary to the views of a political party or an incumbent government – to the contrary that is again precisely the sort of freedom of expression that is expressly preserved by the NZBoRA and the more liberal/less exacting approach identified in the Advocacy Ad Guidance. It is important to note here that the Ad was encouraging participation in the legislative process through submissions – it was not an invitation to protest or take any direct action other than to make a submission. There is no basis for inferring a lack of social responsibility.

- 45.4. Furthermore, C#2-I says this is in ways that are “almost certainly racist”. This is not accepted.
- a The Ad identifies a Bill that differentiates between Rotorua voters on the basis of race, and which would give Rotorua voters on the General Ward less say than voters on the Māori Ward, and says that this approach is racist. This is a conclusion that the Attorney-General reached, in essence, too. It is not accepted that this is – per se – racist. HPT maintains that, far from being racist, the Ad is simply: (i) highlighting that the Bill is itself discriminating on the grounds of race; and(ii) on that factual basis, the Ad is in good faith expressing a legitimate position on these political issues, to which s14, and s19(2), NZBoRA apply.
 - b There are differing political views on the right way to approach these issues. Complainant C#2 (like the other complainants) is of course entitled to their views. But, as identified already, it is not the role of the ASA Board under the ASA Code, in relation to an Advocacy Ad, to try to judge who is right. Again, this has to be the sort of political expression that, in line with the NZBoRA and the more liberal/less exacting approach identified in the Advocacy Ad Guidance, the Code expressly allows.
- 45.5. C#3-L alleges that C#3’s lack of truthful presentation (C#3-J and C#3-K, dealt with earlier) is “in order to scaremonger”. This mirrors part of C#3-C above, and the response in relation the “fearmongering” complaint applies.
- 45.6. C#3-M alleges that C#3’s alleged lack of truthful presentation (C#3-J and C#3-K, dealt with earlier) is “in order to receive political and financial support”. It is not clear how it could breach any sort of social responsibility” obligation for a political pressure or lobby group, in a free and democratic society, to seek political support in order to do its work. (It is not clear that there is any attempt to attract financial support, but if that were established it would not raise any sort of “social responsibility” issue). Again, this appears to fall in line with the sort of political expression that the NZBoRA and the more liberal/less exacting approach in the Advocacy Ad Guidance allows and preserves.
- 45.7. C#4 suggests the Ad is “trying to stoke racism toward Māori”, and for the reasons articulated regarding C#2-I, this is simply not accepted.

The Ad does not fall foul of *Decency and Offensiveness* criteria

46. Again, the lack of specifics in the complaint is problematic. In most respects, again, truthful presentation should ensure that possible “Decency and Offensiveness” issues do not arise. However, the way in which something is presented could nevertheless raise some such issues. We work through those aspects of this Rule, Rule 1(c), and the associated Guidelines, so far as it appears particular complaints might raise these issues.
- 46.1. Rule 1(c), as to Decency and Offensiveness, is set out in full above. The Ad contains nothing could legitimately be said to be indecent, exploitative or degrading, so - by elimination - any issue must be as to whether in any respect the Ad is “*likely to cause harm, or serious or widespread offence, or give rise to hostility, contempt, abuse or ridicule.*”
- 46.2. The Guideline includes potentially relevant elements:
- a “*Grounds for offence includes, but are not limited to: race;... ethnic or national origin; cultural, ... political or ethical beliefs.*”; and

- b “Advertisers must not use offensive, degrading or provocative copy and/or images to attract attention...¹⁶”.

47. Again, in this context too, compliance should be assessed in light of NZBoRA considerations and the more liberal/less exacting approach identified in the Advocacy Ad Guidance. The Ad relates to a political issue, on which there will be many diverging views.
- 47.1. Political views per se that invite a political response on a Bill before the House of Representatives are not “likely to cause harm”, unless they get into the territory of inciting some sort of uprising or riot, which is not the case here. Again, this was just an invitation to make a submission in a legislative process.
- 47.2. It is not accepted that the Ad would be “*likely to cause... serious or widespread offence*”. This is high threshold. In this regard, claims of racism *could* in theory be grounds for offence, given the terms of the “Grounds for offence include...” Guideline identified above. But for the reasons identified previously, racism is not established here, where the Ad raises a concern that the Bill itself is racist, in the context of a live political issue, and where s14 and s19(2) NZBoRA apply. Again, the ASA Code needs to be construed in the context of the Advocacy Ad Guidance and, in that context, it is submitted that neither the form and content of the Ad, nor four complaints with two asserting racism, gets anywhere near to the threshold in terms of being “likely to cause... serious or widespread offence.”
- 47.3. For similar reasons, it is not accepted that the Ad would reach that threshold in terms of the “Advertisers must not use offensive... or provocative copy...” Guideline. Again, neither the Ad nor the fact that perhaps two of the four complainants might be able to be seen as offended or provoked by the Ad gets anywhere near substantiating an assertion that the Ad is “likely to cause” such “serious or widespread offence”.
48. A similar analysis applies in respect of any suggestion that such matters would in fact (not just be “likely to cause”) “give rise to” “hostility, contempt, abuse or ridicule”. It cannot be right that political speech, focussed on a legitimate important issue, on terms which are truthfully presented within the bounds protected by NZBoRA and to which a more liberal/less exacting Advocacy Ad approach applies, “gives rise to” those sorts of outcomes. In an environment that is meant to “encourage robust debate in a democratic society”, we maintain that the Ad cannot credibly be said to have crossed the line.

Conclusion:

49. For these reasons, we urge the Board to *not uphold* this complaint. Freedom of expression in relation to matters of political and social importance is the central issue here. There is no (sufficient) reason to stifle that freedom of expression.

¹⁶ The reference to “or promote the sale of products or services” has been omitted from the quotation as it is not relevant here: the advertiser is a political pressure group promoting ideas, not products or services.