

COMPLAINT NUMBER	22/186
ADVERTISER	BusinessNZ
ADVERTISEMENT	BusinessNZ website
DATE OF MEETING	4 July 2022
OUTCOME	No Grounds to Proceed

Advertisement: The BusinessNZ website had the following text: “Test your knowledge on Fair Pay Agreements.” Following this were two multiple choice questions:

1. Who is going to be the most affected from the government’s Fair Pay Agreements? The answer “All of the above” was ticked, meaning the mature working student, the parent juggling work and kids and the small business owner. Beneath this was the text “Under the Fair Pay Agreements, working conditions are set and almost impossible to change, meaning there is a possibility that everyone will be negatively impacted”.
2. Under Fair Pay Agreements, would you still be able to keep previously negotiated flexible working hours to pick up your child from school very day? The answer “No” was ticked.

Following this was the text “Fair Pay Agreements aren’t all that fair, and in reality they will take control away from Kiwi workers and employers. Get behind the petition against Fair Pay Agreements and sign our open letter now!” At the top of the third webpage was the Your Work Your Way logo.

The Chair ruled there were no grounds for the complaint to proceed.

Complaint:

Website contains a section called "test your knowledge" with 3 questions and answers. Once the person visiting the website answers the question the website tells the viewer if they are right or wrong and the reason why. The information is incorrect and appears to be deliberately misleading. Question 1 (attached as Q1) asks "who is going to be most affected from the government’s Fair pay Agreements?" It then lists mature working students, the parent juggling work and kids, the small business owner and all of the above. It then states that "under the Fair Pay Agreements ... there is a possibility that everyone will be negatively impacted". This is objectively untrue. Firstly because all groups cannot be "the most" affected. "Most" requires one group to be selected ahead of the others. therefore, the basic premise of the question and answer is incorrect and misleading. Secondly, regardless of how the viewer answers, the website informs the viewer that everyone will be negatively impacted. The question does not ask who will be the most negatively impacted. Thirdly, the purpose of the Fair Pay Agreements Bill is to improve the working conditions of workers. While this will likely negatively impact on small business owners the most (e.g. increased costs if wages improve) it is simply not true that there is a possibility everyone will be negatively impacted, or even that all of the three groups listed will be negatively impacted when there is nothing in the Bill which seeks to reduce terms and conditions of employment for workers. Fair Pay Agreements will do nothing more than set minimum terms and conditions for an industry. individuals and unions can negotiate above those minimums. The misinformation on this website is no different to stating that everyone is negatively impacted by an increase in the minimum wage or increase to sick leave (to use the example of two recent statutory improvements to minimum terms and conditions of employment). Question 2 (attached as Q2) asks the viewer if they will "... still be able to keep previously negotiated

flexible working hours to pick up your child from school each day". The quiz categorically tells the viewer that the answer is "No" and explains that under Fair Pay Agreements there will be set conditions of work "meaning that flexible working is in no way guaranteed". There are two parts to the misinformation here. Firstly, it is not true that flexible working is in no way guaranteed. Sections 69AA to 69AAK of the Employment Relations Act 2000 deal with flexible working arrangements and section 69AA states that the purpose is to "provide employees with a statutory right to make, or to have made on their behalf, a request for a variation of their working arrangements ..." These sections of the Act are not repealed by the Fair Pay Agreements Bill, therefore flexible working arrangements are statutorily protected. As noted above, the intention of the Fair Pay Agreements Bill is to improve working conditions, not to lessen them and there is nothing in the Bill that suggests flexible working arrangements agreed between an employer and employee will be removed. Secondly, even if it were true that there were some potential situations for some individuals where their current flexible working arrangement had to be revised, the answer to the question could not be "No". It would have to be "maybe" as there is no categorical removal of flexible working arrangements, regardless of the view taken on the issue. The questions and answers laid out on the website are false and misleading. It would appear this is deliberately so. The intent of the questions and answers appears to be to make a worker think that Fair Pay Agreements are going to lessen their terms and conditions of employment when the reality is that Fair Pay Agreements will either improve their terms and conditions or have no effect because their terms and conditions are already above the minimum that will be set under the Fair Pay Agreement. I seek a removal of the false and misleading questions and a published statement from apologising for publishing misleading information and printed corrections.

The relevant provisions were Advertising Standards Code - Principle 2, Rule 2(b), Rule 2(e);

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

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

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

The Chair acknowledged the Complainant was concerned the website advertisement contained misleading information about the Fair Pay Agreements Bill.

Definition of advertisement

The Chair confirmed the information on the BusinessNZ website, which is the subject of this complaint, fell within the ASA definition of an advertisement, which is:

any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behaviour of those to whom it is addressed

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.

Complainants sometimes ask the Board to in effect decide which side in an advocacy debate is correct. The Chair noted the Complaints Board has consistently declines 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 the Codes.

The Chair said complaints about advocacy advertising are considered differently to complaints about advertising for products and services. In assessing whether an advocacy advertisement complies with the Advertising Standards Code, the freedom of expression provisions under the Bill of Rights Act 1990 must also be considered.

Section 14 of the Act 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." This freedom of expression supports robust debate on current issues in a democracy.

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.

Identity and position of Advertiser

The Chair confirmed the website advertisement was advocacy advertising and both the Advertiser's identity and position were clear. This is because the advertisement on the BUsinessNZ website drew attention to the Advertiser's opinion regarding the Fair Pay Agreements Bill. The Chair noted the text under the website heading "About Your Work, Your Way", which said "The Fair Pay Agreements Bill is fundamentally flawed... Why? Because despite their name, they simply aren't fair". The Chair said the advertisement complied with the requirements of Rule 2(e) of the Advertising Standards Code.

Precedent decision

The Chair referred to a relevant precedent decision, 22/207, which was ruled Settled in part and Not Upheld in part, by the Complaints Board. A copy of this decision is available on the ASA website. This decision concerned a complaint about two BusinessNZ digital billboard advertisements in opposition to the Fair Pay Agreements Bill. One of the billboards said "If 10% of workers want a Fair Pay Agreement, 100% of workers get them. Say no at YourWorkYourWay.co.nz". The other billboard said "Say yes to flexible working. Say no Fair Pay Agreements. Go to YourWorkYourWay.co.nz". Both billboards also included the "Your Work Your Way" campaign logo.

A majority of the Board said, in the context of political advertising on a matter of public debate, the first advertisement was not misleading. The Board unanimously agreed the second advertisement was not misleading, in the same context. The Board said the Advertiser, BusinessNZ, had not been clearly identified in the advertisements. The Board agreed that as the Advertiser had confirmed that in any future advertising of this nature it will prominently include its name and/or logo, this part of the complaint was Settled.

About this complaint

Turning to the complaint presently being considered, the Chair confirmed the Advertiser was presenting its opinion about how the Fair Pay Agreements will work in practice, once the current Bill has been passed into law. This includes who is going to be most affected, whether previously negotiated flexible working hours will still be available and whether the agreements are “fair”.

The Chair said opinion in support of an Advertiser's position, in the context of an advocacy advertisement, does not need to be substantiated.

The Chair noted this Bill was a matter of public interest which is currently being widely debated and covered by a range of media platforms. The final version of the legislation has yet to be agreed.

The Chair noted the advertisement was located on the Advertiser's website. The Chair referred to the following excerpt from the “[ASA Guide on Election and Referenda Advertising August 2020](#)”:

...Context is a key part of assessing a breach of the advertising codes. In an election year, if consumers choose to visit or follow websites or branded social media pages from political parties, candidates, and election-related advocacy groups, they need to be aware the content is presented from a particular perspective and should be viewed in that context...

The Chair said although a general election will not be held in New Zealand in 2022, this statement still has some relevance in this case.

The Chair said in the context of political advertising, on a matter of public debate, the advertisement was not misleading.

The Chair said the viewpoint represented in the advocacy environment did not meet the threshold to breach Principle 2 or Rule 2(b) of the Advertising Standards Code.

The Chair ruled there were no grounds for the complaints to proceed.

Chair's Ruling: Complaint **No Grounds to Proceed**

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.