

COMPLAINT NUMBER	22/207
COMPLAINT ON BEHALF OF	New Zealand Council of Trade Unions
ADVERTISER	BusinessNZ
ADVERTISEMENT	BusinessNZ Digital Billboard
DATE OF MEETING	23 August 2022
OUTCOME	Settled in part, Not Upheld in part No further action required

Summary of the Complaints Board Decision

The Complaints Board agreed to Settle in part and Not Uphold in part two BusinessNZ digital billboard advertisements. 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. 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.

Advertisements

There were two BusinessNZ digital billboards. 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.

Summary of the Complaint

The Complainant, on behalf of the New Zealand Council of Trade Unions, was concerned the advertisements were misleading. The Complainant said the first advertisement “contains the misleading claim that 10% of a workforce can decide an FPA and impose it on their colleagues. 10% is the amount needed to initiate the FPA process. However, to be finalised, an FPA would require a majority vote of everyone who votes.” (*FPA is an abbreviation for Fair Pay Agreement*).

Regarding the second advertisement, the Complainant said “FPAs do not result in a loss of flexibility. An FPA does not replace collective or individual agreements, which continue to exist. Employees can still negotiate terms as they are able to now. FPAs are no less flexible than Individual Employment Agreements or Collective Agreements, both of which are standard practise in our current law.”

A copy of the complaint is in Appendix 1.

Issues Raised:

- Truthful presentation
- Advocacy advertising

Summary of the Advertiser's Response

The Advertiser said the billboards reached the scheduled end of their run, and they do not plan to use them again.

The Advertiser defended the advertisements and said they are advocacy advertisements expressing opposition to the Fair Pay Agreements Bill currently before Parliament.

Advertisement One

The Advertiser said this advertisement was not misleading. This is because under the Bill, if the workforce votes do not ratify a proposed Fair Pay Agreement, then the union that initiated bargaining can apply to the Employment Relations Authority to set the terms of the Fair Pay Agreement, through a determination.

Advertisement Two

The Advertiser said this advertisement also was not misleading. The Advertiser said the statement on the billboard is a mix of factual statement and opinion. While it is possible for individual employers and their employees to agree terms that are different to those in an FPA, these cannot be "less favourable" than those of the FPA. Blanket terms of employment across an entire occupation and industry mean less flexibility for its participants.

Identity of Advertiser

The Advertiser said both billboards included the YourWorkYourWay.co.nz website URL and the "Your Work Your Way" distinctive logo.

The Advertiser confirmed that in any future advertising of this nature, on the Bill, it will prominently include its name and/or logo, as well as the "Your Work Your Way" campaign logo.

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 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 a precedent decision, Decision 18/340, which was Upheld.

The full version of this decision can be found on the ASA website:

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

Decision 18/340 concerned a billboard advertisement for WAVES NZ which showed a photo of a man holding a baby. Next to the photo were the words: "If you knew the ingredients in a vaccine, would you RISK it?" The word "Risk" was in red capital letters. At the bottom right of the advertisement was the text "www.wavesnz.org.nz"

The majority of the Complaints Board said the identity of the Advertiser, WAVES NZ, was not sufficiently clear and ruled the identification requirement of Rule 11 of the Code of Ethics¹, Advocacy Advertising, had not been met. In accordance with the majority, the Complaints Board did not consider the rest of the complaints in conjunction with the liberal interpretation available for advocacy advertisements under the application of the Advocacy Principles.

The Complaints Board said the advertisement was misleading as the likely consumer takeout that vaccination is not safe was not sufficiently substantiated by the Advertiser, the advertisement unjustifiably played on fear and was socially irresponsible.

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: Fair Pay Agreements Bill is currently before Parliament
 - Medium: Digital billboards
 - Audience: Unrestricted audience
 - Product: Political advocacy

¹ Now superseded by rule 2 (e) of the Advertising Standards Code

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 has generally endeavoured 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 the 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 first advertisement was, in the opinion of the Advertiser, Fair Pay Agreements will be wrongly inflicted on all workers, if 10% of the workers want them. The advertisement contains a call to action to oppose Fair Pay Agreements, by visiting the YourWorkYourWay website.

The Complaints Board agreed the likely consumer takeout of the second advertisement was, in the opinion of the Advertiser, Fair Pay Agreements will mean less flexible working. The advertisement contains a call to action to oppose Fair Pay Agreements, by visiting the YourWorkYourWay website.

Were the advocacy advertisements adequately identified?

The Complaints Board agreed the identity of the Advertiser, BusinessNZ, in both advertisements, was not sufficiently clear, and ruled the identification requirement of Rule 2(e), Advocacy Advertising, had not been met.

The Board noted that YourWorkYourWay is not the name of an organisation, it is the name of a campaign directed by BusinessNZ. The Board said most consumers would not understand the association and therefore who the Advertiser was.

The Complaints Board agreed the position of the Advertiser, in opposition to the introduction of Fair Pay Agreements, was sufficiently clear.

Given the identification requirement in Rule 2(e) was not met the Complaints Board did not consider the rest of the complaint in conjunction with the liberal interpretation available for advocacy advertisements, under the application of the Advocacy Principles.

The Complaints Board noted the Advertiser confirmed that in any future advertising of this nature, it will prominently include its name and/or logo, as well as the “Your Work Your Way” campaign logo. The Board ruled this part of the complaint was therefore Settled under Rule 2(e) of the Advertising Standards Code.

The Fair Pay Agreements Bill

The Complaints Board understood the Fair Pay Agreements Bill proposes a framework for collective bargaining for fair pay agreements across entire industries or occupations, rather than just between unions and particular employers. It is currently before a Select Committee. According to information on the Ministry of Business, Innovation & Employment website:²

“Unions initiate the Fair Pay Agreement (FPA) process, by meeting a representation threshold of support from 10% or 1000 workers in coverage, or a public interest test... If bargaining parties reach an agreement, their proposed FPA will need support from a simple majority of both employee and employer voters to be ratified... If a first ratification vote fails, parties go back to bargaining. If a second vote fails, the FPA goes to the Employment Relations Authority for determination.

Were the advertisements misleading?

Advertisement One

A majority of the Complaints Board said Advertisement One did not reach the threshold to be misleading in the context of a political advertisement on a matter of public debate. The majority said in an individual case it could be possible that “If 10% of workers want a Fair Pay Agreement, 100% of workers get them”.

The majority said this statement refers to an abbreviation of the full process for implementing fair pay agreements, in the context of a billboard advertisement. The majority said the Advertiser is presenting their perspective on the debate in the way that best suits their argument. The majority noted the advertisement directs the consumer to further information on their website.

A minority disagreed. The minority said the advertisement was making a factual claim, which was misleading. The minority said while 10% of workers might be able to initiate a Fair Pay Agreement, this was not the full picture as a majority of workers and employers would also need to support the agreement before it could be ratified.

Advertisement Two

The Complaints Board agreed Advertisement Two was not misleading in the context of a political advertisement on a matter of public debate. The Board said the text “Say yes to flexible working. Say no Fair Pay Agreements” was a call to action, encouraging consumers to oppose the introduction of Fair Pay Agreements. The Board said the advertisement conveys the Advertiser’s opinion about what it considers to be the lack of flexibility of Fair Pay Agreements, which does not require substantiation.

² <https://www.mbie.govt.nz/business-and-employment/employment-and-skills/employment-legislation-reviews/fair-pay-agreements/>

Have the advertisements been prepared and placed with a due sense of social responsibility to consumers and to society?

In accordance with the majority, the Complaints Board said both advertisements had been prepared and placed with a due sense of social responsibility to consumers and to society, because they were not misleading, taking into account context, medium, audience and product, and were not in breach of Principle 2 or Rule 2(b) of the Advertising Standards Code.

A minority disagreed and said Advertisement One had not been prepared and placed with a due sense of social responsibility to consumers and to society, because it was misleading.

Outcome

The Complaints Board ruled the complaint was **Settled in part and Not Upheld in part.**

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
 3. Response from Media
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Appendix 1

COMPLAINT

Please find attached a complaint made by myself on behalf of the New Zealand Council of Trade Unions, and images of the billboards which are the subject of the complaint.

I am writing to make a complaint about the Your Work Your Way advertisement on Fair Pay Agreements (see attached).

Business New Zealand is the lobby group behind Your Work Your Way, who have been repeatedly criticised by outlets including RNZ, The Spinoff, Stuff and NZ Herald for their campaign against FPAs.

This advertisement is in breach of a rule in the Advertising Standards Code 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.

This advertisement contains the misleading claim that 10% of a workforce can decide an FPA and impose it on their colleagues. 10% is the amount needed to initiate the FPA process. However, to be finalised, an FPA would require a majority vote of everyone who votes.

In the second advertisement, FPAs do not result in a loss of flexibility. An FPA does not replace collective or individual agreements, which continue to exist. Employees can still negotiate terms as they are able to now. FPAs are no less flexible than Individual Employment Agreements or Collective Agreements, both of which are standard practise in our current law.

Appendix 2

RESPONSE FROM ADVERTISER, BUSINESSNZ

Complaint 22/207 – BusinessNZ’s “Your Work Your Way” billboard advertisements

We are writing to respond to the NZCTU’s complaint about BusinessNZ’s “Your Work Your Way” digital billboard advertisements and your letter dated 26 July 2022. BusinessNZ is defending the complaint.

The two digital billboards complained about both reached the scheduled end of their run on 12 June 2022 and are no longer being displayed. BusinessNZ does not plan to use them again. Despite this, we respond to the substance of the complaint below.

Due the volume of substantiating material, we have provided website URLs for the documents relied on. Please let us know if you cannot access any of these and require copies of these documents.

Context

The billboards are advocacy on the Fair Pay Agreements Bill currently before Parliament (the **Bill**). The Bill is currently in the Select Committee stage awaiting the report from the Education and Workforce Select Committee (the **Select Committee**), which is due to report back to Parliament in early October.

The Bill is contentious. The Select Committee received more than 1,800 submissions on the Bill.³ There have been extensive advocacy campaigns both in support and opposition to the Bill, including BusinessNZ’s “Your Work Your Way” campaign⁴ and the NZCTU’s contrasting “Make Work Fair” campaign.⁵ There has also been extensive media coverage of the Bill.

BusinessNZ’s detailed position on the Bill is set out in its submission to the Select Committee and addresses in detail its views on the Bill, which is the subject matter of the two billboard advertisements.⁶ The Bill is available on the Government’s legislation website.⁷

³ Parliament website – submissions and advice on the Bill: https://www.parliament.nz/en/pb/bills-and-laws/billshttps://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_121328/tab/submissionsandadviceproposed-laws/document/BILL_121328/tab/submissionsandadvice

⁴ Business NZ’s Your Work Your Way campaign: <https://www.yourworkyourway.co.nz/>

⁵ NZCTU’s Make Work Fair campaign: <https://www.makeworkfair.nz/>

⁶ Business NZ’s Select Committee submission on the Bill: https://www.businessnz.org.nz/_data/assets/pdf_file/0020/240356/Fair-Pay-Agreements-Bill.pdf ⁵ Text of the Bill:

https://www.legislation.govt.nz/bill/government/2022/0115/latest/whole.html?search=y_bill%40bill_2022_bc%40bcur_an%40bn%40rn_25_a#LMS655984

⁷ Text of the Bill:

https://www.legislation.govt.nz/bill/government/2022/0115/latest/whole.html?search=y_bill%40bill_2022_bc%40bcur_an%40bn%40rn_25_a#LMS655984

The approach to advocacy advertising

The billboard advertisements must be considered in the context of the Guidance Note on Advocacy Advertising. This recognises the importance of robust debate in a democratic society and the right to freedom of expression enshrined in section 14 of the New Zealand Bill of Rights Act 1990. The Complaints Board must not seek to determine which side in an advocacy debate is correct.

The advertisements are not misleading or deceptive

The first advertisement

The first advertisement in issue was a digital billboard displayed at several locations from 23 May 2022 to 12 June 2022. Full details of the placements are in the appendix to this letter and in the enclosed media schedule. The billboard comprises a blue background with the text “If 10% of workers want a Fair Pay Agreement, 100% of workers get them.” and “Say no at YourWorkYourWay.co.nz”. The billboard also included the distinctive “Your Work Your Way” campaign logo. A copy of the advertisement is attached to this letter.

The advertisement is aimed at the public, including both employees and employers who will be affected by the Fair Pay Agreements Bill.

The statement on the billboard is correct. The Bill currently provides that if 10% of workers initiate Fair Pay Agreement bargaining, then 100% of workers in the relevant occupation or industry will become covered by a Fair Pay Agreement:

- The Bill provides that any union can initiate bargaining for a Fair Pay Agreement if 10% of workers in the relevant occupation or industry support initiating bargaining.⁸
- The Bill provides that, once bargaining is initiated, the only outcome is a Fair Pay Agreement being imposed on the occupation or industry. There is no alternative where no Fair Pay Agreement is imposed. The bargaining parties have two opportunities to vote on a proposed Fair Pay Agreement and, if these votes do not ratify the proposed Fair Pay Agreement, then the union that initiated bargaining can apply to the Employment Relations Authority to set the terms of the Fair Pay Agreement.⁹
- Further, the Government has proposed an amendment to the Bill whereby if there is no bargaining party on one side (i.e. employer or employee) then the Employment Relations Authority will set the terms of the Fair Pay Agreement.¹⁰

This is confirmed by:

1. The Explanatory Note at the start of the Bill:¹¹

⁸ Text of the bill: clauses 28 and 29.

⁹ Text of the Bill: clauses 140 to 145.

¹⁰ Parliamentary Paper: Proposed policy change to the Fair Pay Agreements Bill, G46C, 31 March 2022: https://www.parliament.nz/resource/en-NZ/PAP_121464/a141b142e6532b7aa40dedfb2c024177e9292a47

¹¹ Text of the Bill: General Policy Statement – Fair pay agreement bargaining process: https://www.legislation.govt.nz/bill/government/2022/0115/latest/whole.html?search=y_bill%40bill_2022_bc%

“In addition, if parties cannot reach agreement during bargaining and specified criteria are met (for example, exhausting all other reasonable alternatives) or if ratification of a fair pay agreement has failed twice, a bargaining side may apply to the Authority to fix the terms of the fair pay agreement through a determination.”

2. The Ministry of Business, Innovation and Employment’s description of the Bill on its website:¹²

“If bargaining parties reach a stalemate, the Employment Relations Authority will set the FPA’s terms by determination.” And “If a first ratification vote fails, parties go back to bargaining. If a second vote fails, the FPA goes to the Employment Relations Authority for determination.”

3. The Ministry of Business, Innovation and Employment’s Regulatory Impact Statement:¹³

“...we anticipate in many cases the system is likely to result in bargaining stalemates and determinations fixing terms by the Employment Relations Authority, so the added benefit of bargaining may be limited.”

4. An independent legal opinion from Andrew Butler:¹⁴

“The Authority is given the power to arbitrate and fix the terms of an FPA where bargaining has not resulted in an FPA agreed by the bargaining parties, or where one of the social partners is not represented by a bargaining team”

5. The Parliamentary Paper proposing amendment to the Bill to deal with the situation in which there is no bargaining party:^{13 15}

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¹² MBIE website: <https://www.mbie.govt.nz/business-and-employment/employment-and-skills/employmenthttps://www.mbie.govt.nz/business-and-employment/employment-and-skills/employment-legislation-reviews/fair-pay-agreements/legislation-reviews/fair-pay-agreements/>

¹³ MBIE Regulatory Impact Statement: <https://www.mbie.govt.nz/dmsdocument/15512-fair-pay-agreementshttps://www.mbie.govt.nz/dmsdocument/15512-fair-pay-agreements-regulatory-impact-statement-pdfregulatory-impact-statement-pdf>

¹⁴ Andrew Butler’s independent legal opinion for Business NZ dated 20 June 2022: https://www.businessnz.org.nz/_data/assets/pdf_file/0015/242250/Ltr-Kirk-Hope-Business-NZ-re-FAIR-PAYhttps://www.businessnz.org.nz/_data/assets/pdf_file/0015/242250/Ltr-Kirk-Hope-Business-NZ-re-FAIR-PAY-AGREEMENTS-BILL-2022-CONSISTENCY-WITH-THE-NEW-ZEALAND-BILL-OF-RIGHTS-ACT-1990-003.pdfAGREEMENTS-BILL-2022-CONSISTENCY-WITH-THE-NEW-ZEALAND-BILL-OF-RIGHTS-ACT-1990-003.pdf

¹⁵ Parliamentary Paper: Proposed policy change to the Fair Pay Agreements Bill, G46C, 31 March 2022: https://www.parliament.nz/resource/en-NZ/PAP_121464/a141b142e6532b7aa40dedfb2c024177e9292a47

“The backstop aims to strike a balance between a reasonable opportunity for parties to bargain, with the need to ensure that an FPA is produced once the initiation threshold is met.”

The second advertisement

The second advertisement in issue was a digital billboard displayed at several locations from 16 May 2022 to 12 June 2022. Full details of the placements are in the appendix to this letter and in the enclosed media schedule. The billboard comprises a blue background with the text “Say yes to flexible working. Say no to Fair Pay Agreements.” and “Say no at YourWorkYourWay.co.nz”. The billboard also included the distinctive Your Work Your Way campaign logo. A copy of the advertisement is attached.

The advertisement is aimed at the public, including both employees and employers who will be affected by the Fair Pay Agreements Bill.

The statement on the billboard is a mix of factual statement and opinion. The Bill currently provides for Fair Pay Agreements which will reduce the flexibility in the working arrangements that can be agreed between employers and employees. BusinessNZ considers that this will prevent flexible working. This impact will be both on employees but also on employers (who are an important stakeholder group affected by the Bill). Blanket terms of employment across an entire occupation and industry means less flexibility for its participants.

The Bill currently provides:

- Fair Pay Agreements will set specific employment conditions in the relevant occupation or industry. Those conditions will bind all employers and employees regardless of whether they participated in the bargaining process.¹⁶
- Fair Pay Agreements must contain terms relating to normal hours of work, minimum base wage rates, overtime, penalty rates, and superannuation.¹⁷
- There is no provision for individuals to opt out and agree different terms which suit their business or lifestyle demands, subject to a “more favourable” exception addressed below, and there are penalties for non-compliance with a Fair Pay Agreement.¹⁸

Under the Bill, Fair Pay Agreements will place significant constraints on the existing ability of individual employers and employees to agree terms that suit their specific circumstances. While it is possible for individual employers and their employees to agree terms that are different than those in an FPA these cannot be “less favourable” than those of the FPA. Analysis of the relative favourableness of a given condition is often a complex exercise and is thus fertile ground for misunderstandings and disputes.

¹⁶ Text of the Bill: clauses 160 to 163.

¹⁷ Text of the Bill: clause 114.

¹⁸ Text of the Bill: clauses 8, 160 to 163 and 197

Some of BusinessNZ's members are concerned that the system proposed in the Bill will increase capability and capacity issues and increase labour costs, as well as make current fixed-price contracts unworkable which may lead to less flexibility for employers to bring on staff as they need them.

The impact of lack of flexibility may be particularly great on small to medium sized business, business without access to resources or capabilities that would help them to become involved in bargaining, become aware of the impact of the Fair Pay Agreement, or understand its impact on their work practises.

The lack of flexibility available to employers and employees under a Fair Pay Agreement is confirmed by:

1. The Explanatory Note at the start of the Bill:¹⁹

“When a fair pay agreement has been finalised, all employers within coverage will be bound by it, regardless of whether they participated in the bargaining process. Like- wise, all employees within coverage will receive the new minimum employment terms set by the fair pay agreement”

2. The Ministry of Business, Innovation and Employment's Regulatory Impact Statement:²⁰

“This means the proposed system may create significant labour market inflexibility and costs when it is used in sectors without a demonstrable labour market issue.”

“There may also be non-wage costs from reduced flexibility, potentially impacting innovation, productivity and competition.”

“the low threshold for initiation means that the system could be used in situations where the marginal improvement in terms and conditions for existing workers are achieved at a significant cost to employer flexibility.”

3. An independent legal opinion from Andrew Butler:²¹

¹⁹ Text of the Bill: General Policy Statement – Fair pay agreement bargaining process: https://www.legislation.govt.nz/bill/government/2022/0115/latest/whole.html?search=y_bill%40bill_2022_bc%40bcurnan%40bn%40rn_25_a#LMS655984)

²⁰ MBIE Regulatory Impact Statement: <https://www.mbie.govt.nz/dmsdocument/15512-fair-pay-agreementshttps://www.mbie.govt.nz/dmsdocument/15512-fair-pay-agreements-regulatory-impact-statement-pdfregulatory-impact-statement-pdf>

²¹ Andrew Butler's independent legal opinion for Business NZ dated 20 June 2022: https://www.businessnz.org.nz/_data/assets/pdf_file/0015/242250/Ltr-Kirk-Hope-Business-NZ-re-FAIR-PAYhttps://www.businessnz.org.nz/_data/assets/pdf_file/0015/242250/Ltr-Kirk-Hope-Business-NZ-re-FAIR-PAY-AGREEMENTS-BILL-2022-CONSISTENCY-WITH-THE-NEW-ZEALAND-BILL-OF-RIGHTS-ACT-1990-003.pdfAGREEMENTS-BILL-2022-CONSISTENCY-WITH-THE-NEW-ZEALAND-BILL-OF-RIGHTS-ACT-1990-003.pdf ²⁰ ADLS Employment Law Committee's Select Committee submission on the Bill: <https://www.parliament.nz/resource/en->

“There are, therefore, several features of the FPAB which, in my opinion, are not consistent with, or are unlikely to be consistent with, s 17 BORA. Chief among these are its universal coverage; its departure from the principle of voluntariness; its interference in multiple ways with party autonomy; and the complete prohibition on employers initiating bargaining for an initial FPA.”

4. The ADLS Employment Law Committee’s Select Committee submission on the Bill:²⁰

“We have concerns about reduced flexibility. FPAs are likely to include some limitation to the hours of work per week. Using the cleaning industry as an example, currently some cleaners may be happy to run a time bank system so on occasions they work more than 40 hours in a week because of practical requirements, they can work less hours in another to compensate. Such flexibility may be gone under the proposal.”

Identification of Business NZ as the advertiser

You have also asked us to comment on whether BusinessNZ is clearly identified as the advertiser. We note this is not a matter that the NZCTU has raised in its complaint. We consider that the billboard advertisements both identify BusinessNZ:

- The billboards include the YourWorkYourWay.co.nz website URL and the “Your Work Your Way” distinctive logo prominently displayed. The Your Work Your Way campaign is run by BusinessNZ and its involvement has been publicised in press releases and media articles:
 - BusinessNZ press release 6 May 2022:
<https://www.businessnz.org.nz/news-and-media/media-releases/2022/your-work-your-way>
 - HDC article 7 May 2022:
<https://www.hcamag.com/nz/specialisation/employment-law/listen-to-employers-and-workers-businessnz-warns-government/405133>
 - BusinessNZ press release 12 May 2022:
[https://www.scoop.co.nz/stories/BU2205/S00219/businessnz-urge-the-govt-to-scrap-fpas-and-instead-take-action-that-will-make-a-real-difference-where](https://www.scoop.co.nz/stories/BU2205/S00219/businessnz-urge-the-govt-to-scrap-fpas-and-instead-take-action-that-will-make-a-real-difference-where-it-is-needed-most.htm)

[govt-to-scrap-fpas-and-instead-take-action-that-will-make-a-real-difference-where-it-is-needed-most.htm](https://www.ruralnewsgroup.co.nz/rural-news/rural-general-news/fpa-warning)

- Rural News article 24 May 2022:
<https://www.ruralnewsgroup.co.nz/rural-news/rural-general-news/fpa-warning>

- The billboards invite the consumer to visit the YourWorkYourWay.co.nz website.

That website clearly states that it is authorised by BusinessNZ and includes BusinessNZ's contact details, a link to BusinessNZ's website and a physical address. The website also includes other content from BusinessNZ that makes it clear that the campaign is run by BusinessNZ.

Following receipt of your letter we have further considered whether BusinessNZ's identity as the advertiser could have been made even clearer. Whilst the campaign is now at an end and the billboards have been removed, BusinessNZ confirms that, in any future advertising of this nature on the Bill, it will prominently include its name and/or logo as well as the "Your Work Your Way" campaign logo.

We trust this answers the matters raised in the complaint and your letter. We would be pleased to provide more detail if that would assist.

Appendix – placements of the digital billboards

The first advertisement

The first advertisement was in rotation between 23 May 2022 and 29 May 2022 (inclusive) in the following locations:

- 206 Victoria St West, Freemans Bay, Auckland (Lumo)
- 27 Beach Rd, Auckland CBD, Auckland (Lumo)
- 171 Hobson St, Auckland Central, Auckland (Lumo)
- 19 Newton Road, Grey Lynn, Auckland (Lumo)
- 134 Wairau Rd, Wairau Valley, Auckland (Lumo)
- 241-243 Thorndon Quay, Pipitea, Wellington (Lumo)
- 135 St Asaph St, Christchurch Central, Christchurch (Lumo)
- 399 Lincoln Rd, Addington, Christchurch (Lumo)
- Colossus on Colombo (Go Media)
- Stadium Waikato (Go Media)
- Hub of Invercargill (Go Media)
- Pāpāmoa & Bayfair Bound (Go Media)

The second advertisement

The second advertisement was in rotation between 16 May 2022 and 22 May 2022 (inclusive) in the following locations:

- 15-17 Sturdee St, Viaduct Basin, Auckland (Lumo)
- 19 Newton Road, Grey Lynn, Auckland (Lumo)
- 135 Broadway, Newmarket, Auckland (Lumo)
- 134 Wairau Rd, Wairau Valley, Auckland (Lumo)
- 5c Macdonald St, Mt Maunganui, Tauranga (Lumo)
- 241-243 Thorndon Quay, Pipitea, Wellington (Lumo)
- Blenheim Rd Overbridge (Inbound) (Go Media)
- The Base at Te Rapa (Go Media) • Perfect in Porirua (Go Media)
- Bethlehem Tauranga (Go Media)

Both advertisements

Both the first and second advertisements were both in rotation (in a 50/50 split) between 30 May 2022 and 12 June 2022 (inclusive) at the following locations:

- 206 Victoria St West, Freemans Bay, Auckland (Lumo)
- 171 Hobson St, Auckland Central, Auckland (Lumo)
- 18 Stanley St, Parnell, Auckland (Lumo)
- 19 Newton Road, Grey Lynn, Auckland (Lumo)
- 19 Newton Road, Grey Lynn, Auckland (Lumo)
- 10 Mount Eden Rd, Grafton, Auckland (Lumo)
- 319 New North Road, Kingsland, Auckland (Lumo)
- 46 Remuera Rd, Newmarket, Auckland (Lumo)
- 134 Wairau Rd, Wairau Valley, Auckland (Lumo)
- 5c Macdonald St, Mt Maunganui, Tauranga (Lumo)
- 241-243 Thorndon Quay, Pipitea, Wellington (Lumo)
- 135 St Asaph St, Christchurch Central, Christchurch (Lumo)
- 399 Lincoln Rd, Addington, Christchurch (Lumo)
- Blenheim Rd Overbridge (Inbound) (Go Media)
- Colossus on Colombo (Go Media)
- Forsyth Barr Stadium (Go Media)
- The Base at Te Rapa (Go Media)
- Stadium Waikato (Go Media)
- Hub of Invercargill (Go Media)
- Perfect in Porirua (Go Media)
- Bethlehem Tauranga (Go Media)
- Pāpāmoa & Bayfair Bound (Go Media)

Appendix 3

RESPONSE FROM MEDIA, LUMO

We have been in contact with the client who will respond directly and defend their position in relation to the complaint. We support their decision as we also do not believe they are in breach of the code of practice.

FYI – the campaign concluded on June 12th.