

From: Rob Birnie
To: L & P Enquiries
Subject: Re: Complaint - Better NZ Trust advertising
Date: Saturday, 16 December 2023 11:21:53 am

You don't often get email from rob@betternz.org. [Learn why this is important](#)

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Hi Braedyn,

Interesting complaint. Please see below for our initial response.

The Better NZ Trust is a charitable trust focused on a transition to cleaner modes of transport. The effective operation (or lack of effective operation) of the ETS is beyond the scope of the Trust's work. We are focused on concrete reductions in transport emissions, which the Clean Car Discount undeniably achieves. It is widely recognised as one of the best policies to decarbonise transport globally. To suggest that because the ETS exists that we cannot claim that the Clean Car Discount helps fight climate change would, if this argument is accepted, mean that nobody could claim that anything done in New Zealand has an impact on climate change. This is clearly ridiculous, and would not be considered as acceptable by any reasonable voter.

High emitting vehicles also very clearly contribute to the climate crisis. This can be evidenced by evidence of the impact such emissions have on the climate, the decrease in emissions from these vehicles mitigated through the Clean Car Discount and policies across the world focusing on the reduction in the use of fossil fuels as a means of addressing climate change.

The cost of the Clean Car Discount has always been intended to be neutral to taxpayers, and has been stated as such by many sources, including the NZTA website, the former government, and most major New Zealand media outlets. We are by no means alone in stating this, and we certainly do not believe it to be false. Funding it via a repayable loan has been the approach from the inception of the scheme. The average voter would understand exactly what is meant when we say that it does not cost the government or taxpayer. Contrary to the complainants allegations, if the Clean Car Discount were left to run without alteration, it would eventually be making money for the government, as it is currently repaying approximately 5-10m per month of the principle of the loan. This would clearly be considered as not "costing" the government or the taxpayer anything. Furthermore, to suggest that it is not possible for the government to run anything as "cost neutral" without accounting for a lot of different elements from the outset, when in reality many of these costs would not be able to be determined until after the piece of work is completed, demonstrates a lack of understanding from the complainant as to how such large projects operate. For all the complainant knows, any costs of running the scheme that are not already included in the scheme (as day to day costs are included) could well have been covered had the scheme come to its intended end. As such, the complainant should actually be directing their complaint to the new Government who have chosen to terminate the scheme early, without enabling an appropriate windup to recover funds and ensure all costs are covered. It is this decision that is ensuring the Clean Car Discount is not cost neutral, not the actions of the former government in establishing it.

We do not believe it is reasonable or intellectually credible to assert our advertisements are anything other than truthful. 9(2)(ba), 9(2)(g)(i)

I would be interested to know what the process is from here?

Cheers.

Rob.

On 14/12/2023 11:11, L & P Enquiries <legal@Elections.govt.nz> wrote:

Kia ora Rob

The Electoral Commission has received a complaint about the Better NZ Trust's 'Don't Pull the Plug' campaign. We are emailing to seek your view before we respond to the complaint.

The complaint identified Facebook advertising by the Better NZ Trust in the run-up to the 2023 General Election, that the complaint considers to be a breach of section 199A of the Electoral Act 1993 (the Act), for publishing a false statement within two days of polling day.

Section 199A of the Act makes it a corrupt practice for a person, with the intention of influencing the vote of an elector, to first publish or republish a statement, during the specified period (beginning two days before polling day and ending with the close of the poll), that the person knows is false in a material particular.

Advertisements for your 'Don't Pull the Plug' campaign were promoted on Facebook between 4 and 13 October. The offence of publishing a false statement under section 199A does not generally apply to advertising published prior to the specified period. However, a statement that remains available or accessible within the

specified period can come within the ambit of section 199A if the person advertises or draws attention to the statement or promotes or encourages any person to access the statement during the specified period.

The complaint alleges the following underlined statements about the Clean Car Discount are false: “How out of touch do you have to be to scrap the Clean Car Discount? It’s working, helping us reduce our emissions and saving Kiwi families money”, “The Clean Car Discount: SAVES FAMILIES THOUSANDS OF DOLLARS. HELPS FIGHT CLIMATE CHANGE” and “The policy is funded by a surcharge placed on imported vehicles that have high emissions, therefore contributing to the climate crisis. This means there is no cost to the government or the taxpayer to run the Clean Car Discount.”

The reasons the complainant considers these statements to be false are that, in their view:

- the Clean Car Discount does not reduce New Zealand’s net emissions because of how New Zealand’s ‘cap and trade’ Emissions Trading Scheme (ETS) functions, as any reduction in emissions in the transport sector (through increased EV uptake caused by the Clean Car Discount policy) will allow more emissions to occur elsewhere in the economy leaving the country’s net emissions (and therefore impact on climate change) unchanged.
- the Clean Car Discount does cost the government or taxpayers, as it received \$401.4 million in taxpayer funding in the form of a repayable grant, with \$119.9 million of this that has not yet been recovered. In their view, even if this money is paid back there are still identifiable costs to the taxpayer of lost interest on the money or interest payment costs if the scheme is debt funded.

For an offence under section 199A it is also necessary to establish:

- knowledge on the part of the person responsible for the statement (that the statement was false in material particular)
- that the statement was false in a material particular, and
- intent (that it was published by that person with the intention of influencing voters).

We want to provide Better NZ Trust with the opportunity to give your views on the complaint, so that we can form a response. We would appreciate a response from you by **5pm, Tuesday 19 December**.

Ngā mihi

Braedyn

Braedyn Freebairn ([he/him](#)) | Advisor Legal

Electoral Commission – Te Kaitiaki Take Kōwhiri

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9(2)(a) | [vote.nz](#) | [elections.nz](#)

