

From: [L & P Enquiries](#)
To: [Rob Birnie](#)
Subject: RE: Third party promoter registration
Date: Monday, 14 August 2023 12:16:00 pm
Attachments: [~WRD1047.jpg](#)
[image001.png](#)

Thanks Rob.

I'll let you know when the application has been processed.

9(2)(a)

Ngā mihi
Braedyn

Braedyn Freebairn ([he/him](#)) | Advisor Legal
Electoral Commission – Te Kaitiaki Take Kōwhiri
PO Box 3220 | Level 10, 34-42 Manners Street, Wellington
9(2)(a) | [vote.nz](#) | [elections.nz](#)



From: Rob Birnie <rob@betternz.org>
Sent: Monday, August 14, 2023 11:24 AM
To: L & P Enquiries <legal@Elections.govt.nz>
Subject: Re: Third party promoter registration

Electoral Commission Cyber Security Warning: This email originated from outside of the Commission. Please take extra care when clicking links or opening attachments. When in doubt, contact the IT Service Desk.

Hi Braedyn,

Perfect thank you. And no worries regarding the other info, it turns out that the information on the documents held by the companies register was out of date, 9(2)(a)

9(2)(a)

Cheers!

Rob.

On Mon, 14 Aug 2023 at 10:21, L & P Enquiries <legal@elections.govt.nz> wrote:

Kia ora Rob

That's not a problem! 9(2)(a)

Noted about the trustees occupying the role of director – thank you.

I've just seen that you called recently with some questions, and I'm not sure if you had them answered. I can give it a go:

Firstly, as a registered charity, we do ask that you provide the names of all trustees. This is a requirement under the Electoral Act. It looks like the names you've provided are the current trustees listed on the charities register.

9(2)(a)

I hope that's helpful.

Ngā mihi

Braedyn

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

Electoral Commission – Te Kaitiaki Take Kōwhiri

PO Box 3220 | Level 10, 34-42 Manners Street, Wellington

9(2)(a) | vote.nz | elections.nz

Image removed by sender.



From: Rob Birnie <rob@betternz.org>
Sent: Monday, August 14, 2023 9:28 AM
To: L & P Enquiries <legal@Elections.govt.nz>
Subject: RE: Third party promoter registration

Electoral Commission Cyber Security Warning: This email originated from outside of the Commission. Please take extra care when clicking links or opening attachments. When in doubt, contact the IT Service Desk.

Hi Braedyn,

9(2)(a)

From the perspective of director, myself and all the trustees would effectively fill this role for the purpose of this campaign, though I will be the person taking lead on our activities.

Cheers.

Rob.

On 14/08/2023 09:09, L & P Enquiries <legal@Elections.govt.nz> wrote:

Kia ora Rob

Thanks for your application to be a registered promoter for the 2023 General Election.

9(2)(a)

The promoter's details will be publicly available, so I wanted to make sure that they were the correct details for the trust. It will appear on our website as:

The Better NZ Trust

Email: rob@betternz.org

Address:

5 Kinapori Terrace

Newlands

Wellington 6037

Authorised representative: Rob Birnie

Trustees:

Martin Ivan Kane

Stephen Marcus Jason

Kathryn Mary Lee Trounson

Sean Christopher Dick

The form also requires the name of the people occupying a position comparable with a director, if applicable. Is that you, or someone else?

Let me know and we'll be happy to carry on with the application.

Ngā mihi

Braedyn

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

Electoral Commission – Te Kaitiaki Take Kōwhiri

PO Box 3220 | Level 10, 34-42 Manners Street, Wellington

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

Error! Filename not specified.

From: Rob Birnie <rob@betternz.org>
Sent: Sunday, August 13, 2023 5:08 PM

To: L & P Enquiries <legal@Elections.govt.nz>

Subject: Third party promoter registration

Electoral Commission Cyber Security Warning: This email originated from outside of the Commission. Please take extra care when clicking links or opening attachments. When in doubt, contact the IT Service Desk.

To whom it may concern,

Please find attached the requested information for the registration of The Better NZ Trust as a third party promoter for the upcoming elections. Included is the registration form, and a signed letter from the trustees.

Please let me know if any further information is required to complete our registration.

Cheers.

Rob.

Please turn over and read the guidance before completing this form

Details of Promoter to Appear on the Register

Provide the residential
address for an individual

Provide the street address
of the principal place of
business or headquarters
for an incorporated or
unincorporated body

Promoter's Name

~~Rob Birnie~~

The Better NZ Trust

Address

5 Kinapori Terrace
Newlands
Wellington 6037

Phone

9(2)(a)

Email

rob@betternz.org

Details of Person Authorised to Make the Application

Complete this section if the
promoter is not an individual

Name

Rob Birnie

Address

9(2)(a)

Phone

9(2)(a)

Email

rob@betternz.org

Name(s) of Relevant Persons

Complete this section if the
promoter is not an individual
or company.

The names of any individual(s)
will appear on the Register of
Promoters

The names of
persons occupying
a position
comparable with
that of a director of
a company

The names of the
trustees if the
promoter is a trust

Martin Ivan Kane
Stephen Marcus Jason West
Kathryn Mary Lee Trounson
Sean Christopher Dick

Declaration

Where the promoter is not
an individual, please attach
evidence to verify that the
applicant is authorised to
apply for registration on the
promoter's behalf.

I apply for the promoter to be registered on the Register of Promoters and declare that, to the best of my knowledge and belief, that the promoter is eligible to be registered as a promoter.

I confirm that I have attached the documentary evidence to verify that I am authorised by the promoter to apply for registration on the promoter's behalf, if applicable.

Signature

9(2)(a)

Date

09/08/2023

9th August 2023

The trustees have agreed to start a campaign to raise public awareness of the government policies designed to support the adoption of Electric Vehicles in New Zealand.

As part of this campaign, we will create public advertising leading up to the 2023 general election.

The anticipated advertising budget will exceed the threshold for registration as a third-party promotor with the Electoral Commission.

The trustees hereby give their approval for Rob Birnie as a representative of the trust for this campaign to execute the required registration and use his name in the promotor statements.

9(2)(a)

Sean Dick

Date

11/8/23

9(2)(a)

Kathryn Trounson

Date

12/8/23

9(2)(a)

Stephen West

Date

11/8/23

9(2)(a)

Martin Kane

Date

11/8/23

CHECKLIST FOR APPLICATION TO BE A REGISTERED PROMOTER **2023 GENERAL ELECTION**

Name of promoter: The Better NZ Trust
 Name of person making application: Rob Birnie
 Date application received: 13 August 2023

- 1 Is the application made in the correct form? Yes
- 2 Is the promoter's name and contact details provided (including street address)? Yes
- 3 Is the name of the promoter indecent or offensive, likely to cause confusion or likely to mislead the public? No
- 4 Does the promoter appear eligible to be registered? Yes
- 5 Is the application made by an individual promoter? **(If yes, go to Q 8)* No
- 6 If the promoter is not an individual, is the applicant's name and contact details provided? Yes
- 7 If the group is not a company, have names of persons responsible and/or names of trustees been provided? Yes
- 8 Is there documentary evidence that the person is authorised to apply on behalf of the promoter? Yes
- 9 Is there anything on the face of the application to suggest that it should be refused? No

Comments: Better NZ is a registered charity, with all trustees listed on the register

Sign off

A. *Is the application satisfactory?* Y/N
 Comments: _____

Checked by: Brachlyn Freebairn Sign: [Signature] Date: 16/08/23

B. *Approval of decision by Manager* (Y/N)
 Comments: _____

Manager: [Signature] Sign: [Signature] Date: 16/8/23

C. *Referral to the Chief Electoral Officer* Y/N
 Decision on application ☐ ACCEPTED ☐ REFUSED

Reasons for decision: _____

Sign: _____ Date: / /

N/A

Next Steps

If accepted: Input promoter's details on online register
 Input promoter's details on spreadsheet in :X Drive
 Letter/email to person who made the application, notifying date of registration

If refused: Letter to person who made application notifying of refusal and reasons

16 August 2023

Rob Birnie
The Better NZ Trust
5 Kinapori Terrace
Newlands
Wellington 6037

By email to: rob@betternz.org

Tēnā koe Mr Birnie

REGISTRATION AS A PROMOTER FOR THE 2023 GENERAL ELECTION

Thank you for your application, which we received on 14 August 2023, to register as a promoter on the Register of Promoters for the 2023 General Election.

The Electoral Commission has accepted the application and registered The Better NZ Trust on the Register of Promoters on 16 August 2023.

The Register of Promoters for the 2023 General Election is available for public inspection on our [website](#) and lists the name of every registered promoter and the promoter's contact details.

Please note that you are required to notify the Commission of any change in your contact details as the applicant, or the promoter, or the names of the persons occupying positions comparable with that of a director within 10 working days of the change.

You can find guidance on the rules for third party promoters and the Third Party Handbook for the 2023 General Election [here](#).

The third party expenses form will also be available on the Commission's website closer to the election. You will need to file a return of election expenses after the 2023 General Election if you spend more than \$100,000 on election expenses during the regulated period (14 July – 13 October 2023).

Ngā mihi



Kristina Temel
Manager Legal and Policy

From: [Advisory Opinions](#)
To: 9(2)(a)
Subject: FW: Request for advisory opinion
Date: Monday, 18 September 2023 11:43:00 am
Attachments: [image001.png](#)
[724 Advisory Opinion - Better NZ Trust - campaign items.pdf](#)
[image002.png](#)

Kia ora 9(2)(a)

Further to your request, please find attached an advisory opinion issued on behalf of the Electoral Commission. Please note we have renumbered some of the material to be different than in the concept provided, to make for easier reading.

The advisory opinion and supporting material must be treated as confidential by the Commission until the last day for the return of the writ for the 2023 General Election. Advisory opinions will then be made available in accordance with the Official Information Act 1982.

Please let us know if there are any specific details in the material you have provided that you would not want made available, so that we can take this into account if we get a request.

Ngā mihi
Braedyn

Braedyn Freebairn ([he/him](#)) | Advisor Legal
Electoral Commission – Te Kaitiaki Take Kōwhiri
PO Box 3220 | Level 10, 34-42 Manners Street, Wellington
[vote.nz](#) | [elections.nz](#)



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Please let us know if there are any specific details in the material you have provided that you would not want made available, so that we can take this into account if we get a request.

From: Advisory Opinions <advisory@Elections.govt.nz>
Sent: Thursday, September 14, 2023 11:13 AM
To: 9(2)(a)
Subject: RE: Request for advisory opinion

Kia ora 9(2)(a)

Thanks for getting in touch. We can provide an advisory opinion on these items.

Please be advised that we can only provide an opinion on the specific items shared, not the 'campaign' generally. This is because we assess each item, with its content and specific context in which it is published, against the Electoral Act. If there are substantive changes made to the items, or new items added as you finalise the campaign, we can provide a further opinion on these items.

We'll get you an opinion as soon as we can.

Ngā mihi
Braedyn

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

Electoral Commission – Te Kaitiaki Take Kōwhiri

PO Box 3220 | Level 10, 34-42 Manners Street, Wellington

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



From: **9(2)(a)**

Sent: Wednesday, September 13, 2023 6:39 PM

To: Advisory Opinions <advisory@Elections.govt.nz>

Subject: Request for advisory opinion

Electoral Commission Cyber Security Warning: This email originated from outside of the Commission. Please take extra care when clicking links or opening attachments. When in doubt, contact the IT Service Desk.

Kia ora,

We're an agency helping a registered third party promoter ([The Better NZ Trust](#)) run a campaign during the election.

Before launching it, we wanted to check whether you're able to give an advisory opinion on the advertising we've attached.

We intend to:

- Publish this advertising in outdoor advertising (physical posters, digital billboards), and online (Facebook, Instagram, Display advertising across news sites, etc)
- Publish these ads next week (c. 18 September, and run them through to 13 October)
- Publish these both organically (on the Better NZ social media pages, on their website, and in email), and via paid advertising, so that they're seen extensively.

We'd love an advisory opinion on whether these ads meet the rules generally, and in particular, wanted to check that they don't count as supporting any particular party or candidate.

We've attached a document with examples of these ads – let us know if there's anything else you need, otherwise look forward to hearing from you soon.

Ngā mihi,

9(2)(a)

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9(2)(a)

From: [Natalie McNaught](#)
To: [Braedyn Freebairn](#); [Kristina Temel](#)
Subject: FW: AO 2023/724 for approval: Better NZ Trust campaign
Date: Friday, 15 September 2023 4:52:02 pm
Attachments: [Better NZ Trust - Ad options.pdf](#)
[921 Advisory Opinion - Out of scope](#) - scorecard ad.pdf
[894 Advisory Opinion -](#) - social media ad.pdf

This looks good to me Braedyn, I've just made a couple of minor edits.

As this is a bit novel, and third party advertising its drafted for you to sign of KT - are you happy to approve?

Thanks

Natalie

From: Braedyn Freebairn <[REDACTED] 9(2)(a) >
Sent: Thursday, September 14, 2023 3:45 PM
To: Natalie McNaught <[REDACTED] >
Subject: AO 2023/724 for approval: Better NZ Trust campaign

Kia ora

Advisory opinion 2023/724, from the advertising company Supergood on behalf of Better NZ Trust (registered promoter).

Given the amount of content I thought a formal advisory would be good – I've drafted it as all election advertisements, with a mix of advertisements encouraging not to vote for National/ACT. For the scorecard, I have drafted it as an election ad (not for specific parties) in line with **2020/921** and **2020/894** which are similar scorecards for parties.

In the promotor statement section, I've noted that the promoter statement doesn't have the promoter's name so is not currently compliant.
I have included the authorisation section, even though these are not party-specific in my view, because the requestor specifically asked whether it would require authorisation. Wanted to make it very clear.

As it's a third party you might want to escalate to KT.
What do you think?

From: [REDACTED] <[REDACTED] >
Sent: Wednesday, September 13, 2023 6:39 PM
To: Advisory Opinions <advisory@Elections.govt.nz>
Subject: Request for advisory opinion

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Kia ora,

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We've attached a document with examples of these ads – let us know if there's anything else you need, otherwise look forward to hearing from you soon.

Ngā mihi,

9(2)(a)

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[Redacted signature block]

Electoral Commission Advisory Opinion

18 September 2023

Requested by: [REDACTED]

Advisory Opinion Number – 2023/724

Better NZ Trust – campaign items

Electoral Commission’s opinion

The scorecard poster, 5 two-poster sets, 1 three-poster set and 4 individual posters are election advertisements.

You have advised that you intend to run a campaign on behalf of the Better NZ Trust prior to the 2023 General Election. The campaign includes 1 scorecard poster, 5 two-poster sets, 1 three-poster set, and 4 individual posters. They are intended to be published as posters and digital billboards between 18 September and 13 October 2023, and online advertising on Facebook, Instagram, news media sites, and email advertising.

In *Greenpeace of New Zealand Incorporated v Electoral Commission* [2014], the High Court held that where a third party’s focus in an advertisement is on the promotion of the importance of a particular issue when voting, but does not identify parties by reference to views or positions held or taken, it would not be an election advertisement.

Similarly, the Court of Appeal held in *The Electoral Commission v Watson & Anor* [2016] that the relevant effect of the advertisement is its tendency to encourage voting for a type of candidate or party, and then only by reference to views or positions held or taken or not held or taken by that type of candidate or party. Therefore, advocacy about political issues is not election advertising unless it has the effect of identifying positions of parties or candidates on those issues and encouraging voters to vote by reference to those positions.

The Commission has had particular regard to these recent Court decisions, and freedom of expression under the New Zealand Bill of Rights Act 1990, in forming its opinion.

Having considered its overall effect, the Commission’s view is that the scorecard poster is an election advertisement. This is because it has the effect of identifying the positions of parties in relation to the Clean Car Discount and Clean Car Standard, which along with ticks and crosses and the statement “Don’t pull the plug on clean cars” may reasonably be regarded as encouraging voters to vote for the types of parties identified as committed to keeping the Clean Car Discount and Clean Car Standard in the 2023 General Election.

9(2)(b)(ii), 9(2)(ba)

This opinion is based on the information provided. We note the campaign is conceptual and not yet finalised. If there are changes made to the items or new items added to the campaign, let us know and we can provide an updated opinion.

Promoter statement requirement

An election advertisement must include a promoter statement with the promoter's name and street address in accordance with section 204F of the Electoral Act. For registered promoters, the name and address must be the same as that recorded on the Register of Promoters.

As the Better NZ Trust is a registered promoter, the promoter's name should be in the promoter statement. The form we recommend is "*Authorised/Promoted by the Better NZ Trust, 5 Kinapori Terrace, Wellington*". Please ensure this is clearly displayed.

In their current form, the advertisements include the name of the authorised representative of the Better NZ Trust and the address. They should be amended to include the name and address of the entity to meet the requirements of section 204F.

Authorisation of advertisement

Where an election advertisement promotes a party or candidate, the party secretary and/or candidate must give written authorisation before the advertisement is published (see sections 204H and 204G of the Electoral Act).

These election advertisements do not promote voting for a particular party or candidate, so prior written authorisation is not required.

Accounting for the cost as an election expense

The cost of preparing and publishing the advertisements will be an election expense for the Better NZ Trust if they are published during the regulated period for the 2023 General Election (14 July – 13 October 2023).

Explanatory notes

The Electoral Commission has formed its view on the basis of the information available to it, including the content of your emails and attachments.

The advice expressed about the application of the Electoral Act reflects the Electoral Commission's interpretation of the law and does not constitute legal advice. A court of law may reach a different view. You may wish to consider seeking independent legal advice on questions of compliance.

Signed for and on behalf of the Electoral Commission



Kristina Temel

Manager, Legal and Policy

Relevant legislation

Electoral Act 1993

Section 3A of the Electoral Act provides a definition of election advertisement, which is set out below. In addition, section 3A provides certain exceptions to the meaning of what is an election advertisement which are also summarised below.

Section 204F of the Electoral Act requires that an election advertisement published at any time must include a promoter statement.

An **election advertisement**

- (a) means an advertisement in any medium that may reasonably be regarded as encouraging or persuading voters to do either or both of the following:
 - (i) to vote, or not to vote, for a type of candidate described or indicated by reference to views or positions that are, or are not, held or taken (whether or not the name of the candidate is stated);
 - (ii) to vote, or not to vote, for a type of party described or indicated by reference to views or positions that are, or are not, held or taken (whether or not the name of the party is stated) and
- (b) includes
 - (i) a candidate advertisement; and
 - (ii) a party advertisement.

A **candidate advertisement** means an advertisement in any medium that may reasonably be regarded as encouraging or persuading voters to do either or both of the following:

- (a) to vote for a constituency candidate (whether or not the name of the candidate is stated);
- (b) not to vote for a constituency candidate (whether or not the name of the candidate is stated).

The definition of **candidate** means a constituency candidate and includes a person who has declared his or her intention of becoming a constituency candidate.

A **party advertisement** means an advertisement in any medium that may reasonably be regarded as encouraging or persuading voters to do either or both of the following:

- (a) to vote for a party (whether or not the name of the party is stated);
- (b) not to vote for a party (whether or not the name of the party is stated).

None of the following are election advertisements:

- contact information published in any medium by a member of Parliament that satisfies certain requirements as set out in section 3A of the Electoral Act
- editorial content of a periodical, a radio or television programme, or a publication on a news media Internet site
- any transmission of proceedings in the House of Representatives
- personal political views published by an individual on the Internet or other electronic medium, where no payment is made or received.

Attachments

The following documents were received and considered by the Electoral Commission in providing this advisory opinion:

1. Email dated 13 September 2023 and attachments.

Scorecard poster

Which parties have committed to keeping:

	The Clean Car Discount	The Clean Car Standard
National	✗	✓*
ACT	✗	✗
Labour	✓	✓
Greens	✓	✓
Te Pāti Māori	?	?
NZ First	?	?

*National has confirmed while they intend to keep the Clean Car Standard, they will work with industry to ensure it's appropriately set, and takes into account availability and affordability.

Don't **pull the plug** on clean cars.



Find out more:
dontpulltheplug.nz

Authorised by Rob Birnie, 5 Kinapori Tce, Newlands

9(2)(b)(ii), 9(2)(ba)

9(2)(b)(ii), 9(2)(ba)

9(2)(b)(ii), 9(2)(ba)

9(2)(b)(ii), 9(2)(ba)

9(2)(b)(ii), 9(2)(ba)

9(2)(b)(ii), 9(2)(ba)

Braedyn Freebairn

From: L & P Enquiries <legal@Elections.govt.nz>
Sent: Saturday, 14 October 2023 8:34 am
To: 9(2)(a)
Subject: RE: [Enquiry Subject] Election advertising enquiry from 9(2)(a)

Categories: Braedyn

Kia ora 9(2)(a),

Thank you for reporting this. We will follow up with the advertiser and Google.

Kind regards

Kristina

Legal and Policy Team | **Electoral Commission** | Te Kaitiaki Take Kōwhiri
PO Box 3220 | Level 10, 34 – 42 Manners Street | Wellington | 6140 | New Zealand
Phone 0800 36 76 56 | vote.nz | elections.nz



From: 9(2)(a)
Date: Sat, Oct 14, 2023 at 7:47 am

Name: 9(2)(a)

Email: 9(2)(a)

From site: elections.nz

Subject: Election advertising

Type: Complaint

Message:

I'm receiving advertising on Election Day, via YouTube, from The Better NZ Trust. It's titled Don't Pull the Plug - Save the Clean Car Discount and advertises parties to vote for. I've reported this on the platform.

From: [Rob Birnie](#)
To: [Kristina Temel](#)
Subject: RE: Alleged breach of the election day rules
Date: Saturday, 14 October 2023 7:16:10 pm

Electoral Commission Cyber Security Warning: This email originated from outside of the Commission. Please take extra care when clicking links or opening attachments. When in doubt, contact the IT Service Desk.

Fantastic news, thanks Kristina! And thank you for your work in making tonight happen. Watching the results now :)

On 14/10/2023 19:08, Kristina Temel <Kristina.Temel@elections.govt.nz> wrote:

Hi again Rob,

Google has confirmed that the account has not accrued any impressions for today and everything had been paused.

It is likely a caching issue and the complainant will be advised that there has been no non-compliance.

Thanks for your speedy responses.

Ngā mihi

Kristina

From: L & P Enquiries
Sent: Saturday, October 14, 2023 1:14 PM
To: 'Rob Birnie' <rob@betternz.org>; L & P Enquiries <legal@Elections.govt.nz>
Subject: RE: Alleged breach of the election day rules

Hi Rob,

Sorry I haven't had anything further back from Google.

It may be that they are looking into whether there was a problem at their end.

Be assured I will let you know when they get back to me.

At this stage, you have provided us with good information and we don't need you to provide anything further.

Ngā mihi

Kristina

Kristina Temel | Manager, Legal and Policy | **Electoral Commission** | Te Kaitiaki Take Kōwhiri

PO Box 3220 | Level 10, 34 – 42 Manners Street | Wellington | 6140

Phone +64 4 495 0030 | vote.nz | elections.nz



From: Rob Birnie <rob@betternz.org>
Sent: Saturday, October 14, 2023 1:00 PM
To: L & P Enquiries <legal@Elections.govt.nz>
Subject: Re: Alleged breach of the election day rules

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Hi Kristina,

Any further updates here? We haven't uncovered anything that would indicate our ads were or are still up and aren't really certain what else we can do here?

Cheers.

Rob.

On Sat, 14 Oct 2023 at 09:53, L & P Enquiries <legal@elections.govt.nz> wrote:

Thanks Rob,

Yes I will keep you updated on what Google come back with.

Yes we did receive a screenshot this morning (attached), which does look unusual.

Ngā mihi

Kristina

Kristina Temel | Manager, Legal and Policy | **Electoral Commission** | Te Kaitiaki Take Kōwhiri

PO Box 3220 | Level 10, 34 – 42 Manners Street | Wellington | 6140

Phone +64 4 495 0030 | vote.nz | elections.nz



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Sent: Saturday, October 14, 2023 9:41 AM
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Subject: Re: Alleged breach of the election day rules

Electoral Commission Cyber Security Warning: This email originated from outside of the Commission. Please take extra care when clicking links or opening attachments. When in doubt, contact the IT Service Desk.

Hi Kristina,

Further to my previous comments, please see attached a screenshot of our ad impressions across Google today.

I have also attached two further screenshots showing the logs from the two campaigns in question being paused prior to midnight last night.

Cheers.

Rob.

On 14/10/2023 09:15, Rob Birnie <rob@betternz.org> wrote:

Hi Kristina,

I have spoken with our media buyer who assured me that our advertising was disabled across all platforms at 11pm yesterday. For further peace of mind, they are going to pull the logs to confirm this.

This may take a few hours, as it requires that person to get to their PC and pull the logs from YouTube and all other platforms, then share them with me. As soon as I receive these, I will share them with you.

Are you able to advise if you received evidence of the ads still running (a screenshot or similar)? Or did you receive a report stating the ads were running with no associated evidence?

In the event you receive a response from Google, could you please also let me know what they say? As noted above, to the best of our knowledge this should not be occurring.

Cheers.

Rob.

On 14/10/2023 08:57, Rob Birnie <rob@betternz.org> wrote:

Hi,

I will investigate this immediately. We responded immediately to the Electoral Commissions call yesterday regarding physical advertising to ensure this was all removed, as we are aware of our legal obligations and we take this matter very seriously.

I will come back to you as soon as I have more information.

Rob.

On 14/10/2023 08:38, L & P Enquiries <legal@Elections.govt.nz> wrote:

Kia ora,

We have received a complaint today that Better New Zealand Trust advertisements are still playing at 7:32am on YouTube today.

We have escalated the matter to Google.

Publishing anything on election day from midnight on Friday that could potentially influence a voter is strictly prohibited. Nothing can be published on election day that includes any party name, emblem slogan or logo.

This carries a potential penalty of a fine not exceeding \$20,000.

Please confirm by reply email as soon as possible whether you had taken steps to halt advertising today and if not what remedial action you have taken to address this?

Kind regards

Kristina

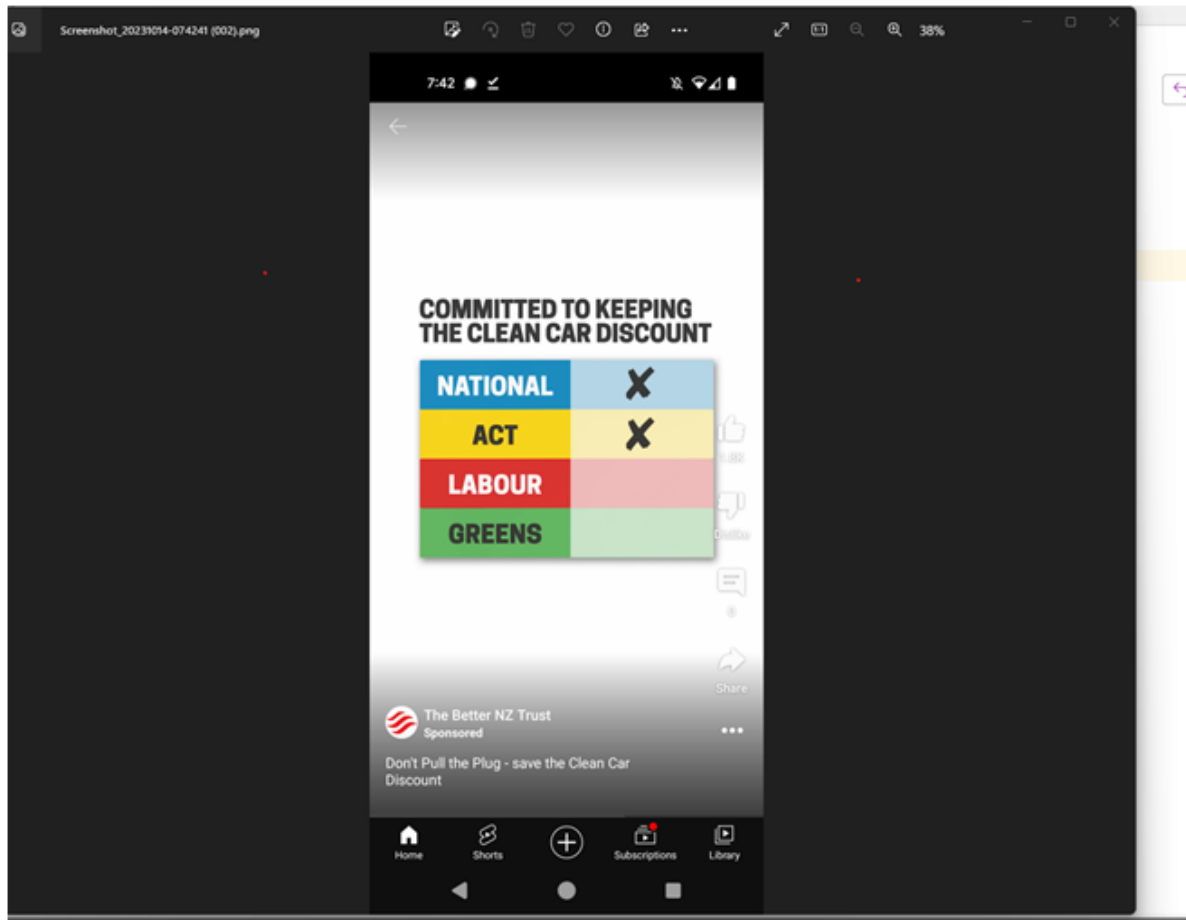
Legal and Policy Team | **Electoral Commission** | Te Kaitiaki Take Kōwhiri

PO Box 3220 | Level 10, 34 – 42 Manners Street | Wellington | 6140 | New Zealand

Phone 0800 36 76 56 | [vote.nz](https://www.vote.nz) | [elections.nz](https://www.elections.nz)

From: Kristina Temel
To: [REDACTED]@google.com; [REDACTED]@google.com; [REDACTED]@google.com; [REDACTED]@google.com
Subject: RE: Violation of the election day rules
Date: Saturday, 14 October 2023 8:42:00 am
Attachments: image002.png
image003.png

Here is an image



From: Kristina Temel
Sent: Saturday, October 14, 2023 8:15 AM
To: '9(2)(a)'@google.com'; [REDACTED]@google.com>; [REDACTED]@google.com'; [REDACTED]@google.com>; [REDACTED]@google.com'; [REDACTED]@google.com>; [REDACTED]@google.com'; [REDACTED]@google.com>; [REDACTED]@google.com'; [REDACTED]@google.com'; [REDACTED]@google.com>
Subject: Violation of the election day rules
Importance: High

Hi team,

We have received a complaint that a person is receiving advertising on Election Day, via YouTube, from The Better NZ Trust. It's titled Don't Pull the Plug - Save the Clean Car Discount and advertises parties to vote for. Can you please take this down.

The provision being breached is [section 197](#) of the Electoral Act 1993.

Can you update me when it has been actioned?

Kind regards

Kristina

Kristina Temel | Manager, Legal and Policy | **Electoral Commission** | Te Kaitiaki Take Kōwhiri
PO Box 3220 | Level 10, 34 – 42 Manners Street | Wellington | 6140
Phone +64 4 495 0030 | vote.nz | elections.nz



From: 9(2)(a)
To: Kristina Temel
Cc: ; ; ;
Subject: Re: Violation of the election day rules
Date: Saturday, 14 October 2023 4:07:29 pm
Attachments: image001.png

Electoral Commission Cyber Security Warning: This email originated from outside of the Commission. Please take extra care when clicking links or opening attachments. When in doubt, contact the IT Service Desk.

Hey all,

It's pretty odd, without more information there isn't much we can do as the account has not accrued any impressions for today.

So, advertiser doing what has been asked and our teams unable to find account serving.

Our support teams can only confirm the same as I that everything has been paused.

On Sat, 14 Oct 2023, 11:00 am Kristina Temel, <Kristina.Temel@elections.govt.nz> wrote:

Hi again ,

Could this have been an issue with Google as the advertiser is adamant that advertising was paused for election day?

See attached.

Thanks

Kristina

Kristina Temel | Manager, Legal and Policy | **Electoral Commission** | Te Kaitiaki Take Kōwhiri

PO Box 3220 | Level 10, 34 – 42 Manners Street | Wellington | 6140

Phone +64 4 495 0030 | vote.nz | elections.nz



From: Kristina Temel
Sent: Saturday, October 14, 2023 8:48 AM

To: 9(2)(a) <[REDACTED]@google.com>
Cc: [REDACTED] <[REDACTED]@google.com>; [REDACTED] <[REDACTED]@google.com>; [REDACTED] <[REDACTED]@google.com>; [REDACTED] <[REDACTED]@google.com>
Subject: RE: Violation of the election day rules

Thanks [REDACTED],

That sounds good.

I have just sent you an image of the item. It shows 7:42 but the date isn't clear.

Can you have a look and let me know if you think it didn't play today.

Thanks again.

Kristina

Kristina Temel | Manager, Legal and Policy | **Electoral Commission** | Te Kaitiaki Take Kōwhiri

PO Box 3220 | Level 10, 34 – 42 Manners Street | Wellington | 6140

Phone +64 4 495 0030 | [vote.nz](https://www.vote.nz) | [elections.nz](https://www.elections.nz)



From: [REDACTED] <[REDACTED]@google.com>
Sent: Saturday, October 14, 2023 8:42 AM
To: Kristina Temel <Kristina.Temel@elections.govt.nz>
Cc: [REDACTED] <[REDACTED]@google.com>; [REDACTED] <[REDACTED]@google.com>; [REDACTED] <[REDACTED]@google.com>
Subject: Re: Violation of the election day rules

Electoral Commission Cyber Security Warning: This email originated from outside of the Commission. Please take extra care when clicking links or opening attachments. When in doubt, contact the IT Service Desk.

Hey Kristina,

Thanks for reaching out, I have just found the account you mentioned and it appears that everything is paused and not

running as of 14th Oct, nor has it accrued any impressions today.

From our end this appears to be as per requirements.

The only other thought I had was if it wasn't actually on YouTube and another service that still had activity running?

9(2)(a)

On Sat, 14 Oct 2023, 8:15 am Kristina Temel, <Kristina.Temel@elections.govt.nz> wrote:

Hi team,

We have received a complaint that a person is receiving advertising on Election Day, via YouTube, from The Better NZ Trust. It's titled Don't Pull the Plug - Save the Clean Car Discount and advertises parties to vote for. Can you please take this down.

The provision being breached is [section 197](#) of the Electoral Act 1993.

Can you update me when it has been actioned?

Kind regards

Kristina

Kristina Temel | Manager, Legal and Policy | **Electoral Commission** | Te Kaitiaki Take Kōwhiri

PO Box 3220 | Level 10, 34 – 42 Manners Street | Wellington | 6140

Phone [+64 4 495 0030](tel:+6444950030) | vote.nz | elections.nz

----- Forwarded message -----

From: Rob Birnie <rob@betternz.org>

To: "L & P Enquiries" <legal@elections.govt.nz>

Cc:

Bcc:

Date: Fri, 13 Oct 2023 20:40:37 +0000

Subject: Re: Alleged breach of the election day rules

Electoral Commission Cyber Security Warning: This email originated from outside of the Commission. Please

take extra care when clicking links or opening attachments. When in doubt, contact the IT Service Desk.

Hi Kristina,

Further to my previous comments, please see attached a screenshot of our ad impressions across Google today.

I have also attached two further screenshots showing the logs from the two campaigns in question being paused prior to midnight last night.

Cheers.

Rob.

On 14/10/2023 09:15, Rob Birnie <rob@betternz.org> wrote:

Hi Kristina,

I have spoken with our media buyer who assured me that our advertising was disabled across all platforms at 11pm yesterday. For further peace of mind, they are going to pull the logs to confirm this.

This may take a few hours, as it requires that person to get to their PC and pull the logs from YouTube and all other platforms, then share them with me. As soon as I receive these, I will share them with you.

Are you able to advise if you received evidence of the ads still running (a screenshot or similar)? Or did you receive a report stating the ads were running with no associated evidence?

In the event you receive a response from Google, could you please also let me know what they say? As noted above, to the best of our knowledge this should not be occurring.

Cheers.

Rob.

On 14/10/2023 08:57, Rob Birnie <rob@betternz.org> wrote:

Hi,

I will investigate this immediately. We responded immediately to the Electoral Commissions call yesterday regarding physical advertising to ensure this was all removed, as we are aware of our legal obligations and we take this matter very seriously.

I will come back to you as soon as I have more information.

Rob.

On 14/10/2023 08:38, L & P Enquiries <legal@Elections.govt.nz> wrote:

Kia ora,

We have received a complaint today that Better New Zealand Trust advertisements are still playing at 7:32am on YouTube today.

We have escalated the matter to Google.

Publishing anything on election day from midnight on Friday that could potentially influence a voter is strictly prohibited. Nothing can be published on election day that includes any party name, emblem slogan or logo.

This carries a potential penalty of a fine not exceeding \$20,000.

Please confirm by reply email as soon as possible whether you had taken steps to halt advertising today and if not what remedial action you have taken to address this?

Kind regards

Kristina


Legal and Policy Team | **Electoral Commission** | Te Kaitiaki Take Kōwhiri


PO Box 3220 | Level 10, 34 – 42 Manners Street | Wellington | 6140 | New Zealand

Phone 0800 36 76 56 | [vote.nz](https://www.vote.nz) | [elections.nz](https://www.elections.nz)






 Oct 13 – 14, 2023


Campaign changed 

9(2)(a)

• 13 Oct 2023, 23:28:10

Campaign changed 

• 13 Oct 2023, 23:28:04

1 budget amount increased 

Campaign changed

User	
Date & Time	13 Oct 2023, 23:28:04
Tool	Web client (manual)
Campaign	231002_AWN_ElectionCampaign

Status changed from active to paused



Oct 13 – 14, 2023

Campaign changed ▾

9(2)(a) • 13 Oct 2023, 23:28:10

Campaign changed ▾

• 13 Oct 2023, 23:28:04


1 budget amount increased ▾

Campaign changed

User	
Date & Time	13 Oct 2023, 23:28:10
Tool	Web client (manual)
Campaign	231004_VIDVIEWS_CleanCars

Status changed from active to paused



 Your ads aren't running

[Fix it](#)



 Today

Clicks 0

Impr. 0

CTR 0.00%

2

1

0

12 AM

6 AM

12 PM

6 PM

Enable notifications

Real-time notifications help you keep your campaigns on track

[Not now](#)

[Turn on](#)

Google Ads •



 [Overview](#)

 [Recommendations](#)

 [Campaigns](#)

 [More](#)

Ella Simmons

From: L & P Enquiries <legal@Elections.govt.nz>
Sent: Thursday, 30 November 2023 12:27 pm
To: Rob Birnie
Subject: RE: Registered Promoter Return

Kia ora Rob

I can confirm we have received your third party return for the 2023 General Election.

We will begin our checks of the return and be in touch if we have any questions.

Candidate returns will be published on elections.nz after 14 February 2024.

Ngā mihi
Zara

Zara Melville | Advisor Legal

Electoral Commission – Te Kaitiaki Take Kōwhiri

PO Box 3220 | Level 10, 34-42 Manners Street, Wellington

vote.nz | elections.nz



From: Rob Birnie <rob@betternz.org>
Sent: Thursday, November 30, 2023 10:51 AM
To: L & P Enquiries <legal@Elections.govt.nz>
Subject: Registered Promoter Return

Electoral Commission Cyber Security Warning: This email originated from outside of the Commission. Please take extra care when clicking links or opening attachments. When in doubt, contact the IT Service Desk.

Hi team,

Please find attached our return. Not having done one of these before, I'd appreciate it if you could please reach out if you have any questions or concerns. I don't want to get anything wrong here.

Cheers.

Rob.

From: [Support](#)
To: [L & P Enquiries](#)
Subject: [Enquiry Subject] Better NZ Trust
Date: Monday, 4 December 2023 9:55:59 am
Attachments: [20231203_ihw_ltr_Better_NZ_Trust_draft_complaints_to_Electoral_Commission.pdf](#)

Electoral Commission Cyber Security Warning: This email originated from outside of the Commission. Please take extra care when clicking links or opening attachments. When in doubt, contact the IT Service Desk.

Hi Legal Team,

Here is an enquiry from Jordan Williams (jordan@taxpayers.org.nz).

It was CC'd to: Connor Molloy

From: **Jordan Williams**
Date: Mon, Dec 4, 2023 at 9:23 am
Please find complaint **attached**.

Please confirm receipt.

Regards

Jordan Williams

Executive Director | New Zealand Taxpayers' Union | Auckland Ratepayers' Alliance
DDI Wellington +64 4 282 0301 | **DDI Auckland** +64 9 279 9968 | **Mob** +64 21 762 542 | Email Jordan@taxpayers.org.nz

New Zealand Taxpayers' Union Inc. | Main +64 4 282 0300 | Level 4, 117 Lambton Quay, Wellington 6011 | PO Box 10518, The Terrace, Wellington 6140 | www.taxpayers.org.nz
Auckland Ratepayers' Alliance | Main +64 9 281 5172 | CCHQ, Unit 6, 143 Quay Street, Auckland 1010 | PO Box 133099, Eastridge, Auckland 1146 | www.ratepayers.nz

We stand for Lower Taxes, Less Waste, and More Transparency across all levels of government. If you like what we do, join the [Taxpayers' Union](#) or the [Auckland Ratepayers' Alliance](#).



3 December 2023

Karl Le Quesne
Chief Electoral Officer and Chief Executive
Electoral Commission

By email: enquiries@elections.govt.nz

COMPLAINT: BETTER NZ TRUST

1. It appears to us that false advertising was published by the *Better NZ Trust* (the “Trust”) as part of the Trust’s *Don’t Pull The Plug* campaign and breached section 199A of the Electoral Act 1993 (the “Act”). As we understand the law that is a corrupt practice. Has it been, or is it being investigated by the Electoral Commission, or referred to the Police?
2. If the Commission is not investigating the matter, we ask you to do so and to meet your investigators about it.

Offence of publishing false statements to influence voters

3. Section **199A Publishing false statements to influence voters**, states:

(1) A person is guilty of a corrupt practice if the person, with the intention of influencing the vote of an elector,—

(a) first publishes or republishes a statement, during the specified period, that the person knows is false in a material particular; or

(b) arranges for the first publication or republication of a statement, during the specified period, that the person knows is false in a material particular.

4. The false advertisements were promoted via paid advertising on Facebook from October 4 through to October 13 this year – i.e. just prior to the general election. That extends into the specified period (within two days of polling day). We have reason to believe that the promotion continued within that period so that the exception in section 199A (2) does not apply.

The False Advertisements

5. We append the Trust’s false advertisements in context, and draw your attention specifically to the statements below which are false (underlining ours). The underlined words are untrue for the reasons explained below:

- (a) *"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."¹*

We submit that the reference to "us" would be interpreted to mean New Zealand or society in general. This is significant, as it misleads as to the effect of the policy.

- (b) *"The Clean Car Discount: SAVES FAMILIES THOUSANDS OF DOLLARS. HELPS FIGHT CLIMATE CHANGE."²*

- (c) *"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."³*

False claim 1: The Clean Car Discount helps to reduce emissions and/or climate change

2. Claims a, b and c would be understood by the ordinary voter to mean that the Clean Car Discount helps reduce emission for the laudable purpose of reducing the scale or likelihood of damaging climate change.
3. New Zealand's Clean Car Discount policy does not reduce New Zealand's net emissions because of how New Zealand's 'cap and trade' Emissions Trading Scheme (ETS) functions.
4. The ETS operates under a 'cap and trade' model where the maximum number of carbon dioxide emissions (or their equivalent) are capped at a set level each period (normally a couple of years). Carbon credits are auctioned to individuals and businesses the right to emit.
5. For emissions from motor vehicles, fuel companies buy emissions credits and pass the cost to consumers in the form of higher prices.
6. The Trust must know that 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.
7. Put another way, if motorists consume less petrol or diesel, fuel companies are required to surrender fewer credits so they will have a surplus of credits. These credits will either be sold to other emitters (for example factories using coal-powered industrial heating) or held for future years – either way these emissions will still occur. This is known as the "waterbed effect" of the ETS.
8. Whether a tonne of emissions comes from a vehicle or from a coal powered heater is irrelevant in terms of the fight against climate change.
9. For persons who know how the ETS system works it is false to tell voters that Clean Car Discount policy is "helping us reduce our emissions", "helps fight climate change", or that high emissions vehicles are "contributing to the climate crisis".

¹ See appendix 1

² See appendix 1

³ <https://www.dontpulltheplug.nz/about>

10. As put by the *Intergovernmental Panel on Climate Change* (IPCC): “[i]f a cap and trade system has a sufficiently stringent cap to affect emission-related decisions, then other policies have no further impact on reducing emissions.”⁴

False claim 2: The Clean Car Discount does not cost the government or taxpayers

11. The latter half of claim c is also demonstrably false. The Clean Car Discount Scheme has received \$401.4 million in taxpayer funding in the form of a repayable grant.⁵ \$119.9 million of this has not yet been recovered.
12. Even if it is contended that all of this money *will* be paid back, there are still identifiable costs to the taxpayer of lost interest (or opportunity cost) on the money or interest payment costs if the scheme is debt funded. Either way there are clearly costs to the taxpayer.

Statements deliberate, widespread, and intended to influence votes of electors

13. The sum of money spent on this misinformation campaign was significant. *The Post* reported that the *Better NZ Trust* expected to spend “more than \$100,000 pushing electric vehicle policies.”⁶ The extent of this influence should not be underestimated.
14. Reflecting on the campaign, a spokesperson for the *Better NZ Trust* has been quoted in media that “we were able to get our message in front of over a million voters online, run tens of digital billboards and hundreds of posters in key locations, and grab the attention of some senior politicians.”⁷
15. We believe that the Trust must understand their claims are false.⁸ At the *Taxpayers’ Union*, we have issued public statements explaining the same – including as recently as 10 October 2023 when we issued a media release about the Trust’s false advertising and contacted the Trust to draw their attention to the same.⁹ *The New Zealand Initiative* thinktank has repeatedly published reports on the redundancy of the clean car discount and subsidies for other already covered sectors with respect to reducing emissions.

The Trust was falsely advertising to influence votes for commercial gain – and should therefore be prosecuted

16. Far from an bona fide (albeit misleading) effort to improve environmental outcomes, it appears the misleading statements were made for commercial gain. The Trust’s founder, Steve West, is also the director and shareholder of *ChargeNet NZ* – a private company that operates commercial electric car charging stations. The Trust was a registered promoter for the 2023 general election, and was therefore aware of the Act’s requirements (and on notice of the rules related to advertising contained in the *Third Party Handbook* published by the Commission for third party promoters)

⁴ See IPCC, 2014: Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, R.K. Pachauri and L.A. Meyer (eds.)]. IPCC, Geneva, Switzerland. Page 109. https://ar5-syr.ipcc.ch/ipcc/resources/pdf/IPCC_SynthesisReport.pdf

⁵ See <https://www.nzta.govt.nz/vehicles/clean-car-programme/clean-car-discount/clean-car-discount-scheme-financial-reports/>

⁶ See <https://www.thepost.co.nz/politics/350086210/influencers-whos-spending-money-trying-sway-your-vote-election>

⁷ See <https://leadingthecharge.org.nz/all-news/news-releases-and-press-contact/2023-election-awareness-campaign/>

⁸ See <https://www.nzinitiative.org.nz/reports-and-media/opinion/a-point-to-the-pointless/>, <https://www.nzinitiative.org.nz/reports-and-media/opinion/new-opinion-27/>, <https://www.nzinitiative.org.nz/reports-and-media/reports/the-emissions-trading-scheme-faq/>, and <https://www.nzinitiative.org.nz/reports-and-media/reports/pretence-of-necessity/document/751>

⁹ A copy of the relevant media release is available at <https://twitter.com/TaxpayersUnion/status/1711557571981840597>

17. There is personal financial benefit to Mr West in the continuation of subsidised expansion of EV numbers. They need charging stations We submit that making false claims to influence the election to further commercial objectives is consistent with the use of the word "corrupt" in section 199A. It puts the behaviour at the serious end of offending, so there is a need for prosecution if the public are to have trust in the integrity of enforcement and the administration of the Act. Section 199A is intended to punish and therefore to deter corrupt manipulation of public opinion and/or use false currency (misinformation) to influence electors. The Trust has coupled its false claims with greenwashing, pretending to be useful and altruistic. Such behaviour can be distinguished from a mistaken claim by a genuinely benevolent philanthropic promoter.
18. In short, we submit that because the Trust's attention was drawn to its misleading statements, but it continued to advertise them, the Trust and its decision makers were choosing to be dishonest, to influence an election, for commercial gain.

Conclusion


19. As an organisation which also engages in political/third party advertising, we make great efforts to comply with electoral advertising laws and not mislead. It is vital to our democracy that all parties who wish to advertise around an election do so honestly, in good faith, and by the same rules.
20. In the same way as many advocates for free speech advocate for strong *ex-post* rules and defamation laws – to ensure that claims of fact (as opposed to opinion) are able to be justified, we believe that it is in the public interest to ensure that our elections are not competitions of misinformation. We submit that the actions of the Trust are precisely the sort of commercially motivated misinformation intended to be caught by the Section 199A, and should therefore be prosecuted.
21. We look forward to hearing from you.

Yours faithfully,
New Zealand Taxpayers' Union Inc.




Jordan Williams
Executive Director
Jordan@taxpayers.org.nz

Appendix 1: Examples of the advertisements



The Better NZ Trust - Leading The Charge
Sponsored • Paid for by The Better NZ Trust - Leading The Charge
Library ID: 6114516508649084

...



The Better NZ Trust - Leading The Charge
Sponsored • Paid for by The Better NZ Trust - Leading The Charge
Library ID: 1045332546596118

...

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.

Help us persuade politicians to do the right thing this election at donthelptheplug.nz

The Clean Car Discount:
SAVES FAMILIES
THOUSANDS OF DOLLARS.

HELPS FIGHT
CLIMATE CHANGE.

WORKS.
REALLY REALLY WELL.

Which parties will keep the Clean Car Discount?

NATIONAL	ACT	LABOUR	GREENS
X	X	✓	✓

Authorised by The Better NZ Trust, 5 Kinapori Tce, Wellington. Party responses when asked if they'd keep the Clean Car Discount, a policy which has been shown to increase EV take up, and save families money.

[DONTHELPTHEPLUG.NZ](https://donthelptheplug.nz) [Learn More](#)

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.

Help us persuade politicians to do the right thing this election at donthelptheplug.nz

EVERYONE:
There's a climate crisis.

NATIONAL & ACT:
Let's scrap the Clean Car Discount and make it harder to buy a clean car.

LABOUR & GREENS:
Let's not.

Full scorecard: [DONTHELPTHEPLUG.NZ](https://donthelptheplug.nz)

Authorised by The Better NZ Trust, 5 Kinapori Tce, Wellington.

All of the social media advertisements on Facebook and Instagram can be seen here:

[https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=NZ&view_all_page_id=391751334315477&sort_data\[direction\]=desc&sort_data\[mode\]=relevancy_monthly_grouped&search_type=page&media_type=all](https://www.facebook.com/ads/library/?active_status=all&ad_type=all&country=NZ&view_all_page_id=391751334315477&sort_data[direction]=desc&sort_data[mode]=relevancy_monthly_grouped&search_type=page&media_type=all)

The advertisements also link to their website which repeats similar false claims:

<https://www.donthelptheplug.nz/>

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](#)

Electoral Commission Cyber Security Warning: This email originated from outside of the Commission. Please take extra care when clicking links or opening attachments. When in doubt, contact the IT Service Desk.

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 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

PO Box 3220 | Level 10, 34-42 Manners Street, Wellington

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



From: [Natalie McNaught](#)
To: [L & P Enquiries](#)
Subject: RE: Complaint - Better NZ Trust advertising
Date: Tuesday, 19 December 2023 2:50:57 pm

Have discussed with KT, think we can say the complainants are not the same. Happy for this to go out

From: L & P Enquiries <legal@Elections.govt.nz>
Sent: Tuesday, December 19, 2023 1:59 PM
To: Natalie McNaught 9(2)(a)
Subject: RE: Complaint - Better NZ Trust advertising

Hi Natalie – wondering if there's anything else that can be said here? I'm hesitant to point him towards an OIA request, but it might be possible to supply info about the request with identifying details redacted.

Also noting Kristina's call with Hillary, it sounds like the two complaints he's mentioned are complaints to us.

Kia ora Rob

To protect the privacy of complainants, the Commission does not release their details. However, we can confirm the two complaints we have received (this one and one relating to advertising on election day) are not from the same complainant.

From: Rob Birnie <rob@betternz.org>
Sent: Monday, December 18, 2023 3:26 PM
To: L & P Enquiries <legal@Elections.govt.nz>
Subject: RE: Complaint - Better NZ Trust advertising

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

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Many thanks Braedyn.

Out of interest, is there a mechanism by which we could learn if the two complaints thusfar made against us have been made tmby the same individual/group, or whether this individual/group frequently lays complaints? We have had a number of false statements printed about us by a specific group and have chosen to ignore them thusfar, but our stance may change if we were to discover they were attempting to use legal mechanisms to discourage our commentary on this topic.

Appreciate this may not be possible, but hoping you may be able to assist to ensure further elections can take place free from undue influence and dirty tactics.

Cheers.

Rob.

On 18/12/2023 15:01, L & P Enquiries <legal@Elections.govt.nz> wrote:

Kia ora Rob

Thanks for such a prompt response, much appreciated.

We have considered what you've said. With the content and context of the Facebook advertising in mind, the Commission's view is that the statements about the Clean Car Discount are analysis, opinion or comment on vehicle policy, and party positions with reference to that policy at the election. We also note that there has been the opportunity for differing views to be put forward on the merits of this particular policy.

In our view the advertising falls short of the requirements of section 199A, regarding the publication of a statement that a person knows is false for the offence provision to be made out. On this basis, the Commission will not be taking any further action on this matter.

Nothing further will be needed from the Better NZ Trust at this stage.

Ngā mihi

Braedyn

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

Electoral Commission – Te Kaitiaki Take Kōwhiri

PO Box 3220 | Level 10, 34-42 Manners Street, Wellington

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From: [L & P Enquiries](#)
To: [Rob Birnie](#)
Subject: RE: Complaint - Better NZ Trust advertising
Date: Tuesday, 19 December 2023 3:06:00 pm
Attachments: [image001.png](#)

Kia ora Rob

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Ngā mihi

Braedyn

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

Electoral Commission – Te Kaitiaki Take Kōwhiri

PO Box 3220 | Level 10, 34-42 Manners Street, Wellington

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



From: Rob Birnie <rob@betternz.org>
Sent: Monday, December 18, 2023 3:26 PM
To: L & P Enquiries <legal@Elections.govt.nz>
Subject: RE: Complaint - Better NZ Trust advertising

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

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Appreciate this may not be possible, but hoping you may be able to assist to ensure further elections can take place free from undue influence and dirty tactics.

Cheers.

Rob.

From: [Braedyn Freebairn](#)
To: [Karl Le Quesne](#)
Cc: [Natalie McNaught](#); [Kristina Temel](#); [Karen Murdoch](#); [L & P Enquiries](#)
Subject: FW: Complaint - Better NZ Trust advertising
Date: Monday, 18 December 2023 2:16:00 pm
Attachments: [Letter to Taxpayers Union.docx](#)
[20231203_jhw_ltr Better NZ Trust draft complaints to Electoral Commission.pdf](#)
[image001.png](#)
[image00001.png](#)

Braedyn Freebairn has shared a OneDrive for Business file with you. To view it, click the link below.

 [Letter to Taxpayers Union.docx](#)

Kia ora Karl

Please find attached our draft response to the Taxpayers' Union's complaint about false advertising (section 199A).

The Taxpayers' Union allege that comments as part of the Better NZ Trust's election campaign ('Don't Pull the Plug') about the Clean Car Discount are false. Section 199A makes it a corrupt practice offence 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.

In our view, the requirements in the Electoral Act are not made out. The comments made by the Better NZ Trust are analysis or opinion on vehicle policy, not objective statements that can be demonstrably false. In addition, one of the key purposes of the provision (when inserted in 2002) was to stop deliberately false statements from being made close to election day without the right of reply. The Taxpayers' Union and similar organisations have had the chance to put forward differing views and critique the campaign, which doesn't align with the provision's purpose.

For reference, the original complaint is attached. The Better NZ's response is forwarded below.

Please could you make any changes, or sign the letter for L&P to send out.

Ngā mihi
Braedyn

Braedyn Freebairn ([he/him](#)) | Advisor Legal
Electoral Commission – Te Kaitiaki Take Kōwhiri
PO Box 3220 | Level 10, 34-42 Manners Street, Wellington
 9(2)(a) | [vote.nz](#) | [elections.nz](#)



From: [Karl Le Quesne](#)
To: [Braedyn Freebairn](#)
Cc: [Natalie McNaught](#); [Kristina Temel](#); [Karen Murdoch](#); [L & P Enquiries](#)
Subject: RE: Complaint - Better NZ Trust advertising
Date: Monday, 18 December 2023 2:23:05 pm
Attachments: [image001.png](#)

Thanks Braedyn

I have signed the letter.

Karl Le Quesne

From: Braedyn Freebairn <[REDACTED] 9(2)(a) [REDACTED]>
Sent: Monday, December 18, 2023 2:16 PM
To: Karl Le Quesne <[REDACTED]>
Cc: Natalie McNaught <[REDACTED]>; Kristina Temel <[REDACTED]>; Karen Murdoch <[REDACTED]>; L & P Enquiries <legal@Elections.govt.nz>
Subject: FW: Complaint - Better NZ Trust advertising

Kia ora Karl

Please find attached our draft response to the Taxpayers' Union's complaint about false advertising (section 199A).

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Please could you make any changes, or sign the letter for L&P to send out.

Ngā mihi
Braedyn

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

Electoral Commission – Te Kaitiaki Take Kōwhiri

PO Box 3220 | Level 10, 34-42 Manners Street, Wellington

[REDACTED] | [vote.nz](#) | [elections.nz](#)



From: [L & P Enquiries](#)
To: jordan@taxpayers.org.nz
Cc: [Connor Molloy](#)
Subject: RE: [Enquiry Subject] Better NZ Trust
Date: Monday, 18 December 2023 3:03:00 pm
Attachments: [image001.png](#)
[Letter to Taxpayers Union - section 199A complaint.pdf](#)

Kia ora Jordan

Regarding your complaint about the Better NZ Trust's advertising, please find a letter signed on behalf of the Electoral Commission.

Ngā mihi
Braedyn

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

Electoral Commission – Te Kaitiaki Take Kōwhiri

PO Box 3220 | Level 10, 34-42 Manners Street, Wellington

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From: **Jordan Williams**
Date: Mon, Dec 4, 2023 at 9:23 am
Please find complaint **attached**.

Please confirm receipt.

Regards

Jordan Williams

Executive Director | New Zealand Taxpayers' Union | Auckland Ratepayers' Alliance

DDI Wellington +64 4 282 0301 | **DDI Auckland** +64 9 279 9968 | **Mob** +64 21 762 542 | **Email** Jordan@taxpayers.org.nz

New Zealand Taxpayers' Union Inc. | **Main** +64 4 282 0300 | Level 4, 117 Lambton Quay, Wellington 6011 | PO Box 10518, The Terrace, Wellington 6140 | www.taxpayers.org.nz

Auckland Ratepayers' Alliance | **Main** +64 9 281 5172 | CCHQ, Unit 6, 143 Quay Street, Auckland 1010 | PO Box 133099, Eastridge, Auckland 1146 | www.ratepayers.nz

We stand for Lower Taxes, Less Waste, and More Transparency across all levels of government. If you like what we do, join the [Taxpayers' Union](#) or the [Auckland Ratepayers' Alliance](#).

18 December 2023

Jordan Williams
Executive Director
New Zealand Taxpayers' Union

By email to: jordan@taxpayers.org.nz

Dear Mr Williams

COMPLAINT: BETTER NZ TRUST

Thank you for your letter dated 3 December 2023, setting out your concerns about Facebook advertising promoted by the Better NZ Trust in the run-up to the 2023 General Election that you consider may be in breach of section 199A of the Electoral Act 1993 (the Act).

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.

Section 199A was inserted in the Act in 2002 to address a specific concern about parties or candidates publishing false statements on the eve of an election when the timing of publication meant that other candidates and parties have insufficient time to correct the statement. The Justice and Electoral Committee in its report on its Inquiry into the 1999 General Election, said:

"We do not wish to see people's right to freedom of expression unduly limited, especially during election campaigns, but we consider that there is a very narrow class of expressions that should be limited in order to protect the integrity of electoral decisions. The expressions that should be limited are deliberately false statements of fact made on election day and the two preceding days with the intention of influencing the vote of any elector."

Publish is defined for the purpose of section 199A to include "disseminating by means of the Internet". You have confirmed the advertising in question was 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, as you note, 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.

While the statement you have complained about was promoted on social media during the specified period, for an offence under section 199A it is also necessary to establish:

- knowledge on the part of the person responsible for the publication of the statement (that the statement was false in a 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).

The threshold for establishing a corrupt intention is high. Genuinely held beliefs, or opinions on subjective matters, may not meet this threshold.

The Commission has contacted Better NZ Trust to provide them with the opportunity of commenting on the statements in their advertising which you are concerned amount to false statements.

The Clean Car Discount helps to reduce emissions and/or climate change

Better NZ Trust has indicated their focus is on the concrete reductions in transport emissions, and the operation of the Emissions Trading Scheme is beyond the scope of their work.

In their view high emitting vehicles clearly contribute to the climate crisis, with emissions from these vehicles mitigated through the Clean Car Discount and other policies across the world that focus on the reduction in the use of fossil fuels as a means of addressing climate change.

The Clean Car Discount does not cost the government or taxpayers

In Better NZ Trust's view, 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. They do not believe their statements on this to be false.

You have pointed out counterviews have been expressed by the Taxpayers' Union in statements issued, as recently as 10 October, on the Emissions Trading Scheme. You have also noted the New Zealand Initiative thinktank has repeatedly published reports on the redundancy of the Clean Car Discount.

Having considered the content and context of the Facebook advertising by the Better NZ Trust, the Commission's view is the statements about the Clean Car Discount are analysis, opinion or comment on a vehicle policy, and party positions with reference to that policy at the election. We also note there has been the opportunity for differing views to be put forward on the merits of this particular policy.

In our view the advertising falls short of the requirements of section 199A regarding the publication of a statement that a person knows is false for the offence provision to be made out. On this basis the Commission will not be taking any further action on this matter.

Thank you for taking the time to contact the Commission.



Karl Le Quesne
Chief Electoral Officer

FILE NOTE

Braedyn Freebairn – phone call with Rob Birnie, director of Better NZ Trust

On 13 October 2023, I called Rob to let him know that the Returning Officer for the Wellington Central electorate had noticed some of Better NZ Trust's posters were still on display, not far from a voting place in Wellington. I noted that under the Electoral Act 1993, election advertisements would have to be removed by midnight on 13 October. Rob explained that he was aware of the rules and had been told by the supplier that the posters would be removed before election day. He said that he would arrange for someone to have the posters removed.