

House of Representatives

Supplementary Order Paper

Tuesday, 20 June 2023

Grocery Industry Competition Bill

Proposed amendment to SOP 353

Hon Dr Duncan Webb, in Committee, to move the following amendment:

Clause 188

After *clause 188(1)(c)* (page 97), insert:

- (caa) providing for any provision or provisions of **Parts 2 and 3** to apply to a person (**P**) that is a franchisee or transacting shareholder of an interconnected body corporate of a regulated grocery retailer (**A**) as if—
- (i) P were a franchisee or transacting shareholder of A;
and
 - (ii) for the purpose of **section 26**, P were a member of the same group as A:

Explanatory note

This Supplementary Order Paper proposes an amendment to the regulation-making powers in *clause 188* to enable a franchisee or transacting shareholder of an interconnected body corporate of a main regulated grocery retailer (the **main RGR**) to be put in the same position under *Parts 2 and 3* of the Bill as a franchisee or transacting shareholder of the main RGR. (The main RGRs are Foodstuffs North Island Limited, Foodstuffs South Island Limited, Woolworths New Zealand Limited, and any other person that may in future be designated as a regulated grocery retailer). For example, the franchisees of a subsidiary of Woolworths New Zealand Limited could be put into the same position as the franchisees of Woolworths New Zealand Limited.

The main effect is that a franchisee or transacting shareholder of an interconnected body corporate may become subject to—

- duties under the grocery supply code to the extent that it may have dealings with suppliers (under *Part 2*); and
- wholesale supply duties under *Part 3*. However, in that case, the main RGR may perform the duties on the franchisee's or transacting shareholder's behalf (*see clause 27*). The franchisee or transacting shareholder also has a defence for a breach of a duty if it reasonably relies on the main RGR to perform the duty (*see clause 27A*).

Another important effect relates to the obligation on regulated grocery retailers to ensure that their wholesale agreements and conduct do not unduly hinder or obstruct trading relationships between wholesale customers and suppliers (*see clause 40*). The select committee recommended inserting *clause 40(2) and (3)* to clarify that members of the same group are not wholesale customers, unless a determination provides otherwise. This helps to avoid any potential confusion or difficulty in compliance with *clause 40*. This Supplementary Order Paper means that the effect of this amendment could be extended to franchisees or transacting shareholders of an interconnected body corporate of the main RGR (because they are also members of the broader group).