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Submission on Discussion Paper – Economic regulation and consumer protection for three waters services in New Zealand

This is a joint submission by Civic Financial Services Limited (**'Civic'**) and Local Government Superannuation Trustee Limited (**'LGST'**) on the economic regulation and consumer protection for three waters services in New Zealand (**'Discussion Paper'**) released by the Ministry of Business, Innovation and Employment (**'MBIE'**).

About Civic and LGST

Civic is owned by local Government and supplies local Government with a range of financial services including the SuperEasy KiwiSaver Scheme (**'SKSS'**) and the Local Government Superannuation Scheme (**'LGSS'**) (together **'Schemes'**). Civic is the administration manager of the Schemes. Civic is also the sole-shareholder of LGST.

LGST is the sole corporate trustee and the issuer of the Schemes. LGST is responsible for managing and issuing membership interests in the Schemes.

About the Schemes

SKSS is a registered restricted KiwiSaver scheme and LGSS is a registered restricted workplace savings scheme registered under the Financial Markets Conduct Act 2013. The Schemes are managed investment schemes, giving members the opportunity to invest in particular investment options and receive returns based on the performance of the investments.

The Schemes are 'restricted' under the Financial Markets Conduct Act 2013 (**'FMCA'**). This means that only specified classes of persons can be admitted to membership of the Schemes. These include persons who are employed by a particular employer, employed by a related body corporate of a particular employer, belong to a particular professional calling, trade, occupation, or industry, or belong to a particular association, society, or other entity with a definable community of interest.

In addition to a limited number of other persons, only employees of a 'local authority' or 'council-controlled organisation' (as those terms are defined in the Local Government Act 2002 (**'Act'**)) can become members of either of the Schemes. Due to the 'restricted' status of the Schemes under the FMCA, the eligibility criteria for becoming a member in either of the Schemes cannot be expanded to include employees of entities that are not local authorities or council-controlled organisations.

Summary

Our key concern is that the four new entities contemplated in the Discussion Paper may not meet the legal definition of a 'council-controlled organisation'. This would adversely affect existing members of the Schemes who become employees of the new entities by limiting their employers' participation options. Existing LGSS members will not be able to continue benefitting from employer contributions. It would also create workplace inequity by preventing new employees of the four entities from joining either of the Schemes.

To avoid any detrimental effect on members of the Schemes and overriding existing employment arrangements and avoid workplace inequities arising by preventing new employees from joining, we submit that the four new entities should be structured to meet the definition of 'council-controlled organisations' under the Act. Alternatively, there should be a specific legislative deeming mechanism to the effect that the four new entities are eligible to become participating employers in the Schemes.

Current proposal

At the time of writing this submission, the Water Services Entities Bill has not been released to Parliament or for public submissions/hearings. Therefore, this submission is based on the information publicly available on MBIE's website.

We estimate that around 4,900 council staff will have their employment arrangements directly affected by the three waters reform proposals. This means there is several existing members expected to cease employment with their current local authority or council-controlled organisation employer and take up employment with one of the four new entities.

In addition, several Scheme members are likely to have their employment arrangements disrupted by these reforms as current employers adjust to the sudden decrease in their head counts. While that disruption is unfortunate, we accept that it is an inevitable outcome of the reform process, if it goes ahead, and addressing the impact of that disruption is outside the scope of our submission.

The Government's proposal paper released 30 June 2021 for the three waters reforms notes that the four new entities will be owned by local authorities on behalf of their communities, with mana whenua having a joint oversight role. We are not aware of any further information that is publicly available on what constitutes 'being owned' or 'having a joint oversight role'. Informal discussion with various stakeholders in these reforms suggests that the intention is that the four new entities **not** be established as 'council-controlled organisations', despite public references to them being owned by local authorities on behalf of their communities. We are therefore concerned that the public description of the four new entities may not match the technical provisions of the new legislation when it is introduced.

Desired outcome

If the four new entities are owned by local authorities (e.g., if they are structured as companies and one or more local authorities own 50% or more of the shares) or otherwise meet the definition of a 'council-controlled organisation', then the new entities will automatically be considered 'qualifying employers' for our purposes and would be eligible to contribute to the Schemes as participating employers, with their employees eligible to join as members.

Effects if four new entities are not owned by local authorities or meet the definition of a 'council-controlled organisation'

If the four new entities are not owned by local authorities or meet the definition of a 'council-controlled organisation', then new employees of those entities will be unable to join either of the Schemes. Existing members in the Schemes will be able to remain as members and contribute, but their new employers will not be eligible to become participating employers.

The new employers of SKSS members will be required to make employer contributions in accordance with the KiwiSaver Act 2006 so there will be minimal impact on existing contribution arrangements for

that Scheme. However, the new employers of LGSS members will not be able to contribute to LGSS as they will not be eligible to become participating employers in that Scheme. This would be a significant disruption to existing employment arrangements.

With around 4,900 council staff that may be affected by the three waters reforms, there will be members who will no longer be employed by their current employer and be employed by one of the four new entities. This may give rise to technical redundancies unless those members are offered employment with the four new entities on terms and conditions that are substantially the same as existing terms. If a member of LGSS is unable to continue benefitting from employer contributions to the Scheme because of their new employer not being eligible to participate, it seems inevitable that technical redundancies will arise. The only way to avoid this consequence and preserve existing benefits from employment for affected members (specifically for members in LGSS) is if the four new entities meet the definition of a 'council-controlled organisation' under the Act or are otherwise able to participate in the Schemes.

Alternative option if four new entities are not structured as 'council-controlled organisations'

An alternative option is if there is a specific mechanism in the Water Services Entities Bill which deems the four new entities a 'council-controlled organisation' for the purposes of the Schemes' trust deeds. To ensure there are no unintended consequences of such a deeming mechanism, the legislative provision(s) could specify that its purpose is to ensure membership eligibility and participation rights for SKSS and LGSS remain unaffected by the change in employer.

This would permit the four new entities to be structured other than as 'council-controlled organisations' for the purposes of the Act, if that is the preference, and minimise disruption to existing and future participation in the Schemes for members and employers alike and overcome the risk of technical redundancies automatically arising.

Further information

We are happy to discuss any aspect of our feedback on the Discussion Paper.

Thank you for the opportunity to submit.

Yours faithfully



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