

30 April 2020 [From LGFA]

Councils, council subsidiaries and the Government wage subsidy

Introduction

Subject to meeting specified criteria, councils and their subsidiaries are eligible to apply for the Government wage subsidy.

For details of the subsidy scheme, criteria and guidance for potential applicants please visit the work and Income website <https://www.workandincome.govt.nz/products/a-z-benefits/covid19-wage-subsidy.html>.

It is important to remember that the overriding purpose of the subsidy scheme is to protect jobs and keep people employed. All councils and council entities must meet the wage subsidy criteria relating to specific employees that must be named in the application (ie, the named employees must be legally working in New Zealand and will be retained by the council for the period of the subsidy).

Registration as a New Zealand business

All councils will meet the criterion of being a “*business registered and operating in New Zealand*” (ie, as all councils are on the New Zealand Business Number Register).

Council subsidiaries can apply independently from the council, but to be able to do this the subsidiaries must be separately registered with the Companies Office. If in doubt about registration status you can search for the relevant entity on www.nzbn.govt.nz.

One exception to this registration criterion is a ‘Council Organisation’ (as defined in ss.5 and 6 of the Local Government Act 2002). The Ministry of Social Development (MSD) has confirmed that such Council Organisations:

- are not required to be registered with the Companies Office, but must meet all other criteria to qualify for the wage subsidy;
- would need to be able to demonstrate that the Council Organisation operates as a business in their own right – ie substantially separate from the relevant council(s);
- will need to decide whether in good faith they are entitled to apply as a business/employer themselves based on their own circumstances.

Examples of factors that might help to show operational separation of a Council Organisation are employment of staff independently from the council(s), having a separate GST number and a trading name separate from the council(s).

Examples of separately registered council-controlled organisations (CCOs) that are NZ limited companies are Auckland Tourism Events and Economic Development Limited (NZBN 9429031397964) and Waikato Local Authority Shared Services Limited (NZBN 9429034424940).

However, it is important to note that registration with the Companies Office does not only apply to NZ limited companies. There are several different types of entities registered with that Office. Other examples of separately registered council entities are Charitable Trusts such as the Wellington Zoo Trust (NZBN 9429043129751) and the Southland Museum & Art Gallery Trust Board (9429042728689).

If you want to make a separate application for an entity other than the council itself, MSD advice is that the entity must be a business that the council can in good faith say is separate from council (even if the council is the sole shareholder or holds strong influence).

Revenue reduction requirement

It may be challenging for most councils to demonstrate that they meet the criterion of “*a minimum 30% decline in actual or predicted revenue over the period of a month, when compared with the same month last year, and that decline is related to COVID-19*” (during the period January 2020 to June 2020). However, some might (particularly smaller councils with a high proportion of revenue during that period from fees and charges and income sources other than rates).

There is a robust process to review the circumstances of larger businesses (over 80 employees). These are considered on a case by case basis, can involve direct discussions and enable new information to be introduced progressively (ie, rather than one-off lodgement of a standard form). This could apply to council applications and will allow detailed consideration of individual council situations, which it is recognised may vary considerably.

A council subsidiary whose revenue (eg, from fees and charges) has been severely impacted by COVID-19 will find it much easier to demonstrate that they meet the revenue decline criterion.

Active steps to mitigate COVID-19 impacts

Wage subsidy applicants must also be able to demonstrate how they have met the criterion that “*active steps have been taken to mitigate the impact of COVID-19*”.

Published guidance on this criterion for businesses in general suggests that this could include:

- drawing from your cash reserves (as appropriate);
- activating your business continuity plan;
- making an insurance claim; and
- seeking advice and support from a relevant industry association.

If you are preparing a subsidy application, we suggest that it would also be helpful to have supporting information about efforts made to find and place affected staff into alternate roles within your organisation or elsewhere.

If relevant, you may also wish to signal whether and how your balance sheet has been used to help keep staff on the payroll.