



Education (Toi Mai Workforce Development Council) Order 2021

Patsy Reddy, Governor-General

Order in Council

At Wellington this 10th day of May 2021

Present:

Her Excellency the Governor-General in Council

This order is made under section 363 of the Education and Training Act 2020—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Education made in accordance with section 363(3) and (4) of that Act.

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Order

- 1 Title**
This order is the Education (Toi Mai Workforce Development Council) Order 2021.
- 2 Commencement**
This order comes into force on 11 June 2021.
- 3 Interpretation**
In this order, unless the context otherwise requires,—
Act means the Education and Training Act 2020
Council means the Toi Mai Workforce Development Council established by clause 5

learner means a learner in 1 or more of the specified industries

member means a member of the Council

specified industries means the industries listed in Schedule 2

tertiary education strategy means the tertiary education strategy issued under section 7 of the Act

vocational education provider means a provider of vocational education or training for 1 or more of the specified industries.

4 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

Council

5 Toi Mai Workforce Development Council established

This clause establishes the Toi Mai Workforce Development Council.

6 Coverage of Council

The Council covers the specified industries.

7 Performance of Council's functions and duty

- (1) When performing its functions under section 366 of the Act, the Council must act in a manner that—
 - (a) contributes to an education system that honours Te Tiriti o Waitangi and supports Māori–Crown relations; and
 - (b) seeks to contribute to an education system that helps to ensure fair and equitable outcomes for all; and
 - (c) facilitates the voices of the specified industries to contribute to the creation of a sustainable, globally engaged, and adaptive New Zealand; and
 - (d) seeks to contribute to an education system that provides opportunities for all people in the specified industries to reach their full potential and capabilities, including those who have been traditionally underserved by the education system; and
 - (e) aims to support the responses to New Zealand's current and future workforce needs, taking into account—
 - (i) the transition to a low-emissions and climate-resilient New Zealand; and
 - (ii) new global challenges; and
 - (iii) emerging technologies; and
 - (iv) global sustainability goals; and
 - (v) the changing nature of work; and

- (vi) the skills, knowledge, and qualifications that learners will need in future to achieve success for themselves and their communities; and
 - (f) contributes to a well-functioning labour market system in which the specified industries can access the skills required to meet their current and future needs.
- (2) When performing its functions under section 366 of the Act, the Council must give effect to the relevant parts of the tertiary education strategy.
- (3) When performing its duty under section 369(2)(b) of the Act to have regard to the needs of Māori and other population groups identified in the tertiary education strategy, the Council must consult the persons or bodies it considers on reasonable grounds represent the interests of Māori and those population groups.
- (4) The Council may appoint committees to advise it on any matters relating to the performance or exercise of its functions, duties, or powers.

8 Statement of strategic direction

- (1) The Council must, at least once every 3 years, issue a statement setting out its strategic direction for the next 5 years.
- (2) The statement must include (without limitation)—
 - (a) how the Council intends to perform its functions; and
 - (b) how the Council intends to give effect to the relevant parts of the tertiary education strategy; and
 - (c) the performance measures the Council will use to assess its performance against the goals and objectives set out in the statement.
- (3) Before issuing a statement, the Council must—
 - (a) engage with the specified industries to develop the statement; and
 - (b) consult the following on the proposed statement:
 - (i) the Minister;
 - (ii) vocational education providers;
 - (iii) persons or bodies it considers on reasonable grounds represent the interests of Māori.
- (4) The Council must publish a copy of the statement on an Internet site maintained by or on behalf of the Council.

9 Annual report

- (1) As soon as practicable after the end of each financial year, the Council must provide the specified industries and the Minister with an annual report on the operations and activities of the Council in the performance of its functions and duties during that financial year.

- (2) The annual report must include (without limitation)—
 - (a) the audited financial statements of the Council; and
 - (b) an outline of the progress the Council has made towards achieving the goals and objectives set out in its statement of strategic direction.

Members of Council

10 Membership

- (1) The Council comprises 7, 8, or 9 members, as determined by the Council and made up as follows:
 - (a) at least 1 member nominated by Māori employers in the specified industries to represent them; and
 - (b) at least 1 member nominated by employers in the specified industries to represent them; and
 - (c) at least 1 member to represent employees in the specified industries nominated by—
 - (i) the New Zealand Council of Trade Unions Te Kauae Kaimahi (**NZCTU**) or NZCTU Runanga; or
 - (ii) any of the trade unions who represent employees of the specified industries; or
 - (iii) individual employees (including the nominee) or other groups of employees involved in the specified industries; and
 - (d) a number of additional members appointed by the Council as required to bring the total membership of the Council up to 7, 8, or 9 members as determined by the Council.
- (2) In addition to the members appointed under subclause (1), the Council may co-opt 1 or 2 persons to be members if it considers it is necessary to ensure that the Council has an appropriate mix of skills, leadership, and experience.
- (3) A person may be co-opted as a member under subclause (2) for up to 3 years.

11 Appointment process

- (1) The Council must establish an appointments panel (the **panel**) to oversee the appointment of members to the Council.
- (2) The panel must consist of 6 members comprising 1 Council member from each of the workforce development councils established under the Act.
- (3) The Council must—
 - (a) appoint 1 member as chair of the panel; and
 - (b) as far as is reasonably practicable, ensure that at least 2 panel members are Māori.

- (4) If, for any reason, a workforce development council is unable to appoint a representative to the panel, the Council must appoint the number of panel members required to bring the total number of members up to 6.
- (5) The panel must—
 - (a) seek nominations for appointment as a member under clause 10(1)(a) to (c); and
 - (b) invite expressions of interest for appointment as a member under clause 10(1)(d); and
 - (c) recommend to the Council the persons who it considers are suitable for appointment, having regard to the matters specified in clause 12.
- (6) Before making a recommendation, the panel must consult the Council on the knowledge, skills, and experience necessary for the Council to perform its functions efficiently and effectively.
- (7) The Council must consider the recommendations made by the panel and appoint as members of the Council those persons who are best suited for appointment as a member, having regard to the matters specified in clause 12.

12 Matters to be considered when appointing members

- (1) When appointing members, the Council must—
 - (a) ensure that at least 3 members are Māori involved in the specified industries; and
 - (b) as far as is reasonably practicable, ensure that the Council as a whole has—
 - (i) a deep knowledge of, and networks within, te ao Māori; and
 - (ii) skills in te ao Māori, te reo Māori, and mātauranga Māori; and
 - (iii) an understanding of, and commitment to upholding, Te Tiriti o Waitangi; and
 - (iv) a commitment to eliminating inequality and an understanding of, and a commitment to addressing, the needs of underserved learners, including Māori, Pacific peoples, and disabled people; and
 - (v) gender balance; and
 - (vi) a diversity of thought and experience; and
 - (vii) experience in industry leadership and sufficient knowledge of, connections with, and experience with the specified industries, including small to medium enterprises, large organisations, and self-employed persons; and
 - (viii) knowledge, skills, and experience in relation to the following:
 - (A) vocational education and training;
 - (B) governance;

- (C) engaging with government entities, public bodies, or local authorities;
 - (D) financial analysis and management; and
 - (c) appoint persons who are strategic thinkers, creative, and have values aligned to the Council.
- (2) When appointing employee representatives under clause 10(1)(c), the Council must appoint persons who have demonstrated an ability to provide collective representation of employees and who—
- (a) have the support of a body recognised as representing employees in 1 or more of the specified industries; or
 - (b) can otherwise demonstrate that their appointment represents employees collectively in 1 or more of the specified industries.

13 Disqualification from office

The following persons are disqualified from being members:

- (a) a person who is an undischarged bankrupt;
- (b) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under any enactment;
- (c) a person who is subject to a property order under the Protection of Personal and Property Rights Act 1988;
- (d) a person in respect of whom a personal order has been made under that Act that reflects adversely on the person's—
 - (i) competence to manage their own affairs in relation to their property; or
 - (ii) capacity to make or to communicate decisions relating to any particular aspect or aspects of their personal care and welfare;
- (e) a person who has been convicted of an offence punishable by imprisonment for a term of 2 years or more, or who has been sentenced to imprisonment for any other offence, unless the person has obtained a pardon, served the sentence, or otherwise suffered the penalty imposed on the person;
- (f) a member of Parliament;
- (g) a person who is disqualified from holding an office under an Act.

14 Term of appointment

A member may be appointed for a term of 3 years and may be reappointed for 1 more term.

15 Co-chairs*Appointment*

- (1) The Council must appoint 2 of the members to be co-chairs, 1 of whom must be Māori, for a fixed term of 2 years by notice in writing stating the date on which the appointment takes effect.
- (2) When appointing co-chairs, the Council must consider the need for—
 - (a) gender balance and ethnic diversity; and
 - (b) experience and strong connections within the specified industries covered by the Council.
- (3) Each co-chair must be appointed by consensus or, in the absence of consensus, by secret ballot.

Term of office

- (4) Each co-chair holds office until—
 - (a) they resign from that office; or
 - (b) they are removed from office by the Council; or
 - (c) they cease to hold office under regulation 16; or
 - (d) their term of office specified on appointment expires.
- (5) A person may be reappointed as co-chair for further terms of 1 year but may only hold office as co-chair for a maximum of 4 years, whether consecutively or not.

Resignation

- (6) A co-chair may, without resigning as a member, resign from that office by giving written notice to the Council.
- (7) The notice of resignation must state the date on which the resignation takes effect.

Removal

- (8) The Council may, after consulting the person concerned, remove a co-chair from that office by written notice to the person (and must give a copy to the Council).
- (9) The notice of removal must state the date on which the removal takes effect.

Allocation of functions

- (10) The Council must determine a policy relating to the allocation of functions, duties, and responsibilities of the co-chairs, including the process for determining—
 - (a) which co-chair will chair each meeting; and
 - (b) which co-chair is for the time being responsible for overseeing the performance of the general manager.

16 Revocation of appointments

- (1) The Council may revoke the appointment of a member for just cause.
- (2) The revocation of the appointment must be made by written notice to the member, stating—
 - (a) the date on which the revocation takes effect, which must be no earlier than the date on which the notice is received; and
 - (b) the reasons for the revocation.
- (3) The Council may revoke the appointment of a member with as little formality and technicality, and as much expedition, as is permitted by—
 - (a) the principles of natural justice; and
 - (b) a proper consideration of the matter; and
 - (c) the Council's policy (if any) on the revocation of appointment of members.
- (4) A member is not entitled to any compensation or other payment or benefit relating to the member ceasing, for any reason, to hold office as a member.
- (5) In subclause (1), **just cause** includes misconduct, inability to perform the functions of office, neglect of duty, and breach of any of the collective duties of the Council or the individual duties of members (depending on the seriousness of the breach).

17 Continuation in office

- (1) Each member continues in office (unless the member ceases to hold office) until a successor is appointed.
- (2) A member may resign from office by written notice to the Council signed by the member.
- (3) The resignation takes effect when the Council receives the notice or at any later time specified in the notice.
- (4) A member ceases to hold office if the member—
 - (a) resigns; or
 - (b) has their appointment as a member revoked under clause 16; or
 - (c) becomes disqualified from being a member; or
 - (d) ceases to hold office in accordance with any enactment.

18 Vacancies*Ordinary vacancies*

- (1) The Council must fill an ordinary vacancy as soon as practicable using the process by which the departing member was appointed, unless that process is no longer available or applicable to the position.

Extraordinary vacancies

- (2) An extraordinary vacancy occurs when a member dies or ceases to hold office under clause 17(4).
- (3) If an extraordinary vacancy occurs within 6 months of the expiry of the vacating member's term, the Council may—
 - (a) appoint a replacement; or
 - (b) leave the vacancy open.
- (4) If an extraordinary vacancy occurs more than 6 months before the expiry of the vacating member's term, the Council must appoint a replacement member using the process by which the departing member was appointed, unless that process is no longer available or applicable to the position.
- (5) A person appointed to fill an extraordinary vacancy holds office only for the remainder of the vacating member's term.

General

- (6) The powers of the Council are not affected by any vacancy in its membership.

*Responsibilities of members***19 Collective duties**

- (1) The Council must act in a manner consistent with its functions, duties, and powers.
- (2) The Council must perform or exercise its functions, duties, and powers efficiently and effectively.
- (3) The Council must operate in a financially responsible manner and, for that purpose, ensure that it prudently manages its assets and liabilities.

20 Individual duties

- (1) A member may not contravene, or cause the contravention of, or agree to the Council contravening, the Act.
- (2) A member must, when acting as a member, act with honesty and integrity.
- (3) A member must, when acting as a member, act in good faith and not pursue the member's own interests at the expense of the Council's interests.
- (4) A member must, when acting as a member, exercise the care, diligence, and skill that a reasonable person would exercise in the same circumstances, taking into account (without limitation)—
 - (a) the nature of the Council; and
 - (b) the nature of the action; and
 - (c) the position of the member and the nature of the responsibilities undertaken by the member.
- (5) A member must—

- (a) act in the interests of the Council as a whole; and
 - (b) act in a manner that promotes the performance of the functions and the duties of the Council.
- (6) A member must comply with a code of conduct for members issued by the Council.
- (7) A member who has information in their capacity as a member that would not otherwise be available to them may not disclose the information to any person, or make use of, or act on, the information, except—
- (a) in the performance of the Council’s functions; or
 - (b) as required or permitted by law; or
 - (c) if the member is first authorised to do so by the Council and the disclosure, use, or act in question does not, or is unlikely to, prejudice the Council.

21 Accountability

- (1) A member’s duties are owed to the Council.
- (2) If a member does not comply with their individual duties, the member’s appointment may be revoked.
- (3) The Council may bring an action against a member for breach of any individual duty.
- (4) A member is not liable for a breach of an individual duty, except as provided in subclauses (2) and (3).
- (5) Nothing in this clause limits or affects the member’s accountability for anything else for which the member may be liable under any Act or rule of law arising from the act or omission that constitutes the breach.

22 Personal liability

A member is not personally liable for any act or omission of the Council or any loss to the Council arising out of any act or omission of the member if the act or omission was (as far as the member’s involvement is concerned)—

- (a) in good faith; and
- (b) in performance or intended performance of the functions of the Council.

23 Conflicts of interest

- (1) A person is **interested** in a matter if the person—
- (a) may derive a financial benefit from the matter; or
 - (b) is the spouse, civil union partner, de facto partner, child, or parent of a person who may derive a financial benefit from the matter; or
 - (c) may have a financial interest in a person to whom the matter relates; or

- (d) is a partner, director, officer, or member of a board or council or committee of a person who may have a financial interest in a person to whom the matter relates; or
 - (e) otherwise directly or indirectly has an interest in the matter.
- (2) A member who is interested in a matter relating to the Council must disclose to the Council details of the interest as soon as practicable after the member becomes aware they are interested.
- (3) The details that must be disclosed are—
- (a) the nature of the interest and the monetary value of the interest (if the monetary value can be quantified); or
 - (b) the nature and extent of the interest (if the monetary value cannot be quantified).
- (4) A member who has an interest in a matter—
- (a) may not vote or take part in any discussion or decision of the Council or any of its committees relating to the matter, or otherwise participate in any activity of the Council that relates to the matter; and
 - (b) may not sign any document relating to the entry into a transaction or the initiation of the matter.
- (5) In this clause, **matter** means the Council's performance of its functions or the exercise of its powers, or an arrangement or agreement, or a contract made or entered into, or proposed to be made or entered into, by the Council.

Industry engagement and collaboration

24 Industry engagement

- (1) The Council must make arrangements (for example, by establishing stakeholder groups) to ensure that persons or bodies who have an interest in the specified industries (including employers and Māori employers, industry bodies, employees, independent earners, iwi and hapū partners, and learners) have adequate opportunity to provide input that will assist the Council in the performance of its functions.
- (2) Without limiting subclause (1), the arrangements must ensure that the specified industries are able to—
- (a) provide information and views—
 - (i) on the current and future skills and knowledge requirements of the specified industries; and
 - (ii) on reviews of industry qualifications; and
 - (iii) on career pathways into and within the specified industries; and

- (iv) that will assist the Council in formulating its advice to the TEC on investment in vocational education and training and workforce planning to address the needs of the specified industries; and
 - (v) that will assist the Council to undertake strategic workforce leadership and research and to provide advice and support to the specified industries; and
- (b) raise issues and concerns about the governance, management, and operation of the Council.

25 Collaboration with other workforce development councils

The Council must—

- (a) identify the specified industries where close collaboration with another workforce development council is required to ensure that the industry training needs of those industries are met; and
- (b) establish appropriate engagement models with those other workforce development councils and specified industries to ensure that the industry training needs of those industries are met; and
- (c) co-ordinate its activities with other workforce development councils in the performance of its functions.

Miscellaneous

26 Appointment of general manager and other employees

- (1) The Council—
- (a) must appoint a person who is not a member of the Council to be its general manager; and
 - (b) may appoint any other employees it thinks necessary for the efficient performance of its functions.
- (2) The general manager—
- (a) is responsible for the efficient and effective management of the Council; and
 - (b) must give effect to the policies and directions of the Council in relation to the performance of its functions.
- (3) The general manager may be referred to by any other title that the Council determines.

27 Delegation

- (1) The Council may, by resolution and by written notice to the delegate, delegate any of its functions or powers (except the power to appoint a general manager) to—
- (a) any member or members of the Council:

- (b) the general manager;
 - (c) a committee appointed by the Council;
 - (d) a subsidiary of the Council;
 - (e) any other person approved by the Council.
- (2) The power to delegate may not be further delegated.
- (3) The person to whom any functions or powers are delegated may perform those functions or exercise those powers in the same manner and with the same effect as if the delegate were the Council.
- (4) A person who purports to act under a delegation is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of delegation.
- (5) A delegation under this clause—
- (a) may be subject to any conditions that the Council thinks fit;
 - (b) is revocable at any time, by notice in writing or by any other method specified in the delegation;
 - (c) does not prevent the Council from performing the functions or exercising the powers;
 - (d) does not affect the Council’s responsibility for the actions of the person acting under delegation.

28 Meetings

- (1) A co-chair may convene meetings to be held at the time and place that the co-chair determines, and must give at least 7 days’ notice in writing of those meetings to members.
- (2) A meeting may be held by means of electronic communication.
- (3) The quorum for a meeting is a majority of the members then holding office.
- (4) The Council should strive to achieve consensus in its decision making.
- (5) However, if at any meeting of the Council, consensus on any matter cannot be achieved, the matter must be decided by a majority of those members present, with the co-chair for the meeting (as determined under clause 15(10)(a)) having a casting vote or, if the co-chair for that meeting is absent, with the other co-chair having a casting vote.
- (6) A resolution in writing signed by a majority of members is as valid as if it had been passed at a meeting of those members.
- (7) An irregularity in a notice of a meeting is waived if all members entitled to receive the notice—
- (a) attend the meeting without objection to the irregularity; or
 - (b) do not attend the meeting but agree before the meeting is held to waive the irregularity.

- (8) Subject to this clause, the Council may determine its own procedures for regulating meetings and conducting its affairs.

Schedule 1

Transitional, savings, and related provisions

cl 4

Part 1

Provisions relating to this order as made

1 Interpretation

In this schedule, **commencement date** means 11 June 2021.

2 First Council

- (1) The members of the first Council must be appointed in accordance with clause 10 and 12.
- (2) For the purpose of making appointments to the first Council, the chief executive of the TEC must—
- (a) establish a nominations committee comprising 5 persons representing the specified industries; and
 - (b) seek nominations for appointment as a member of the Council under clause 10(1)(a) to (c); and
 - (c) invite expressions of interest for appointment as a member of the Council under clause 10(1)(d).
- (3) The nominations committee must—
- (a) determine the number of members on the Council (7, 8, or 9); and
 - (b) present to the Minister a list of the candidates who it considers are suitable for appointment as members of the Council having regard to the matters set out in clause 12.
- (4) The Minister must consider the list of candidates and appoint as members of the first Council those persons who are best suited for appointment as members having regard to the matters set out in clause 12.
- (5) To ensure continuity in membership, half of the members of the first Council must be appointed for a fixed term of 18 months and the remaining members must be appointed for a fixed term of 3 years.

3 Validation of pre-commencement actions and processes regarding appointments to Council

An appointment of a member to the Council under clause 2(4) is valid if the action or process for appointment undertaken before the commencement date substantially complies with the membership provisions of this order.

4 Membership of Council reduced until all appointments made

- (1) The number of members and the quorum required for a meeting under clause 28(3) is proportionately reduced until the date on which each member referred to in clause 10(1) is appointed to the Council.
- (2) No action of the Council is invalid merely because any member has not been appointed to the Council on the commencement date.

Schedule 2

Specified industries

cl 3

The coverage of the Council—

- (a) comprises the workforce development activities in relation to employers, vocational education providers, employees, and people seeking to be employed, in work related to the following industries:
 - (i) Toi Auaha/Creative and Culture:
 - (ii) Nga Toi Māori/Māori creativity:
 - (iii) Toi Tāngata/Recreation:
 - (iv) Toi Hangarau/Technology; and
- (b) includes the level 4 industries specified in the *Australia and New Zealand Standard Industrial Classification 2006 (ANZSIC)*, published by Statistics New Zealand, that are set out in the following table:

ANZSIC L4 code	ANZSIC L4 description
C259100	Jewellery and silverware manufacturing (creative design and making of jewellery only)
G427400	Flower retailing
J541100	Newspaper publishing
J541200	Magazine and other periodical publishing
J541300	Book publishing
J541400	Directory and mailing list publishing
J541900	Other publishing (except software, music, and Internet)
J542000	Software publishing
J551100	Motion picture and video production
J551200	Motion picture and video distribution
J551300	Motion picture exhibition
J551400	Post-production services and other motion picture and video activities

ANZSIC L4 code	ANZSIC L4 description
JJ552100	Music publishing
J552200	Music and other sound recording activities
J561000	Radio broadcasting
J562100	Free-to-air television broadcasting
J562200	Cable and other subscription broadcasting
J570000	Internet publishing and broadcasting
J601000	Libraries and archives
J602000	Other information services
M70000	Computer system design and related services
P821100	Sports and physical recreation instruction
R891000	Museum operation
R892100	Zoological and botanical gardens operation
R892200	Nature reserves and conservation parks operation
R900100	Performing arts operation
R900200	Creative artists, musicians, writers, and performers
R900300	Performing arts venue operation
R911100	Health and fitness centres and gymnasias operation
R911200	Sports and physical recreation clubs and sports professionals
R911300	Sports and physical recreation venues, grounds, and facilities operation
R911400	Sports and physical recreation administrative service
R913100	Amusement parks and centres operation
R913900	Amusement and other recreation activities n.e.c
R920100	Casino operation
R920200	Lottery operation
R920900	Other gambling activities
S951100	Hairdressing and beauty services (excluding skin therapies and nail technology)

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order, which comes into force on 11 June 2021, establishes the Toi Mai Workforce Development Council (the **Council**) under the Education and Training Act 2020 and sets out provisions relating to the operation of the Council, including—

- the specified industries covered by the Council;
- the membership of the Council and the responsibilities of members;
- the Council's engagement with the specified industries and its duty to collaborate with other workforce development councils.

**Education (Toi Mai Workforce Development Council)
Order 2021**

2021/98

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 13 May 2021.
This order is administered by the Ministry of Education.

Wellington, New Zealand:

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