



# Education (Waihanga Ara Rau Construction and Infrastructure 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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**Education (Waihanga Ara Rau Construction and  
Infrastructure Workforce Development Council) Order  
2021**

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**Specified industries**

**Order**

- 1 Title**  
This order is the Education (Waihanga Ara Rau Construction and Infrastructure 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 Waihanga Ara Rau Construction and Infrastructure 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 Waihanga Ara Rau Construction and Infrastructure Workforce Development Council established**

This clause establishes the Waihanga Ara Rau Construction and Infrastructure Workforce Development Council.

#### **6 Coverage of Council**

The Council covers the specified industries.

#### **7 Performance of Council's functions and duties**

- (1) When performing its functions under section 366 of the Act and its additional functions under clause 8, the Council must act in a manner that—
  - (a) facilitates the voices of the specified industries to lead the development of a more sustainable, globally engaged, and adaptive construction and infrastructure workforce in New Zealand; and
  - (b) seeks to contribute to a vocational education and training system that provides opportunities for all people to reach their full potential and capabilities in the construction and infrastructure industries, including those who have been traditionally underserved by the education system; and
  - (c) ensures the construction and infrastructure vocational education and training system provides opportunities for all people in the construction and infrastructure workforce to reach their full potential; and
  - (d) contributes to an education system that honours Te Tiriti o Waitangi and supports Māori–Crown relations; and
  - (e) seeks to contribute to an education system that helps ensure fair and equitable outcomes for all; and

- (f) encourages clear career pathways and a sustainable workforce pipeline; and
  - (g) aims to support the responses to New Zealand’s current and future construction and infrastructure 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 learners will need in future to achieve success for themselves and their communities; and
  - (h) 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) The Council in the performance of its functions 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 Additional functions of Council**

The additional functions of the Council are—

- (a) to promote opportunities for all people in the specified industries to reach their full potential and capabilities by supporting quality vocational educational outcomes; and
- (b) to address the needs and aspirations of priority learners in the specified industries, including Pacific learners and people with disabilities.

## **9 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 of strategic direction.
- (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 the Council considers on reasonable grounds to 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.

## **10 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 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*

## **11 Membership**

- (1) The Council comprises 8 members made up as follows:
  - (a) at least 1 member nominated by employers in the specified industries to represent them; and
  - (b) at least 2 members nominated by trade unions engaged in the specified industries or the New Zealand Council of Trade Unions Te Kauae Kaimahi to represent employees in the specified industries; and
  - (c) at least 1 member nominated by Māori employers in the specified industries to represent them; and
  - (d) additional members as required to bring the total membership of the Council up to 8 members.

- (2) The Council may co-opt 1 person to be a member if necessary to ensure that the Council as a whole has an appropriate mix of skills, leadership, and experience, in which case, the Council comprises 9 members.

## **12 Appointment process**

- (1) The Council must—
- (a) establish a selection committee comprising an even number of members of the Council and representatives of the specified industries to oversee the appointment of members to the Council; and
  - (b) appoint an independent chairperson to the selection committee.
- (2) The selection committee must—
- (a) seek nominations for appointment as a member under clause 11(1)(a) to (c); and
  - (b) invite expressions of interest for appointment as a member under clause 11(1)(d); and
  - (c) identify those persons who are suitable for appointment as members of the Council; and
  - (d) recommend to the Council persons who it considers are suitable for appointment as members of the Council, having regard to the matters set out in clause 13.
- (3) The Council must consider the recommendations made by the selection committee 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 13.

## **13 Matters to be considered when appointing members**

When appointing members, the selection committee must—

- (a) apply the principle that membership of the Council should, as far as reasonably possible, reflect the ethnic, gender, and cultural diversity of the people within the specified industries and in New Zealand's population; and
- (b) ensure that at least 1 of the employer representatives (including the Māori employer representatives) is Māori; and
- (c) ensure that at least 1 of the employee representatives is Māori; and
- (d) ensure that, as far as is reasonably practicable, at least half (approximately) of the members are Māori; and
- (e) ensure that at least 2 members identify as female; and
- (f) ensure that the Council as a whole has sufficient knowledge, skills, and experience in relation to—
  - (i) te ao Māori; and

- (ii) the specified industries; and
- (iii) the governance of organisations; and
- (iv) vocational education and training; and
- (v) public administration; and
- (vi) community organisations.

#### **14 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 office under an Act.

#### **15 Term of appointment**

- (1) When making appointments, the Council must specify a term of appointment having regard to the need to maintain continuity in membership of the Council in a calendar year.
- (2) A member may be appointed for a period of between 2 and 4 years.
- (3) A member may be reappointed if the total of all consecutive or non-consecutive terms does not exceed 8 years.

## **16 Co-chairpersons**

### *Appointment*

- (1) The Council must appoint 2 of the members to be co-chairpersons, one of whom must be Māori, by notice in writing stating the date on which the appointment takes effect.
- (2) When appointing co-chairpersons, the Council must ensure that each co-chairperson has demonstrated a commitment to working with each other as active partners with a shared kaupapa aligned with the functions of the Council.

### *Term of office*

- (3) Each co-chairperson holds that 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 as a member; or
  - (d) the term of office specified on appointment expires.
- (4) A person may be reappointed as co-chairperson for a further term.

### *Resignation*

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

### *Removal*

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

### *Allocation of functions*

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

## **17 Revocation of appointments**

- (1) The Council may revoke the appointment of a member for just cause.

- (2) The revocation of 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 removal 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).

## **18 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 had their appointment as a member revoked under clause 17; or
  - (c) becomes disqualified from being a member; or
  - (d) ceases to hold office in accordance with any enactment.

## **19 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 18(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*

**20 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.

**21 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.

## 22 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.

## 23 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.

## 24 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 that 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*

**25 Industry engagement**

- (1) The Council must establish enough national industry advisory groups to enable the specified industries to provide input that will assist the Council in the performance of its functions.
- (2) The Council must develop and implement an engagement model that sets out the means by which the specified industries may engage with the Council and advise and assist the Council in performing its functions.
- (3) The engagement model must—
  - (a) take into account the needs of particular industries and specialist areas within the coverage of the Council and the specified industries as a whole; and
  - (b) specify the means by which a specified industry can raise any concerns arising from the Council’s performance of its functions; and
  - (c) describe the arrangements or opportunities for regular interaction between the specified industries and the Council, including at least 1 annual meeting with representatives of the specified industries.

**26 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*

**27 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.

**28 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) a 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.

## **29 Meetings**

- (1) A co-chairperson may convene meetings to be held at the time and place that the co-chairperson 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 4 of the members then holding office.
- (4) All questions arising at any meeting must be decided by a majority of those members present, with the co-chairperson for the meeting having a casting vote.
- (5) 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.
- (6) 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.
- (7) 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 clauses 11 and 13.
- (2) For the purpose of making appointments to the first Council, the Chief Executive of the Tertiary Education Commission must—
  - (a) establish an appointments committee comprising 5 persons representing of the specified industries; and
  - (b) seek nominations for appointment as a member under clause 11(1)(a) to (c); and
  - (c) invite expressions of interest for appointment as a member under clause 11(1)(d).
- (3) The appointments committee must—
  - (a) identify the persons who it considers are best suited for appointment as members of the Council, having regard to the matters set out in clause 13; and
  - (b) appoint the members of the first Council.
- (4) The members of the first Council may be appointed for a term of between 2 and 4 years.
- (5) When appointing members of the first Council, the appointments committee must ensure that, during the 2 years following the establishment of the Council, the Council has—
  - (a) sufficient experience in establishing new organisations, enterprises, or businesses; and
  - (b) sufficient experience in leading industry, business transformation, and change management.

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

An appointment of a member to the Council by the appointments committee is valid if the action or process for appointment undertaken before the commencement date substantially complies with the membership appointment provisions of this order.

## **4 Membership of Council reduced until all appointments made**

The number of members and the quorum required for a meeting under clause 29(3) are proportionately reduced until the date on which each member referred to in clause 11 is appointed to the Council.

## Schedule 2 Specified industries

cl 3

The coverage of the Council comprises the workforce development activities in relation to employers, vocational education providers, employees, and people seeking to be employed in work related to 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:

<b>ANZSIC L4 code</b>	<b>ANZSIC L4 description</b>
C149200	Wooden structural fitting and component manufacturing (prefabricated timber wall frames and roof trusses only)
C203300	Ready-mixed concrete manufacturing
C203400	Concrete product manufacturing
D261100	Fossil fuel electricity generation
D261200	Hydro-electricity generation
D261900	Other electricity generation
D262000	Electricity transmission
D263000	Electricity distribution
D264000	On selling electricity and electricity market operation
D270000	Gas supply
D281100	Water supply
D281200	Sewerage and drainage services
E301100	House construction
E301900	Other residential building construction
E302000	Non-residential building construction
E310100	Road and bridge construction
E310900	Other heavy and civil engineering construction
E321100	Land development and subdivision
E321200	Site preparation services
E322100	Concreting services
E322200	Bricklaying services
E322300	Roofing services
E322400	Structural steel erection services
E323100	Plumbing services
E323200	Electrical services
E323400	Fire and security alarm installation services (circuit video surveillance system installation only)
E323900	Other building installation services
E324100	Plastering and ceiling services
E324200	Carpentry services
E324300	Tiling and carpeting services
E324400	Painting and decorating services
E324500	Glazing services
E329200	Hire of construction machinery with operator

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Explanatory note

<b>ANZSIC L4 code</b>	<b>ANZSIC L4 description</b>
E329900	Other construction services n.e.c.
F333200	Plumbing goods wholesaling
F373100	Furniture and floor covering wholesaling
G421200	Floor coverings retailing
G422100	Electrical, electronic, and gas appliance retailing
G423100	Hardware and building supplies retailing
J580100	Wired telecommunications network operation
J580200	Other telecommunications network operation
J580900	Other telecommunications services
L663100	Heavy machinery and scaffolding rental and hiring
M692100	Architectural services
M692200	Surveying and mapping services
M692300	Engineering design and engineering consulting services (building consulting service, building inspection service, civil engineering consulting service, construction consulting service, electrical engineering consulting service, geotechnical engineering consulting service, pipeline engineering consulting service, quantity surveying service, sanitary engineering consulting service, and traffic engineering consulting service only)
S942100	Domestic appliance repair and maintenance
S942200	Electronic (except domestic appliance) and precision equipment repair and maintenance (excluding locksmithing)

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 Waihanga Ara Rau Construction and Infrastructure 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.

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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.

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Wellington, New Zealand:

Published under the authority of the New Zealand Government—2021