

TE KĀHUI O MĀHUTONGA

Ka titiro whakarunga, Ka ahu whakamua



Review of the Māori Television Service Act 2003

A Report from the Ministers of Māori Affairs and Finance
prepared by Te Kāhui o Māhutonga

April 2009



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HEI TĪMATANGA

He puehu rā ko ahau
Nāu i poke e te Atua mai rā anō
Tōu wairua i whakahā atu
He tangata Māori ka puta ki te ao

E piko ana ko te rara
Ka whakaea manawa ki te ao
Nō tata rawa ki tōku manawa
Ka whai tokorua rāua, he rūruhi whaiāipo

He mahi whakamīharo
Nāu nei e te Kaihanga i whakamanganga
Ko te iwi Māori me tōna reo
Tuku iho ki a Koro, ki a Kui, ki a Mokopuna mā

Ka whati rā aku mahuri tōtara
Aku nohoanga whakanui i te rangi awatea
Kai rikiriki i ahau ko te aroha
Ki te reo i muri nei ka pania

Tērā te marama ka whakawhenua i te pae
Ka whakaata tāwera karere o te ata
Nāna te rongo e te reo ka whakahemo koe
Kapakapa kau ana te tau o taku ate rā

Ahakoā rā me whakapakari
Ki te hua o te rengarenga
Ki te hua o te kawariki
Kia ū, kia mau, kia piri ki te reo rangatira

Ko te reo rā
Te kākahu o te whakaaro
Te huarahi ki te ao tūroa
O te hinengaro

Ko te reo te mauri
O te mana Māori
Ko te tangata te kaiwhakapuaki
Kia tū tangata ai

Sir James Hēnare (he wāhanga kau)

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FOREWORD

E ngā Minita, tēnā kōrua.

Pou hihiko, pou rarama
Tiaho i roto, mārama i roto
Tēnā te pou
Te pou tokomanawa
Te pou o ēnei kōrero
Hui te mārama
Hui te ora ... Tihei Mauriora.

E te matua Tā Himi – ko koe tēnā kua whetūrangihia. Ko tōu wairua aroha tēnā ka pīataata tonu iho nei. Nō reira haere koe e kara. Kia tiatia koe ki te manu rererangi. I rākaitia koe ki te piki kōtuku, te rau o te toroa, te huia tītama: Haere koe – haere koutou. Ko koutou ēnā i whakangaro atu ki te pō. Kua hīrere kē koutou ki te ahiahitanga o te rā; Kua tae koutou ki te wāhi ngaro ki reira okioki ai. Waiho iho ai ā koutou ōhākī hei whai mā mātou mā te manawa tina mā te manawa keukeu e. Nō reira haere e ngā mate, haere, haere atu rā.

Ka tū honohono rātou ki a rātou. Ka tū honohono tātou ki a tātou. Nā, kāti. Tātou mā: Ngā mana whakaheke ō rātou. Tēnā koutou. Kia ora mai tātou.

Ka mutu, e ngā Minita, tēnei rā te tangi ake nei ki a koutou ko te Kāwanatanga. Ka tapae atu nei i tā mātou ripoata e karangahia nei ko Te Kāhui o Māhutonga. He mea whakaoti nā mātou i runga i tā te ture i tohu mai ai. He mea hanga e mātou hei hiki i ngā uara me ngā moehewa mō tō tātou reo Māori me āna tikanga.

Ministers, it is with great honour that we place before you the findings and recommendations of our independent review panel Te Kāhui o Māhutonga.

We are grateful for the time and frank contributions of Whakaata Māori, stakeholders, officials, and members of the public. We thank Te Puni Kōkiri for their excellent administrative assistance in the creation of this report.

Te Kāhui o Māhutonga considers the culmination of decades of commitment and effort to regenerate and revitalise the Māori language and custom through the medium of television broadcasting.

The comments and suggestions in this report are not ours alone. They were offered to us by individuals and iwi; of the past, present and future. Their words compel us to listen and to rededicate ourselves to the vital task of preserving the voice of our people with the best technology of today and tomorrow.

Kia ora tātou,

Tainui Stephens (Chair)

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Legal Disclaimer

The review panel has used all reasonable endeavors to ensure that the information in this report is as accurate as possible as at the date of this report (April 2009).

The views, opinions, findings and conclusions or recommendations expressed in this publication are based on verbal information provided by the review participants and the Te Kāhui o Māhutonga panel's review of documentation supplied to them. They do not necessarily reflect the views of Te Puni Kōkiri. The panel and Te Puni Kōkiri take no responsibility for any errors or omissions in, or for the correctness of, the information contained in this publication and shall not be liable for any loss or damage sustained by any person relying on this report.

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EXECUTIVE SUMMARY

Purpose

Te Kāhui o Māhutonga (TKOM) report is a review of the operation and effectiveness of the Māori Television Service Act (Te Aratuku Whakaata Irirangi Māori) 2003 (the Act). The Preamble of this Act acknowledges the Crown's acceptance of the obligation, based on the principles of the Treaty of Waitangi, to protect and promote te reo Māori me ngā tikanga Māori through broadcasting. The Purpose provisions (Sections 2 and 3) also acknowledge a Treaty-based obligation to preserve, protect, and promote te reo Māori. The purposes of the Act are understood in the light of that obligation.

Our report is provided for by Section 56 of the Act, and considers the extent to which the legislation currently enables the Māori Television Service (MTS) to meet the aspirations set out in the Preamble; namely that the Crown meets its Treaty-based commitment to protect, preserve and promote te reo Māori through the establishment of the MTS. Bearing this purpose in mind we recommend legislative amendments that we believe will increase the ability of MTS to continue to deliver positive outcomes for Māori language and custom. This will further enhance the Crown's ability to meet its commitments to protect and promote te reo Māori.

Findings

Despite difficulties in the beginning, MTS has broadcast a comprehensive bi-lingual television service for five years. The MTS has a dedicated and growing audience. It provides a programme schedule that is an alternative to the offerings of mainstream television. It has given the Māori language a heightened presence in broadcasting, and a consequent public profile.

There is inconsistency between the stated purpose (Section 3) of the Act and its principal functions (Section 8). In effect, the Act is successful in providing for the promotion of te reo Māori, but is less clear in providing for its preservation and protection.

Te Kāhui o Māhutonga has met with stakeholders, MTS, broadcasting industry representatives and the public. The review panel found that the legislation was generally appropriate for the establishment phase of MTS. Our recommendations are designed to ensure the legislation supports MTS to achieve subsequent consolidation and growth.

The panel heard from stakeholders about their widespread satisfaction with the television outputs.

Many stakeholders are less satisfied with the overall quality of the Māori language that is being broadcast. There are also concerns that the MTS should be able to participate fully and operate well in the developing digital environment.

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We recommend changes to the legislation in order to:

- define further the focus on television's role to preserve, protect and promote Māori language and culture
- ensure the access of all New Zealanders to Māori television broadcasting, and
- identify ways to maintain the provision of a high quality television service.

Some Key Recommendations

The functions of the Act give effect to the promotion of the Māori language and are less specific about the protection of its linguistic integrity. This lack of specificity leaves the authenticity of the broadcast language vulnerable to compromise.

- *We recommend that an amendment is made to Section 8(1) to include the words 'preserve, protect and' before the word 'promote'. (Recommendation 1)*

The sole interpretation of te reo as 'language' is incomplete and misleading.

- *We recommend that the interpretation of te reo Māori in Section 6 is amended to read 'The language and voice of the Māori people'. (Recommendation 2)*

While the Act calls for the broadcast of programmes in the Māori language, there are no legislative standards outlined to measure the quality of that language.

- *We recommend that a definition of quality language: 'language that is correct in articulation and appropriate in expression' is included in Section 6. (Recommendation 3)*

The amount of Māori language to be broadcast by MTS has been loosely defined. A strategic balance must be found between using Māori and English in the new multi-platform digital world.

- *We recommend that an amendment is made to the Act that requires MTS to broadcast an aggregated minimum of 50% of te reo Māori across all their platforms and channels. (Recommendation 5)*

To broadcast a minority language to a general viewing audience is a paradox. The wider general audience does not speak Māori and needs to be attracted with English.

- *We recommend that the words 'a broad viewing audience' are removed from Section 8(1) of the Act. (Recommendation 6)*

The new digital world will see a huge variety of platforms for the use of broadcasters. There should be a regular Māori presence on any platforms currently known, or yet to be invented.

- *We recommend the Act is amended to affirm that MTS is mandated to broadcast on all multi-media platforms (s8(2)(d) refers). (Recommendation 10)*

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To provide more certainty for the future and to facilitate long term business planning, Māori control of the existing UHF frequencies should remain secure, and in perpetuity.

- *We recommend that four channels of the UHF right (s21 refers) are retained by MTS regardless of changes made to re-package spectrum after Digital Switch Over. (Recommendation 11)*

The panel agrees with MTS's assertion that a better and more assured balance between direct and contestable funding from Te Māngai Pāho must be found, along with an extension of the annual appropriation from one to three years.

- *We recommend that Sections 26 and 28 are amended to reflect accountability by MTS for direct funding on a three yearly basis for the commissioning of programmes and internal production. (Recommendation 17)*

There is currently a broad Māori Language Strategy, and a Māori Broadcasting and e-media Outcomes Framework. There is however no specific overarching Māori language broadcasting plan for practical implementation by the sector. A number of Māori language agencies exist in the broadcasting industry, and there will be tangible benefits for te reo Māori if the expectations and outputs of their respective language plans are in better alignment.

- *We recommend that Section 29 is amended to include the provision of a Māori language plan that aligns with an overarching Māori language broadcasting plan. (Recommendation 19)*

The role of Te Pūtahi Paoho (TPP) as a partner with the Crown is unequal. There are also potential conflicts of interest when MTS does business with constituent memberships of TPP. Our recommendations extend the MTS equitable accountability to TPP and the Crown and redefine its composition to better enable partnership with the Crown.

- *We recommend that the number of organisations who appoint a representative to TPP is reduced, and that conflicted organisations are removed from the Schedule 1 list of organisations. (Recommendation 22)*

Conclusion

The legislation has provided a sound basis for the successful launch and operations of the MTS. There is room for improvement however: to ensure consistency with subsequent legislation; to ensure that MTS benefits from technological developments; and to ensure that the Act offers appropriate specificity and guidelines.



INTRODUCTION

In 1986 the Waitangi Tribunal, in its report on the WAI 11 claim, confirmed that the Māori language was a taonga and accordingly protected by the Treaty.¹ The following year, te reo Māori was made an official language of New Zealand in the Māori Language Act 1987.² Thus began a range of significant Government initiatives to support the impetus of revitalising the Māori tongue.

The Māori Language Strategy Te Rautaki Reo Māori (2003) identified a series of functions for Government to fulfil in order to revitalise te reo Māori. The strategy reserves a significant role for broadcasting that "supports the increased use of the Māori language and the value accorded to the Māori language by all New Zealanders".³

The MTS Act came to life with the launch of MTS on 28 March 2004.

Paragraph 4 of the Preamble to the MTS Act states:

- (4) *The establishment of the Māori Television Service in which te reo Māori me ngā tikanga Māori have a secure place and are recognised and actively promoted is intended to contribute to meeting the Crown's **commitment to the protection and promotion of te reo Māori me ngā tikanga Māori through broadcasting.***

Consistent with this commitment acknowledged in the Preamble, the principal legislative aims of the Act as expressed by Section 3 are set out as follows:

In recognition that the Crown and Māori together have an obligation under the Treaty of Waitangi to preserve, protect, and promote te reo Māori, the purpose of this Act is to provide for –

- a. *the establishment and the functions, duties, and powers of the Service and Te Pūtahi Paoho:*
- b. *the transfer to the Service by the Crown of the UHF right for the use and management by the Service in protecting and promoting te reo Māori me ngā tikanga Māori:*
- c. *a process to safeguard the UHF right, for the purposes of preserving, protecting and promoting te reo Māori me ngā tikanga Māori, if, in performing its functions set out in Section 8, the Service does not require the right, or ceases to use the spectrum licenses created for its use under that right, or wishes to transfer the right or spectrum licenses created under it to a third party other than Te Pūtahi Paoho:*
- d. *the framework of accountability for the Service:*

¹ Report of the Waitangi Tribunal on the Te Reo Claim Māori Claim (WAI 11), 33. <http://www.waitangi-tribunal.govt.nz/scripts/reports/reports/11/2580F91B-5D6F-46F4-ADE0-BC27CA535C01.pdf>

² Section 3 refers.

³ Māori Language Strategy 2003, 31. <http://www.tpk.govt.nz/en/in-print/our-publications/publications/?s=a568a773-1f8c-433c-8669-288ae44d2c6c&ts=1>

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- e. *the termination of Te Reo Māori Television Trust (Te Awhiorangi):*
- f. *the transfer to the Service of the establishment arrangements undertaken during the transition period.*

Section 8 sets out that the principal function of the Act is:

(1) ...to promote te reo Māori me ngā tikanga Māori through the provision of a high quality, cost-effective Māori television service, in both Māori and English, that informs, educates, and entertains a broad viewing audience, and, in doing so, enriches New Zealand's society, culture, and heritage.

This TKOM report reviews whether the Act enables the Crown to meet the Treaty-based commitment set out in the Preamble and Section 3 above. If the Act does not do so, the Crown may be failing to meet its Treaty-based duty. This may leave the Crown open to litigation. Further, this report examines the extent to which these aims of the Act are consistent with the principal function of the Act as set out above.

We review the extent to which the Act has provided a sound legislative base to enable the preservation, protection and promotion, and hence the good health, of te reo Māori.

Following the review Terms of Reference (see Appendix 2), TKOM pays particular attention to:

Focus	The capacity of the Act to enable MTS and related Māori language and culture agencies to protect and promote the Māori language and culture
Access	The nature of MTS's multi-media broadcasting platform and its place in the developing digital broadcast environment
Quality	Aspects of the legislative framework that enable MTS to provide high quality, cost effective services.

In accordance with the Terms of Reference, TKOM did not review the operational activities of MTS. The panel's comments on the performance of MTS are limited to the extent of considering in overview the material that the Service broadcasts, as this has a direct bearing on the language aims of the legislation.

For each assessment of the relevant Term of Reference: a **Panel Comment** illustrates our perspective on the relevant Term of Reference; **Stakeholder Feedback** offers indicative thoughts from review participants; and we share some panel **Opinions** before outlining our respective **Recommendations**. At the conclusion of each assessment, we present what we believe to be **Indices of Success** that would show that the Act is meeting its envisaged objectives.

The panel's recommendations are designed to ensure that the law enables both te reo Māori, and Māori television to maintain their essential places in New Zealand life – and to flourish in the emerging broadcasting environments before us.

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As a panel, we understand the weight and the importance of the matters we have been asked to review. To guide us through our mahi we have held to the following principles:

- We believe in the tenets of the Māori culture
- We believe in a mutually beneficial partnership between iwi and the Crown
- We believe in fiscal responsibility and demonstrable value for taxpayer dollars
- We understand that MTS operates with conflicting imperatives
- We understand that the review does not extend to the operations of MTS
- We understand that the Crown is obliged by the Treaty of Waitangi to take active steps to protect the Māori language
- We want this report to result in better legislative focus and consistency
- We want to future proof the voice of our people – and the way we are.

Kia tika te reo
Kia rere te reo
Kia Māori te reo

Say it right
Say it always
Say it brown

Tēnā koutou.

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THE BIG PICTURE

Although the preservation, protection and promotion of a language lies at the core of the panel's review, we are compelled to consider the functions and nature of television itself and hence its capacity to deliver the expected cultural outcomes.

Television is primarily a medium of entertainment. By itself, it cannot keep a language and its culture alive. People do that. For the moment, television only represents and portrays language. This will all change in the future as technology enables viewers to be interactive with the media.

Language revival and television broadcasting are two significant and quite separate endeavors that have been brought together under the mantle of one piece of legislation. In practice, the MTS has had to deal with two competing and occasionally contrasting imperatives: to use an unpopular language of the minority to make popular television for the majority.

In association with other language-oriented activities in education, health, justice, business and the cultural sectors, the work of MTS has contributed significantly towards the normalisation and presence of te reo Māori in New Zealand society. Despite the growing interest in the Māori language, it remains under threat. It is valued – but not yet popular in usage. It remains a minority language broadcast on two niche channels.

Its continued existence depends upon the creation of many thousands of new speakers. The 2006 Survey of the Health of the Māori Language found that there are only approximately 18,000 people who have moderate to high proficiency⁴ compared to 70,000 native and fluent speakers recorded in 1975.⁵ Overall, there are approximately 150,000 Māori and 30,000 Pākehā who have some understanding of the language.⁶

These statistics suggest that we might not have arrested the total decline of te reo Māori. It is too soon to know. We have not yet achieved the critical mass of fluency that will ensure the language's life. The careful work to regenerate the Māori language to a position of good health in our society remains.

Specifically:

- The process of **normalisation** of te reo must continue. We must speak and hear it, write it and read it, in all the normal places and scenarios where we use language. It must remain part of the soundtrack and ambience of our modern lives.⁷
- The **maturation** of te reo must be nurtured. We should constantly secure, develop and mature its linguistic integrity and contemporary relevance. The intellectual, emotional and spiritual capacities of the language must reflect the personality of the people.

⁴ This is based on 14% of Māori adults who could speak Māori 'well or very well'. Health of the Māori Language Survey 2006, 19.

⁵ Benton, R, Survey of the Māori Language.

⁶ Te Puni Kōkiri, Health of the Māori Language Survey, 2006, 18.

⁷ Te Puni Kōkiri, Māori Language Strategy 2003, 21.

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- The **transmission** of te reo must be consolidated. It is of paramount importance to pass the language on. The responsibility to do so begins in the home.⁸ It continues through life. It ends at the grave.

Television contributes to all of these imperatives by providing examples of what can be said: viewers can acquire the words to utter by what they hear on any multi-media platforms in the Māori language.⁹

We live in a telemedia-fixated world. Screens of all sizes inform us, entertain us, and keep us in touch with each other. Yet the hunger for stories that we experience on our television sets continues unabated. The most recent research indicates that in 2008 more New Zealanders watched more television than at any time since records began.¹⁰

It is an ironic trend that despite the extra services and platforms that are currently available to viewers, their interest in traditional television services has increased. For now, television remains dominant.

But MTS itself is in a period of change. It is no longer a 'start-up' venture and requires an amended legislative framework to support successful operations in an uncertain future.

In MTS, New Zealand possesses a broadcaster of quality and influence. This passionate indigenous television service has met myriad expectations and silenced most trenchant and casual critics.

Despite a troubled gestation, MTS has garnered critical praise and popular appeal since its launch on 28 March 2004.

The MTS has had to both invent itself and forge a pathway through an expensive and competitive broadcasting industry. It has made demonstrable progress. New Zealand now possesses a well-developed indigenous television industry. Māori operate at every level within broadcasting: from conception to production to transmission.

It has achieved this in the space of five years and for a total cost of approximately \$306 million.¹¹ About 1.5 million viewers tune into MTS at least once a month.¹²

Conventional wisdom suggests that, like most minority languages, the Māori language is not commercially viable – and that special funding provisions must be made for its presence in a prime-time television schedule.

8 Te Puni Kōkiri, Māori Language Strategy 2003, 17.

9 Hollings argues that the "existence of Māori language broadcasting legitimises Māori language in a sphere of modernity". Hollings, M, *Māori Language Broadcasting Panacea or Pipe Dream*, in Bell, Harlow, Sparks (eds): *Languages of New Zealand*. Wellington: Victoria University.

10 In 2008 the average New Zealander viewed television for 3 hours and 8 minutes each day, up 8.6% over 2007. Not only did each viewer watch more television, but there were also more viewers. 3,924,400 people watched television last year, compared to 3,824,600 in 2007. On average, 35.6% of the entire population (5+) watched television during the peak viewing period of 6pm to 10:30pm, an increase of 4.7% over 2007. On average, 2,452,600 people tuned in to television at some point each evening. This was up from 2,360,400 in 2007, *AGB Nielsen Media Research, Onfilm Update*.

11 This figure comprises: 1) total contestable funding approved for MTS commissioned programming since 2000/01 (source: Te Māngai Pāho); 2) direct funding to MTS for in-house programming and acquisitions since (source: Te Māngai Pāho); 3) direct Crown funding to MTS (Source: MTS Annual Reports); and 4) total contestable funding approved by NZ on Air where MTS is either the broadcaster or production company (source: NZ On Air Annual Reports).

12 Māori Television Service Annual Report 2008.

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The Government supports MTS with direct funding and the contestable funds that are available through agencies like Te Māngai Pāho and New Zealand On Air. There is inevitable tension between the broadcaster and the funding agencies where the mix of language and television goals can be compromised by the demands of each other.

Conventional wisdom also suggests that a medium like Māori television will only survive if what is on offer to the viewer has popular appeal. Any television entity (even a public service one) operates in a commercial environment. Broadcasting is an expensive business and attaches value to anything that generates revenue.

Any Māori venture requires the interest, involvement and mandate of iwi Māori themselves. The Electoral College, Te Pūtahi Paoho, has played a critical role in the establishment and monitoring of MTS. It is time however to review their partnering arrangements with the Crown.

In addition to commitment to the preservation, protection and promotion of te reo Māori, the requirements of the Act are best serviced by a body that has recourse to skills which include those of: governance, wider industry experience and business. Representation should also include both iwi and pan-Māori perspectives.

There is no doubt that the Māori language has an increasingly positive profile with the public but this alone will not lead to its survival. Language transmission occurs with dedicated instruction between elder and younger generations, and active usage between peers.¹³

The future of our mokopuna lies in a new digital world created from impressive new technology, and ever accelerating rates of change. It will transform the way we live. The impact on all people of the planet will be as profound as the discovery of electricity or of the combustion engine.

It will be prudent for Māori to be prescient about the new broadcasting era if we are to secure our presence within it. We are compelled to think beyond the short and medium term and to prepare for whatever consolidation and resources may be required to take the best advantage of that new world.

¹³ Te Puni Kōkiri, Māori Language Strategy 2003, 21.

FOCUS

Terms of Reference:

The review will consider the focus of MTS on the Māori language and culture, including, inter alia: the role of MTS in promoting the Māori language and culture; the interface between MTS and other Māori language and culture agencies; and the level of specificity around these issues in the Act under Section 8(2).

Panel Comment

The panel believes that the very nature of the broadcasting work of MTS comprises a significant service to Māori language regeneration. Television is an influential medium that has the power to shape people's thinking and attitudes.

The review acknowledges the role of MTS to address its primary function of Section 8 of the Act by promoting the Māori language and culture with its programming schedule. However, given the many concerns received from stakeholders about the quality of Māori language on air, the panel makes recommendations to Section 8 of the Act that not only promote the language, but also preserve and protect the authenticity of the language.

The panel is aware that language revival is not the responsibility of MTS alone, and that the interface with other Māori language and culture agencies is just as critical when addressing matters that concern te reo Māori. Recommendations that consider the interface of MTS with other agencies are addressed later in this report under the Section on 'Quality'.

Stakeholder Feedback

"There needs to be higher standards regarding the language. There should be an increase in the number of Māori language presenters as well as a standard proficiency testing of presenters. There is a high percentage of cheap Māori language programming which affects the way you ingest it – it makes the language unattractive. The measurement of language quantum levels should be infused with the measurement of the quality of the language". (stakeholder submission)

Promotion Alone Is Not Enough

Te reo Māori has official recognition in law to exist.¹⁴ The MTS Act is the first instance where there is a statutory duty to use the language. As yet there are no standards for assessing expected language outputs – beyond the mechanical measurement of words and minutes and ratings.

The panel gave considerable attention to the wording and intents of Section 8 and how this Section might better reflect the intentions of the Act. At present there is a disconnect between the purpose of the Act and the functions that the Act sets out for the Service.

The functions of the Act lean more towards the promotion of the Māori language. Two other important aims, set out in the Act Preamble, are missing: preservation and protection. The purpose of Section 3 of the Act recognises that the Crown and Māori together have an obligation under the Treaty of Waitangi to "preserve, protect and promote te reo Māori". This is absent from Section 8.

¹⁴ Section 3, Māori Language Act 1987.

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This is an oversight that should be addressed. As one stakeholder said "The role of the Māori Television Service is therefore two-fold: to 'protect' and 'promote' the Māori language and culture. One role should not be at the detriment of the other".

To promote the language is one thing, and is achieved remarkably well by televising it. Preservation and protection of the language are two separate issues that both speak to keeping te reo Māori safe.

To preserve the language means to guard against linguistic deterioration. It also gives cause for the establishment of archive facilities. To protect the language means to safeguard its intellectual, emotional and spiritual qualities.

To be compelled to consider the language with the aims of preservation and protection also gives clarity towards what constitutes 'quality' Māori language. This should result in the formulation of appropriate standards of language assessment.

To achieve these results economically and efficiently will require greater co-operation and alignment between Māori language agencies. One way to meet this goal will be the creation of a central Māori language broadcasting plan for the broadcasting industry. The need for this is discussed further under the Section on 'Quality'.

Recommendation 1

We recommend that an amendment is made to Section 8(1) to include the words 'preserve, protect and' before the word 'promote'.

A Matter of Translation

Section 6 of the Act (Interpretation) refers to te reo Māori as meaning the Māori language. This translation is not wrong, merely incomplete. Reo also means 'voice'. Therefore to preserve, protect and promote the Māori voice (and not just the language) more fully defines Māori aspirations for this taonga.

The voice of a people (and that of the individual) implies far more than the fact of their uttered or written or body language. It refers to their need to express themselves and their world-view according to their ability.

We believe that the next steps in the revitalisation of te reo Māori require us to dwell less on the fact of a language, and more on the way we use language, and why. This includes the language needs of the tribes and all the diverse voices of Māoridom. It also includes any New Zealanders who have their own language aspirations and find personal value in speaking te reo.

It is a common feature of the Māori world that non-speakers of the Māori language will defer a degree of authority to those who are fluent in the language. Whether it is warranted or not, the act of deferral is often done in ways that diminish the mana or the self-esteem of the monolingual Māori. This has damaged the psyche of the people.

The tyranny of language is that when you don't speak it, it can rob you of your voice.

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To preserve, protect and promote the voice of the people speaks not just to cultural needs and desires – but to democracy. Every person has a voice and a right to be heard – in the language of their choosing.

Recommendation 2

We recommend that the interpretation of te reo Māori in Section 6 is amended to read 'The language and voice of the Māori people'.

How Māori is Māori?

Despite the success of MTS, we must be cautious. We must be careful that in the pursuit of saving the language, we do not miss the point – and lose our voice. Appealing to many people beyond the Māori audience can dilute the 'Māoriness of the message'.

While we work to preserve the way we speak, the greater challenge is to protect the way we think. We suggest that a definition of 'quality language' is that which is correct in articulation and appropriate in expression.

The panel heard many stakeholder requests for MTS to exhibit more responsibility about the quality of te reo that it broadcasts. Language experts fear that MTS unwittingly entrenches and normalises incorrect Māori language, rather than offer quality language for the benefit of Māori language learners and others.

Stakeholder concerns include:

- Insufficient amount of Māori language programming
- Poor quality of Māori language used in some programmes
- Inadequate language proficiency of some on-air presenters
- Recurring grammatical mistakes by some journalists and narrators.

The Act calls for a 'high quality' television service. This implies that there will be set standards for elements that constitute quality in broadcasting. The Act however offers no definition or guidance on the quality of the language required in MTS broadcasting. We believe the legislative intent to protect the language means securing not just the existence of the language, but its unique character.

Those who criticise incorrect language are most concerned that a continued decline in standards will lead to a dilution of the 'Māoriness' of the language. This concern is expressed by many stakeholders who feel that the mana accorded the Te Reo channel is compromised by a lack of regard and resource. The tuakana tongue is being afforded junior sibling status.

The poem that commences this report is an extract from a work written by the late Sir James Hēnare.¹⁵ It was his tribute to the Kōhanga Reo movement and the survival of our native tongue. He makes a point that "words are the clothing of our thoughts".

¹⁵ An interpretation of the poem is provided in Appendix 8.

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This single phrase points to one of the dilemmas that face all who are engaged in the revitalisation of the language – that the Māori words we speak should reflect a Māori way of thinking. The well meaning attempts to preserve Māori grammar and vocabulary will come to nought if the language that we vocalise reflects English thought processes instead.

The panel believes that the unique value of the Māori language is in danger of being diminished, perhaps fatally, by foreign thinking. One of the disturbing features of the modern Māori spoken by many learners of the language is that in syntax and idiom it sounds like Māori but feels like English. This could be perceived as a virtual colonisation of the Māori mind. Grammar is the soul of a language and the words its bones and flesh.

The following example makes the point. It is a language construction that is in all too frequent use and refers to people who were once students of a particular school (or indeed, a former member of any entity):

"He tauira tawhito" – A former student (literally: an 'old' student).

The word 'tawhito' means old but in Māori is more properly made with reference to objects than to people. A better and more 'Māori' translation would be:

"He tauira o mua" – A former student. (literally: a student of days gone by)

'Mua' is a word that connotes both the past and 'that which is in front of something'. The Western view of the continuum of time is one where we advance face forwards into the future. On the other hand, the Māori view of time is that our future is behind us and that we walk into that future backwards. In other words our past is always in front of us.

To lose these insights into our singular Māori thought processes would be a tragedy.

The most recent census data indicates a drop in the percentage of Māori adults fluent in the language. It shows that few Māori households have enough language proficiency in the home to reinforce the intergenerational transmission of the language.¹⁶ Especially vulnerable are our children and grandchildren who attend kōhanga reo and total immersion schools. Māori language broadcasting in the shape of radio and television provides the only sources of te reo within many Māori homes. If the standard of te reo is low in any medium, our tamariki's grasp of the language is immediately compromised.

Recommendation 3

We recommend that a definition of quality language: 'language that is correct in articulation and appropriate in expression' is included in Section 6.

Prime-Time

Section 8 of the Act stipulates that MTS should broadcast the bulk of its Māori language programming at prime-time. There have been divergent views between stakeholders and MTS about what constitutes the hours of prime-time. At present MTS regards 6.00pm – 10.30pm as the hours of prime-time, i.e. peak viewing time.

¹⁶ Te Puni Kōkiri, Health of the Māori Language Survey 2006, 25.

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The panel understands that a multi-platform environment will provide viewers with more viewing options. They will be able to watch whatever television they want to whenever they wish to. The notion of prime-time will eventually diminish in importance.¹⁷

It is the view of the panel that the concept of prime-time will become irrelevant and that it does not require definition or prescription in the legislation.

Recommendation 4

We recommend that all references to prime-time in the Act are removed (s6, 8 2(a), & s29 (1) (g) refers).

A Question of Quantum

The Act specifies that a "substantial proportion"¹⁸ of programming for the Service be in te reo Māori, and that in the prime-time hours the broadcasts be "mainly" in te reo. The Act does not define "substantial" and "mainly". The Panel was advised that for monitoring purposes, substantial means a minimum of 25% and mainly means a minimum of 50% of te reo.¹⁹

The panel agrees with many review participants that a reasonable quantum of Māori language to be broadcast should be clearly defined. We also wish to ensure that MTS has flexibility to make strategic programming decisions that may or may not always include language imperatives. We consider this flexibility is worthwhile to enable them to fortify their ultimate commitment to te reo. We believe that no less than 50% of the total material broadcast across MTS's platforms should be in te reo. Further, that this quantum should increase over time.

Recommendation 5

We recommend that an amendment is made to the Act that requires MTS to broadcast an aggregated minimum of 50% of te reo Māori across all their platforms and channels.

Who is The Audience?

To broadcast a minority language to a general viewing audience makes for contrasting imperatives. The wider general audience does not speak Māori. For strategic reasons MTS has had to appeal to mainstream audiences. Two thirds of the regular audience are in fact Pākehā.²⁰

The principal function of MTS as expressed by Section 8 is to deliver Māori language outcomes through the "provision of a high quality, cost-effective Māori television service, in both Māori and English, that informs, educates, and entertains a broad viewing audience, and, in doing so, enriches New Zealand's society, culture, and heritage".

The needs of a broad viewing audience are different from those of a niche Māori speaking audience and can be in conflict. To reconcile the varying expectations of respective and potential audiences is a typical challenge faced by all television broadcasters. But Māori

¹⁷ It was noted in stakeholder discussions with the Ministry for Culture and Heritage that prime-time will still be relevant for the next 5 years.

¹⁸ The panel were advised by Te Puni Kōkiri that substantial means a minimum of 25% te reo Māori content.

¹⁹ The Panel were advised by Te Puni Kōkiri regarding the minimum language quanta requirement.

²⁰ http://www.nzherald.co.nz/Māori-television/news/article.cfm?o_id=369&objectid=10461867

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television's situation is unique. It cannot be encouraged to dilute its Māoriness by deferring to the Pākehā mainstream.

The MTS can best serve all New Zealanders by first serving the Māori audience: those who speak Māori and those who speak English. This will still enable MTS to adhere to its successful philosophy of inclusion.²¹

Recommendation 6

We recommend that the words 'a broad viewing audience' are removed from Section 8(1) of the Act.

The Fluent Audience

A great deal of Māori language television is produced for those who are learning and acquiring the language. Necessarily so. There is less television however that features the language of the fully fluent.²²

To specify the needs of the native speakers of te reo is important. They provide a vital linguistic barometer that assists the preservation and protection of the unique character of the language.

Beginning and intermediate learners of the language must be catered for – as must those with a higher calibre of language aspiration and proficiency. This includes growing numbers of immersion education graduates.

Recommendation 7

We recommend that words 'native speakers and speakers with a high level of proficiency in te reo Māori' are included in Section 8(2)(c)(iii) of the Act and that the words 'young people' are included in Section 8(2)(c)(i) of the Act.

Moving On

Section 8(3) of the Act refers to "fostering development of the broadcasting capacity of the Service through appropriate training and education".

It is the view of the panel that this clause was suitable for the start-up phase of MTS but that it is now redundant. The MTS is well established and has been functioning for five years. Training and education is part of MTS 'business as usual' and does not require this legal mandate.

Recommendation 8

We recommend that Section 8(3) is removed.

Indices of Success – Focus

- By exposure to high quality broadcast content the usage of correct and appropriate Māori language grows amongst viewers.

²¹ Mā tātou – for everyone.

²² A key stakeholder submitted that 'native speakers' should be included as one of the target audiences referred to in Section 8 (2).

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- Te reo Māori and tikanga Māori are deemed to be normal practice in niche and mainstream broadcasting functions and practices.
- The MTS maintains its Māori identity and character.
- There is legislative synergy between the MTS and other agencies of Māori language and culture.

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ACCESS

Terms of Reference:

The review will consider the nature of MTS's broadcasting platform, including, inter alia: the UHF Right (s21–24 refers); the convergence of broadcasting technology and other electronic media; the advent of digital television, including the establishment of the Freeview Group; and the establishment of MTS as a multi-channel broadcaster (s9 refers; cf Broadcasting Amendment Bill 2007).

Panel Comment

The TKOM panel believes in equality of opportunity, and that Māori have an inalienable right to a fully functioning presence in any New Zealand broadcasting technology or system.

This Act established the Māori Television Service. Subsequently, MTS became an associate of the Freeview Group of broadcasters for free to air digital television. Now, MTS has two channels including the Te Reo channel on the digital Sky platform. And with the recent launch of their new website MTS offers viewers access to programmes over the internet.

The MTS has kept abreast of the changing face of the multi-media landscape but the Act does not fully cover MTS in this regard. The panel makes recommendations that reflect these recent changes, and which will also futureproof MTS's place in a converged world of broadcasting and electronic media.

Underpinning these recent changes are the UHF management rights due for renewal in 2013. The panel makes recommendations to bring the terms of this lease in alignment with those of Television New Zealand. Furthermore the panel makes recommendations to secure the ownership of the UHF rights.

Stakeholder Feedback

"The Act should enable MTS to engage in other services, as the Board sees fit, to ensure the economic and business sustainability of the organisation. An overly constrictive legislative regime is not in the nature of best interests of a true Treaty partnership. The notion that MTS is 'owned' by the Crown is problematic for Māori, as MTS is an outcome of a Treaty grievance. The Crown would not think of meddling in tribal settlements, to the extent that it does in generic settlements. Thus, the funding of MTS should not be seen by the Crown and its agencies as 'government funding', but as a Treaty grievance recompense, with the Crown's investment in that recompense being protected by the Crown appointments on the MTS Board". (public submission)

Act Name Change

In light of the fundamental changes that are affecting New Zealand's broadcasting industry, as well as the inevitable convergence of all types of media, it is timely to alter the title of the Act. The work of MTS will continue to have a primary transmission on television, but there will be a time when all their programmes will be available on other screens: from the computer to the mobile phone.

It is important that the Act title reflects the multi-platform broadcasting opportunities for Māori Television to carry out its primary functions.

Recommendation 9

We recommend that the title of the Act is amended to reflect the multi-platform broadcasting responsibilities and opportunities for MTS.

Multi-Media Platform Broadcasting

While appropriate at the time of drafting, Section 8(2)(d) does not specifically provide approval for MTS to operate on all multi-media platforms. The panel therefore seeks clarification on this point through the inclusion of confirmation in Section 8(2)(d) that MTS has access to operate on all multi-media platforms in order to preserve, protect and promote the language. The following recommendation is in line with the Broadcasting Amendment Act 2008 which enables New Zealand On Air and Te Māngai Pāho to fund types of content, archiving, and transmission that are likely to be integral to digital radio and television platforms. In addition, MTS is one of the broadcasters that established Freeview, New Zealand's free-to-air digital television and radio service.

Recommendation 10

We recommend the Act is amended to affirm that the Service is given mandate to broadcast on all multi-media platforms (s8(2)(d) refers).

Retention of UHF Spectrum

The MTS currently has a management right over Block 3 (which is comprised of four channels of UHF spectrum) until 2013.

An arrangement has been entered into with SKY where MTS has agreed not to transmit over a channel or frequency (TV 36) to avoid a major interference problem with SKY set-top boxes. As advised by SKY TV, this problem has subsequently largely been solved with the use of audio/video leads.

The arrangement however also provides access for MTS to SKY's UHF frequencies (previously used for the CNN network). This access enabled MTS to begin broadcasting more quickly at inception, at lower cost than under other options and to a much wider audience. This was because all transmission equipment was already in place, and MTS could broadcast under SKY's existing arrangements with Kordia (then BCL) rather than use the more expensive digital terrestrial facility.

Other channels or frequencies provide in-fill coverage in areas where Sky service is not available. Examples are Channel 35 in Timaru, Channel 36 in Gisborne and the Far North, Channel 37 in Nelson and Channel 38 in Gisborne, the Far North and Taumarunui.

The Ministry of Economic Development verbally advised the panel that in their view, the right is not utilised enough, and is not an appropriate use of the allocation. The Ministry pointed out that the spectrum or frequencies are limited in number and that there is significant demand for access to them through the lease arrangements offered to users by the Crown through the Ministry. Ministry officials expressed the opinion that if MTS is not using all the licensed frequency to broadcast MTS programming by 2013, it should revert back to the Crown for Ministry reallocation.

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Despite the fact of the Treaty settlement to ensure the preservation, protection and promotion of Māori language as a taonga, the panel believes that there is an unacceptable risk that MTS may have their spectrum allocation reduced.

The panel supports the MTS's retention of the current management rights to preserve the ongoing ability of the Service to broadcast its programming and to benefit (in time) from conversion of UHF to digital frequencies in order to preserve, protect and promote the Māori language.

As referred to in the public submission noted earlier, the establishment of MTS is the outcome of a Treaty grievance settlement. Settlement of tribal grievances has resulted in many cases of transferral of outright ownership. This provides support for the panel's belief that the Crown should transfer 'freehold' ownership of the spectrum to TPP.

The panel recognises that with the control of assets comes even greater responsibility to stakeholders. A more comprehensive approach to governance will reflect a greater capacity to secure the cultural objectives and explore the opportunities offered by a new telemedia world to preserve, protect and promote te reo Māori me ngā tikanga. Governance is addressed later in this report under 'General Issues'.

Recommendation 11

We recommend that the four channels of the UHF right (s21 refers) are retained by the Service regardless of changes made to re-package spectrum after Digital Switch Over.

To Generate Revenue with UHF

In order for MTS to achieve the functions of the Act, the panel believes that the management rights governed by the license agreement with the Ministry of Economic Development should remain available to MTS. This will provide certainty for MTS business planning and potential opportunity to supplement Crown income through other uses of the UHF channels.

Recommendation 12

We recommend that Part 2, Subpart 2 of the Act is amended to enable the UHF right to be used to generate revenue that would directly benefit the Service in carrying out its primary functions.

Transfer of UHF Right

Te Pūtahi Paoho considers, and the panel agrees that these provisions should be amended to provide a further option for the transfer of the UHF frequencies to other users with more flexibility for the use of the frequencies. The Panel supports the proposition of more flexibility for the use of the frequencies in line with recommendation 12.

Recommendation 13

We recommend that Section 24(1)(a) is amended to enable Te Pūtahi Paoho to transfer the UHF right to an appropriate user as well as a television broadcaster.

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Right in Perpetuity

In order to future-proof the Crown's obligations to protect, promote and preserve the Māori language and culture, the panel recommends that the ownership of the UHF right is transferred in perpetuity from the Crown to TPP.

Recommendation 14

We recommend that the UHF asset is transferred in perpetuity from the Crown to TPP.

UHF Right Renewal for 20 Years

The panel holds the view that the term of the UHF right given by the Crown to TPP should be in line with the normal management rights issued for 20 years under the Radio Communications Act 1989 (s36(g)(i)) and no less favourable than the VHF license right term given to state broadcaster TVNZ (i.e. 20 years), with effect from 2013.

Recommendation 15

Without prejudice to recommendation 14, we recommend that the UHF management right given by the Crown to TPP is renewed for 20 years on expiry of the current licence agreement in 2013.

Indices of Success – Access

- There is always a secure Māori presence in the New Zealand broadcasting, telecommunications and internet industries.
- The MTS is able to transmit on terms no less favorable than those of other broadcasters.
- Māori Television broadcasting is accessible to all.



QUALITY

Terms of Reference:

The review will consider various aspects of the legislative framework that impact on the ability of MTS to provide high quality, cost effective services, including, inter alia: accountability documents (s25-44 refer); editorial independence (s10 refers); performance measurement arrangements; and funding mechanisms and quanta (s26 refers; cf Broadcasting Act 1989 s53).

Panel Comment

Te Kāhui o Māhutonga is aware of the responsibility of accounting for the expenditure of public funds and protecting the creative and editorial integrity of MTS's broadcast content. The panel takes the view that 'high quality' as outlined in the Act refers to the achievement of a superior standard in any activity. Further, that MTS has an effective duty to be an exemplar of te reo.

In order to achieve this, the panel makes recommendations to amend the Act in ways that will alleviate any uncertainty around the MTS's ability to create an appropriate programming schedule. These recommendations will address some of the pressure that currently exists for MTS as it seeks funding from Te Māngai Pāho.

Consequently, this will allow the programmers, schedulers and commissioners more time to plan for a programming schedule that will lead to a high quality, cost-effective service. An added yet intrinsic element is the opportunity to create a Māori Language Plan that dovetails into the programming schedule. This will support a Māori language television schedule that meets the linguistic and broadcasting needs of MTS's target audiences.

Stakeholder Feedback

"Māori language and culture is Māori TV's mandate from Māori, that is the reason Māori pushed through protests, court cases for a Māori television channel. Māori Television exists because of the dire need for Māori language and culture to be on air, to be in our homes and to be there in our homes to be part of us Māori. Māori TV is not there to appeal to 'all New Zealanders'. All New Zealanders have TVNZ and all the other mainstream channels available. We Māori only have MTS and the neglected appendage Te Reo channel". (on-line submission)

Accountability and the Crown Entities Act 2004

The Māori Television Service Act 2003, the 'enabling' Act for the Service, was followed in 2004 by the Crown Entities Act. The purpose of the Crown Entities Act is to provide "a consistent framework for the establishment, governance, and operation of Crown Entities...". The panel acknowledges that MTS is not a Crown Entity but sees benefit in increased alignment with some of the best practice requirements in the later Act with its focus on improving governance and accountability.

For example, in the interests of transparency, s151(1)(f) of the Crown Entities Act requires disclosure in the annual report of any direction given to the entity in writing by the Minister. For transparency, the same requirement can be applied where the responsible Ministers and the Chair of TPP give MTS a direction in writing. Other specific amendments giving effect to this recommendation are set out in Appendix 1.



Recommendation 16

We recommend that amendments as set out in Appendix 1 are made to the Act to align with the Crown Entities Act 2004 and governance best practice.

The Cost of Quality

Certainty of funding has a major influence on the capacity of any broadcasting service's activities. We believe that long term surety of funding is preferable to the short time frames by which the industry receives the financial resources it needs to drive itself.

Annually, MTS receives \$16.5M from Vote Māori Affairs. It receives a further \$16.1M from Te Māngai Pāho for in-house productions. Te Māngai Pāho also makes approximately \$20M of contestable funds available for the independent production community to make programmes for primary screening on MTS.²³

Notwithstanding the statutory obligations of MTS to deliver a specialised and innovative genre of high quality television, it does not have full authority over the choice and production of the majority of its local content.

As stated in the Brief to Incoming Ministers from MTS, "this current funding model significantly limits Māori Television's ability to undertake and implement long term strategic planning and development."²⁴

In five years MTS has moved from the start-up phase to an established position as a sophisticated multi-channel broadcaster with a promising multi-platform future. In the process they have helped to develop a production community with an increasing capacity to deliver high quality television materials.

Te Māngai Pāho and MTS have complementary yet contrasting imperatives. At present MTS is charged under Section 8 with broadcasting material to a broad viewing audience. Te Māngai Pāho's primary responsibility, on the other hand, is to fund programming that reflects the Māori language and culture, although there is provision for the funding of English language programming about Māori culture.

Te Kāhui o Māhūtonga believes that the notion of contestable funding is vital for the solid growth of the Māori broadcasting sector. TKOM also believes it is not in the interests of the quantitative and qualitative development of the Māori production community and broadcasting sector for there to be full direct funding of the Service. MTS cannot become a monopoly supplier. Other broadcasters (TVNZ, TV3 inter alia) also have their own expectations of how TMP may support their own Māori schedule content.

The panel believes that a better and more assured balance between direct and contestable funding must be found. To assist with the long term planning of both MTS and TMP, TKOM believes that a legislative extension of the direct annual appropriation from one to three years is warranted.

²³ Māori Television Service Brief to Incoming Ministers, October 2008, 7.

²⁴ Māori Television Service Brief to Incoming Ministers, October 2008.

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Recommendation 17

We recommend that Sections 26 and 28 are amended to reflect accountability by MTS for direct funding on a three yearly basis for the commissioning of programmes and internal production.

Recommendation 18

Notwithstanding recommendation 17 we recommend that the funding structures for Māori broadcasting be reviewed to streamline an approach that enhances MTS's primary responsibility to provide quality Māori language television.

Māori Television Service Language Plan

The principal issue that remains to be addressed in terms of the 'quality' MTS aspires to, and provides, is the Māori language. This is the issue upon which MTS was founded, and functions.

Te Kāhui o Māhūtonga believes the legislation can better ensure the achievement of its stated language goals by requiring high quality policy and planning that enables more alignment and unity of purpose amongst the broadcasters, funders, Māori language agencies and the production community.

The MTS's Māori language plan is one part of their wider television strategy to sustain and grow MTS in a highly competitive environment. Their long term language objective is to "...significantly contribute to te reo and tikanga (sic) Māori being increasingly valued, embraced and spoken".²⁵

The plan itself is a guide to the MTS's own language standards that apply to all programming with Māori language content. It is clear and in step with other Māori language stakeholders. It also sets out the percentage of Māori language content MTS aims to achieve. The plan indicates how MTS will measure the quality and quantity of Māori language content as well as adhere to the orthographic conventions of the Māori Language Commission, and tikanga based cultural mores.

The plan outlines the Māori language standards that MTS expects to be achieved for both in-house and commissioned programmes. It achieves the primary function of Section 8 of the Act to promote the language. However, the application of the current quality standard measures has failed to prevent mistakes on air.

Te Kāhui o Māhūtonga believes that no matter how well the plan has served MTS to date, it needs to now aspire to a different and more vigorous level of language revitalisation and protection.

In June 1997, Te Puni Kōkiri's policy for Māori language planning included three important linguistic components that are not present in the current Māori language plan of MTS:

Māori Language Acquisition

- To what extent does the language planning of the MTS assist in the acquisition of language?

²⁵ Māori Television Service, Brief to Incoming Ministers, October 2008, 9.

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- Which genres of programmes are commissioned to extend the language of various linguistic domains?
- To what extent (for example) does a cooking show use the language of quantity and volume to assist Māori language learners and native speakers with metric measurements?

Māori Language Corpus

- What types of language are being used to extend the creation of new words? It is vital to use idiom that keeps abreast of the changing world of our young people so that revitalisation and regeneration of the language occurs in these age groups.

Māori Language Status

- What is the status of te reo Māori within the working environment of the Service?
- How is the sense of that status reflected on-air?
- How does MTS reflect, resonate with, or lead a society that is extending its linguistic domains?

The panel concludes that MTS, in its establishment phase, has addressed these language imperatives more by default than design. Language planning is specialised work that requires dedicated resources.

One submission to TKOM asserts that:

Language revitalisation and regeneration theory stipulates that (promotional) activities need to target outcomes for all of the following five areas:

- language acquisition
- language usage
- language status
- critical awareness of Māori language issues
- language (lexicon) developments.

In the MTS's Statement of Intent 2008 – 2009, it states that both channels support the goals of the Māori Language Strategy by broadcasting te reo Māori to 'strengthen language use' which is Goal 2 of the Māori Language Strategy.²⁶ The plan aims to meet this goal by broadcasting levels of te reo Māori suitable for a wide audience, including tamariki, rangatahi, and pakeke.

²⁶ Māori Television Service Statement of Intent 2008-09, 7.

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Neither the Māori language plan, nor the Statement of Intent defines how this is to be achieved. The mere act of broadcasting does not 'strengthen' a language. To meet this goal also means 'protection' of the language by:

- Addressing the concerns of specific language domains
- Catering for the specific language needs of specific audiences
- Regeneration and revitalisation of vocabulary and idiom
- Elimination of recurring grammatical errors on air
- Considered development of both conversational and formal language
- Exemplification of karanga, mōteatea, whaikōrero, pao
- Intention to refresh tribal dialects
- Adherence of MTS staff to a Māori speaking culture
- Creating tikanga based broadcasting that reflects Māori tribal customs.

The panel believes MTS should craft a more comprehensive and linguistically secure language plan. This would necessitate the creation of stand-alone implementation plans and outcomes for the Statement of Intent.

Central Māori Language Broadcasting Plan

The Māori Television Service does not work in isolation with its efforts on behalf of te reo Māori.

There are many entities in the broadcasting industry with their own Māori language strategies. These frameworks endeavor to align with the government's overarching Māori Language Strategy. For the most part the overall aims and objectives of these plans are similar. But there are enough differences in substance and execution which give rise to the likely benefits of a central over-arching Māori language plan for broadcasting. A more streamlined approach will enable better focus and application on issues of common interest.

Such a central Māori broadcasting language plan could be:

- Cognisant of the goals set out in the Government's Māori language strategy monitored by Te Puni Kōkiri
- Cognisant of the Māori language focus of the Te Māngai Pāho funding framework
- Synchronous with the Māori language quality standards of the Māori Language Commission

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- Socialised among the CEOs of the participating organisations
- Managed externally by a group made up of Māori language stakeholders
- Monitored and measured by Te Puni Kōkiri, with quality assessments overseen by the Māori Language Commission.

The panel believes that without such a plan, issues of quality will continue to frustrate MTS and dilute the intent of Section 8 of the Act. It may be of benefit to transmit fewer Māori language programmes of higher quality, than a greater number of a lower linguistic level.

To consolidate an industry-wide Māori vision for the language plan will not be an easy process, but we believe that such consolidation is important.

A report from the Controller and Auditor General in November 2007,²⁷ states the main challenges that agencies face in order to complete and implement their strategies for Māori language planning are:

- The respective agencies differ markedly in their legislative objectives and powers
- The differing roles within the Māori Language Strategy area for which each agency is responsible
- The varying extent of their focus on Māori language
- Wide differences in agency experience.

The most apparent challenge that faces the creation of a central Māori broadcasting language plan is that it may become a compliance exercise more than the establishment of an overarching and achievable vision. An unbundling of legislation, policy, practice and 'systemic thinking' may be needed.

Most agencies include strategy planning as part of their Statements of Intent. It would also be a good strategy to involve iwi interests in the formulation of a central language plan. Tribes are ever more media-literate. Some of them have strong views not just about the Māori language, but about the preservation, protection, and promotion of their own dialects.

It is the panel's view that the Statement of Intent of MTS should include specific requirement for provision of a Māori Language Plan that will operate alongside a comprehensive industry-wide Māori language broadcasting plan.

Recommendation 19

We recommend that Section 29 is amended to include the provision of a Māori language plan that aligns with an overarching Māori language broadcasting plan.

Indices of Success – Quality

- The delivery of a high quality and efficient Māori television service.

²⁷ <http://www.oag.govt.nz/2007/Māori-language-strategy/docs/oag-Māori-language-strategy.pdf>, 8.

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- The presence of te reo television that gives satisfaction to the Māori stakeholders and the public of New Zealand.
- An uncluttered system of compliance that defines and monitors professional standards of governance, policy, and parliamentary responsibility.



GENERAL ISSUES

Terms of Reference:

The review will consider general issues, including, inter alia: governance arrangements (s18-20, Schedule 2 refers); composition, roles and operations of Te Pūtahi Paoho (s12-17, Schedule 1 refers); and the employment arrangement of the chief executive (Schedule 2 refers).

Panel Comment

We believe that the Crown's relationship with TPP provides a significant example of Treaty partnership. It is the first of its kind. The panel believes that the paradigm of this partnership can be balanced and strengthened. To assist this, the panel recommends changes to the legislation to extend the powers of accountability of MTS to TPP. This will enable better synchronicity between TPP and their Crown partner.

The panel also highlights issues around the composition of TPP and makes recommendations for a better constituted body. This will eliminate potential conflicts of interest for those organisations whose members have business arrangements with MTS.

The panel does not recommend any changes to the employment arrangements of the CEO.

Stakeholder Feedback

"The current accountability provisions of the Act seem best suited to government accountabilities and reporting to appropriate ministries. The Māori partner needs to spend some time thinking how the Māori partner can be better accountable to Māori, which means Pūtahi Paoho need to reflect on it in Te Ao Māori who they are accountable [to], and disseminate some information out to Māori about their decision-making and processes".
(public submission)

A Better Partnership between Te Pūtahi Paoho and The Crown

Te Pūtahi Paoho partners with the Crown under the Act. Effective partnership comes from equivalent strengths and a spirit of cooperation. It recognises that both partners have mutual rights, interests and obligations.

The panel heard from several stakeholders who felt that TPP has been overlooked by both MTS and the Crown. In the words of one Māori industry practitioner: "We never forget that Te Pūtahi Paoho is an organic Māori organisation, not an instrument of the Crown". Another submission suggested the Act confined TPP to a "handmaiden role".

The panel believes that a secure relationship between the Crown and TPP should be reflected throughout the Act, particularly with regard to the receipt by TPP of the same accountability and monitoring information as the Crown. The panel has identified where amendments should be made to the Act in order to achieve more balanced reporting in this area.

The panel holds the view that partnership requires the agreement of both TPP and the responsible Ministers to the Output Agreement.

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Recommendation 20

We recommend that Section 38 of the Act is amended to enable both TPP and the responsible Ministers to agree to the Output Agreement.

Recommendation 21

We recommend that the words 'including quarterly reports on the monitoring of the Māori language qualitative and quantitative performance targets or measures by which the performance of the Service and its subsidiaries may be judged' be inserted in Section 15(d).

Te Kāhui o Māhutonga believes that this significant paradigm of partnership between an indigenous people and government demands closer attention and better resourcing. This joint responsibility must be fortified by a reconstitution of TPP itself.

In accordance with the review requirement to examine governance arrangements, and in order to achieve effective partnership, it is the panel's view that the Electoral College members should be fewer in number, with a range of specified skill sets, and with a clear commitment to the Māori language.

The panel acknowledges the contributions of the many individuals and groups whose sustained efforts resulted in the establishment of TPP and MTS. The panel holds the view that now the Service is established, the requirements for effective partnership demand a reconsideration of TPP member composition.

Schedule 1, clause 1 of the Act sets out the eleven organisations that may appoint one representative to TPP. It is the view of the panel that some of the organisations represent people who, by the nature of their activity, are generally conflicted in their business relationship with MTS and therefore should not be included in the Schedule 1 list. Their contribution may be accessible in other ways.

In the event that other list organisations enter into a business arrangement with MTS, the implementation of best practice around conflicts of interest requires that they should declare the interest and withdraw from TPP for the period that the business relationship exists.

Te Kāhui o Māhutonga believes that with a broadening of its competencies and expertise, increased powers and accountabilities will accrue to TPP.

Skills and attributes should include:

- Understanding of how the MTS, in carrying out its primary function preserves, protects and promotes the Māori language
- Iwi mandate, cultural clout, industry nous, an understanding of the workings of government, demonstrable commitment to te reo.

The panel believes that maximum and staggered terms for membership of TPP will ensure that new people and ideas refresh the Electoral College from time to time. The panel believes that a maximum term of eight years should be included in the Act. This will enable new TPP members time to 'come up to speed' and make a solid contribution. It also ensures that rotation continues, with fresh ideas, skills and enthusiasm.

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Recommendation 22

We recommend that the number of organisations who appoint a representative to TPP is reduced, and that conflicted organisations are removed from the Schedule 1 list of organisations.

Recommendation 23

We recommend that the following changes are made to Schedule 1 of the Act: namely that a range of specified skill sets are reflected by the composition of the Electoral College and are included in the Act, including: understanding of how Māori Television, in carrying out its primary function: preserves, protects and promotes the Māori language; iwi mandate; cultural knowledge; insight into government processes and governance; and demonstrable commitment to te reo Māori.

Recommendation 24

We recommend that the following changes are made to Schedule 1 of the Act: namely that a maximum term for membership of TPP is eight years.

Recommendation 25

We recommend that the composition of TPP is reviewed, in line with the MTS Act review frequency, every 5 years. The review would include:

- organisations who may appoint members
- the number of members
- member terms (i.e rotation)
- collective skills and expertise needed, including Māori language education, language revitalisation, governance, and iwi representation.

Growing the Business

The MTS is now out of its start-up phase and needs the capacity to grow and build its business. Therefore the panel believes that where MTS sees direct benefits to carrying out its primary function, MTS should be able to form or hold shares in a related entity up to prescribed levels without gaining the consent of the responsible Ministers and Chair of TPP.

It was apparent from review feedback that MTS has garnered respect and pride amongst many viewers because of the rich diet of programmes and the unique character of Māori television broadcasting. A lower level of commercials may be another reason for its popularity amongst a public who bemoan the level of advertising on other free-to-air networks. Consequently MTS is perceived by some as a high calibre public service broadcaster.²⁸

Notwithstanding this public service success to date, a degree of commercial positioning is something no broadcaster can ever ignore. The MTS neither needs (nor wants) prescriptive commercial imperatives in this next phase of sustainability. But it behooves MTS to stay afloat in difficult times. Survival requires the generation of income.

²⁸ One senior broadcasting industry figure said "MTS is held in universal affection".

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Economic Impact

An economic impact study has been conducted by Business and Economic Research Limited (BERL) to estimate the contribution of the MTS to the New Zealand economy.²⁹ The study has examined the initial, direct, indirect and induced impacts of MTS as a broadcaster, commissioner, purchaser and producer of programmes. Over the five years that MTS has been broadcasting, the impact on the New Zealand economy has increased. This impact can be seen in growth, employment opportunities, and an increased contribution to New Zealand's Gross Domestic Product (GDP).

While the day-to-day business of MTS extends across a range of industries, the sector showing the most significant level of economic contribution is television production. This is where the bulk of MTS's expenditure lies. The majority of programmes screened on MTS (87%) are made in New Zealand. In the 2007-2008 year 24% of MTS's programmes were commissioned from independent production companies, while 51% of programmes were produced in-house by MTS. 13% were acquired locally, with the remaining 12% being international acquisitions.

Employment and GDP

Each year since 2004 between 500-600 Full-Time Equivalent (FTE) jobs have resulted from the activities of MTS and the independent production industry. In their report dated March 2009, BERL notes that Gross expenditure of \$21.5 million by the MTS on programme production and acquisitions in the June 2008 year generated a direct impact of 166 FTE positions and contributed approximately \$12.7 million to New Zealand's Gross Domestic Product (GDP).

Including indirect and induced effects resulting from this economic activity, the total impact of the MTS in the June 2008 year was estimated to be:

- the employment of approximately 270 FTEs
- a contribution to New Zealand's GDP of \$21.5 million.

Te Māngai Pāho funds the production of independently made Māori language programmes. In the year to June 2008, the estimated total economic impact of Te Māngai Pāho funding \$19.7 million to production companies to produce programmes commissioned by MTS was estimated to be:

- the employment of approximately 300 FTEs
- a contribution to New Zealand's GDP of \$19.7 million.

The total economic impact of MTS and its associated production companies in the year to June 2008 was estimated to be:

- the employment of approximately 570 FTEs
- a contribution to New Zealand's GDP of \$41.2 million.

²⁹ <http://media.Māoritelevision.com/default.aspx?tabid=400&pid=1598>

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This total economic impact includes the direct, indirect and induced impact. The operations of MTS have created vocational opportunities across the technical, production, transmission, journalism, management, finance, marketing, communications and sales professions. Out of this activity has also come a new industry for Māori language practitioners. Their fluency is now a much-needed and much sought after skill. MTS has created an opportunity for investment in skilled speakers of te reo.

The advent of MTS and its subsequent requirement for local programming has seen the development of an industry that employs hundreds of people. MTS has given our people the opportunity to progress and build careers within the television broadcasting industry. Māori-owned production companies have been well established with opportunities to grow their existing businesses: for both niche and mainstream broadcasters.

Advertising and Sponsorship Revenue

The MTS has not yet attracted sizeable commercial funding in the form of advertising or sponsorship revenues. Private sector advertisers and sponsors need to have confidence about financial returns from their investment. Brown and Cave in their 1992 study³⁰ noted that advertisers prefer the marginal preferences of the many, over the strong preferences of the few. This has limited the commercial revenue opportunities for MTS to date. There is also little return to MTS from the merchandising of services and programme related products.

A New Confidence

Over the span of just one generation Māori have gained fruitful experience in production and management through to broadcasting governance, control and business. The portfolio of Māori skills has increased exponentially. The sense of confidence and pride engendered by the experience of Māori and others watching MTS is difficult to measure in economic terms. It is not beyond belief however that such consequential activities contribute to a foundation that supports active Māori engagement in the economy.

Commercial Aspects of Music and Māori Culture

The MTS provides a forum to promote and showcase Māori music and other aspects of culture. As well as the development of performers, artists and others, exposure in this forum can result in the development of producers, sound recorders, agents, managers and others associated with music and other aspects of Māori culture. There may also be income streams from a range of related sources, such as cultural tourism, the telecommunications sector, and royalties.

An Australian Action Plan to strengthen contemporary indigenous music states:

"New technologies for production, recording and distribution have improved opportunities to both produce and market music. Indigenous musicians increasingly use web-based and digital platforms such as MySpace and podcasts to create, promote and sell music. Skills developed in digital production, recording and distribution have a broad applicability and can be transferred to other online and digital technologies..."³¹

30 Brown, A. and Martin Cave (1992): The Economics of Television Regulation: A Survey with application to Australia. THE ECONOMIC RECORD Vol. 68, No. 202, December 1992, 377-395.

31 Section 8 - Enhancing Income Generation, Page 11, Indigenous Contemporary Action Plan - Towards a Stronger Contemporary Indigenous Music Sector 2008, produced by the Contemporary Music Development Working Group of Australia's Cultural Ministers Council.

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The panel notes that the Māori Broadcasting and e-Media Outcomes Framework³² supports the creation of economic opportunities through broadcasting. We too, agree that language and economic opportunities can be complementary.

Restrictions on Investment of Money and Borrowing

Under the MTS Act (Schedule 2 Part 3 clause 32 refers), MTS is restricted to investing money as specified in the clause. The MTS is also restricted from borrowing without the prior written consent of the Minister of Finance and the Chairperson of TPP. In recognition of the fact that MTS has gained maturity and moved through its establishment phase, the panel holds the opinion that MTS should have greater freedom to invest and borrow if MTS believes that there are direct benefits to carrying out its principal function under the Act. This capacity will enable MTS to enter business arrangements in a reasonable manner.

Recommendation 26

We recommend that amendments are made to Schedule 2, clauses 32 and 33 to enable MTS to invest or borrow up to five percent of net tangible assets without the approval of responsible Ministers and the Chairperson of TPP: if MTS believes that there are direct benefits to carrying out its principal function under Section 8 of the Act.

Indices of Success – General Issues

- The perpetuation of MTS governance through TPP that possesses demonstrable tribal mandate, cultural authority, commercial acumen, and industry nous.
- The ability for MTS to explore the commercial potential of television in order to achieve appropriate outcomes for te reo Māori me ngā tikanga.

32 <http://www.tpk.govt.nz/en/in-print/our-publications/fact-sheets/Māori-broadcasting-and-e-media/?s=6fd675ad-8ccc-4f21-91e2-e8524007545a>



OTHER MATTERS

Terms of Reference:

The independent panel may also consider other matters that it considers salient to the review, so long as these matters do not fall out-of-scope.

Panel Comment

Matters that were out of scope included MTS's operational matters: funding, scheduling, commissioning, production, transmission, and management inter alia. The remaining issues the panel considered are outlined below.

Stakeholder Feedback

"Given the commitment by the Crown to 'protect and promote the Māori language,' and Māori intentions to reverse Māori language shift, it is likely that the state of the Māori language will undergo rapid changes in the next 10 years. It is therefore important that any legislative instruments (i.e. Māori Language Act 1982, Māori Language Television Act 2003) are reviewed regularly to ensure they remain purposeful, efficient and reflective of Māori aspirations for the language". (On-line submission)

Further Reviews

The panel believes that such is the speed of development in broadcasting generally that it compels us to ensure that the legislation is pertinent to the times in which it operates.

Recommendation 27

We recommend an amendment to Section 56 for a review to be conducted every five years or earlier if significant changes in the broadcasting environment warrant a review of the Act. An earlier review would require the approval of the responsible Ministers and the Chairperson of TPP.

Recommendation 28

We recommend an amendment to Section 56(1)&(3) of the Act to allow the review of the Act to commence within the year a review is scheduled (5th, 10th, 15th year etcetera), and for the Ministers to present a report to the House of Representatives within one year of the review of the Act commencing.

The Crown Entities Act 2004

The panel indicates, where it deems appropriate, sections of the Crown Entities Act 2004 that should be incorporated to ensure that the Act is up to date regarding best practice governance and accountability requirements (see Appendix 1 for specific amendments).

Recommendation 29

We recommend that the Act stipulates that the Crown Entities Act 2004 does not apply to the MTS (which is not a Crown Entity).

Recommendation 30

We recommend that the specific changes be made to the Act according to Appendix 1 of this report.

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Historical Foundation

The panel is aware that the genesis of the MTS Act lies in the Treaty of Waitangi claims, which resulted in the recognition by the Crown of its obligation to preserve, protect and promote the Māori language. It is the view of the panel that this genesis warrants greater recognition in the Preamble of the Act through specific reference to Wai 150 and Wai 776. These claims and subsequent litigation helped provide a foundation for future business opportunities in the changing digital environment and ongoing Māori interests in spectrum.

Recommendation 31

We recommend that the Preamble of the Act is amended to include a specific reference to WAI 150 and WAI 776 in the context of the changing digital environment, and that reference is made to Māori interests in spectrum and Māori entitlement to opportunity.

Indices of Success – Other Matters

- The MTS legislation is regularly reviewed for relevance and efficiency.
- The MTS legislation is in alignment with relevant legislation.
- The MTS legislation enables full Māori broadcasting independence.

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CONCLUSION

The TKOM review is an independent assessment of the value of legislation that has created a MTS vehicle with which to revitalise the Māori language and culture. It is the view of the panel that the Act has been a qualified success and has achieved most of its outcomes.

The MTS is an acclaimed television vehicle, but it has yet to prove that it can transport the language to a place of safety in our society.

The panel is equally of the view that any shortcomings of MTS in achieving the very highest language goals are not the sole fault of this television venture. New Zealand society at large, and the Māori community in particular, needs to protect the place of te reo with the most basic of language imperatives: to speak it. It really is "use it or lose it".

For a people to feel free to use their language – they must be a free people. And to be free, they must be themselves. Language reflects the pedigree of a nation, and the MTS Act, in intent and form, contributes to our nation's maturity.

With this Act we appreciate again the extent to which lore can affect law. The Māori world-view as expressed through tikanga has a profound influence on our legislative framework, and is demonstrably for the betterment of all New Zealanders.

The men and women who work in MTS are not just professional broadcasters. While they may harbour creative and vocational aspirations like their Pākehā counterparts, the vast majority of them work in the medium because of a shared sense of the importance and vitality of the Kaupapa. They are also native storytellers. In the family tree of our Māori broadcasting world, there is a line of descent from the orators on the marae of yore to writers, producers, directors and on-air reporters of today. One could say that the 1980's television series KOHA was the eponymous ancestor of all our current Māori television shows. Our task is to look after the mokopuna.

Te Kāhui o Māhutonga asserts that the legislation must be amended to achieve its own expectations. By doing so, it should perpetuate a Māori world view. There is no point for any Māori endeavor to follow the letter of the law, if that law compromises the capacity of the people to be Māori.

The recommendations that we make in this report go some way to ensure that Māori imperatives find a better accommodation with laws that have a profound impact on our status and actions as citizens of our nation.

We have faith in the potential that Māori cultural paradigms can bring to our society. Te Kāhui o Māhutonga believes that the benefits for New Zealand will truly be beyond the belief of our current imagination.

Heoi.

Nā Te Kāhui o Māhutonga.

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Appendix 1: Specific Amendments

Quality

Section	Title	Specific Amendments
30	Matters for consultation and reporting must be identified	Amend Section 30 to align with Section 143 of the Crown Entities Act 2004 (CEA). Results in the ability of the Minister of Finance to exempt from any statement of service performance any class of outputs that are not directly funded (in whole or in part) by the Crown
41	Contents of annual report	Amend Section 41 to align with Amend Section 41 with provisions in the CEA regarding conflict of interest rules.

General Matters

s12	Establishment (of Te Pūtahi Paoho)	Amend Section 12 (3) to further clarify the extent of the full powers, rights, and privileges of Te Pūtahi Paoho.
s14	Change in composition of Te Pūtahi Paoho	Remove Section 14(4)
s19	Appointment of Directors	Amend Section 19(2) by removing the word 'assist' and replace with the word 'govern'.
Sch 1, 4	Meetings	Amend Sch 1,4 (b) and (c) to align with Sch 5, 7(4)(b) CEA where written notice of meeting may be given by post, delivery or electronic communication, and sent to the members last known address in New Zealand.
Sch 1, 5	Teleconference meetings	Amend Sch 1,5 to align with Sch 5,8(b)(1)&(2) CEA which includes audio, audio and visual or electronic communication as methods of holding meetings
Sch 1, 8	Voting	Amend Sch 1,8 to align with Sch 5 13(1) &(2) CEA for unanimous written resolutions.
Sch 2, 4	Method of appointment of directors	Amend Sch 2,4,4 by inserting Section 31 (1)(c) CEA into Sch 2,4, 4 (a) to strengthen and clarify declarations of interest

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Sch 2, 6	Meaning of interested	Remove Sch 2,6 and replace with Section 62 CEA. This is due to the difficulty in defining what constitutes a 'material' benefit and supports consistency in Crown funded organisations around declarations of interests.
Sch 2, 7	Obligation to disclose interest	Amend Sch 2,7 to align with Section 31(1)(c) CEA so that the nature and extent, including monetary value (if quantifiable) of all interests that person has or is likely to have is declared.
Sch 2, 8	Method of disclosure	Amend Sch 2,8 by inserting the following paragraph after Sch 2,8(b) 'a director who discloses an interest under Sch 2,7 must ensure that the interest disclosed is entered into an interest register kept by MTS.
Sch 2, 9	Consequences of interest	Amend Sch 2,9 by inserting the following words in a new clause Sch 2, 9(c) 'must not sign any document relating to the entry into a transaction or the initiation of the matter'.
Sch 2, 11	Removal from office	Amend Sch 2,11,1 by inserting the following words 'a director may, at any time, be removed from office for any reason by written notice to the director with a copy to MTS and to either the responsible Ministers or TPP, as the case may be'.
Sch 2, 12	Resignation	Amend Sch 12,1 by inserting the following words 'a director of the board may resign from office by giving written notice to the responsible Ministers or to TPP, as the case may be, with a copy of that notice to the other partner'
Sch 2, 20	Voting at meetings	Amend Sch 2, 20 to align with Section 13 CEA Unanimous written resolutions – can pass resolution which is valid outside meeting.

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Sch 2, 24	Immunity of directors and employees	Amend Sch 2, 24 to align with Sections 120-126 CEA inclusive to what is considered best practise. The MTS Act refers to no immunity for 'acts done in bad faith'. Arguably this requires a proactive element of malicious motive, for example dishonesty or fraud. There should also be no immunity for a more passive form of transgression such as negligence or failure to do their duty. We recommend that the description in Section 126 CEA is used as it refers to protection for directors for "excluded acts" which include act or omission in good faith and in the performance of the entity's functions. This includes adherence to reasonable standards which is more encompassing than 'bad faith'.
Sch 2, 26	Ability to delegate	Amend Sch 2, 26 to align with Section 73 CEA which is much more inclusive and prescriptive.
Sch 2, 27	Effect of delegation	Replace Sch 27, 2 with Sections 76 (1)&(2) from CEA and entitle it 'revocations of delegations' for purpose of clarity.
Sch 2, 41	Personnel policy	Amend Sch 2, 41 by inserting Section 118(1)(b) CEA regarding the provision of good employer policy to employees.
Sch 2, 42	Meaning of good employer	Amend Sch 2, 42 by inserting Section 118(2)(f) CEA).

Appendix 2: Terms of Reference

Background

In its Te Reo Māori Report (Wai 11), the Waitangi Tribunal found that the Treaty of Waitangi was directed to ensuring a place for 2 peoples in New Zealand. The Tribunal found that the Māori language is an essential part of Māori culture and must be regarded as a taonga, a valued possession. The Tribunal questioned whether the principles and broad objectives of the Treaty of Waitangi could be achieved without a recognised place for the Māori language. The Tribunal found that the Crown is obliged by the Treaty to take active steps to protect the Māori language. The Crown accepted these findings.

In the litigation that culminated in the decision of the Judicial Committee of the Privy Council in December 1993 (*New Zealand Māori Council v Attorney General* [1994] 1 NZLR 513), the Crown accepted that the principles of the Treaty of Waitangi impose a continuing obligation to take such steps as are reasonable to assist in the preservation of te reo Māori by the use of both radio and television broadcasting:

In that litigation, the Crown outlined a time frame relating to, among other things, the development of special purpose Māori television. The Māori Television Service is a key result of the policy developed for protecting and promoting te reo Māori on television.

The establishment of the Māori Television Service, in which te reo Māori me ngā tikanga Māori have a secure place and are recognised and actively promoted is intended to contribute to meeting the Crown's commitment to the protection and promotion of te reo Māori me ngā tikanga Māori through broadcasting.

The Māori Television Service Act was enacted in 2003, to provide for the establishment of the Māori Television Service (MTS), and sets out the functions, duties, and powers of MTS.

It also makes provision for the establishment of Te Pūtahi Paoho (the Māori Television Electoral College), and sets out the functions, duties and powers of Te Pūtahi Paoho.

The Māori Television Service Act 2003 specifies that the responsible Ministers (the Minister of Māori Affairs and the Minister of Finance) must (a) commence a review of the operation and effectiveness of the Act and (b) prepare a report to the House of Representatives about that review, with recommendations for any amendments to the Act (s56 refers).

The review must commence as soon as practicable after the expiry of five years from the commencement day of the Act (i.e., 7 May 2008), and the report must be presented to the House within six years of the commencement day (i.e., 7 May 2009).

This review must be undertaken in accordance with terms of reference that are established by the responsible Ministers, following consultation with Te Pūtahi Paoho.

This document sets out the terms of reference for the Review of the Māori Television Service Act 2003 (the review). It addresses the following issues:

Who. The terms of reference identify who will undertake the review.

How. The terms of reference identify how the review will be undertaken.

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When. The terms of reference identify the timeframe for the review, within the parameters established by the Māori Television Service Act 2003.

What. The terms of reference identify the issues that will be considered within the review.

Out-of-Scope. The terms of reference also specify the issues that are 'out-of-scope' and will not be considered within the review.

Who Will Undertake the Review

The review will be undertaken by an independent panel of three people who collectively have expertise in the following areas:

- Māori language revitalisation;
- The television industry in the New Zealand context; and
- Broadcasting legislation.

Members of the independent panel will be selected, in consultation with the responsible Ministers and Te Pūhaki Paoho. The sitting fees for the independent panel, and other associated costs, will be met by Te Puni Kōkiri.

MTS shall play a leading role in advising the independent panel.

Te Puni Kōkiri will act as a secretariat for the independent panel.

How will the Review be Undertaken

The independent panel will be required to confirm its work programme for conducting the review within two months of commencement.

- Appropriate consultation with MTS will occur prior to finalisation of the work programme for the review.
- Notwithstanding that, it is likely that the review will include:
- consideration of the long-term strategic planning of MTS;
- consideration of television industry and technological developments;
- consideration of the Māori Broadcasting and E-Media Policy Framework, Māori Language Strategy and other relevant strategies;
- analysis of equivalent legislation and related instruments in other jurisdictions;
- analysis of other broadcasting legislation and related instruments in New Zealand;
- analysis of other relevant documentation, including MTS's annual accountability documents; and
- engagement with key stakeholders in the Māori language and broadcasting sectors.

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In addition, the independent panel may wish to invite submissions from the general public.

An inclusive reporting process will be adopted that provides MTS with the opportunity to provide feedback prior to finalisation of the review report.

The Timeframe for the Review

The MTS Act requires that the review must commence as soon as possible after 7 May 2008.

The independent panel shall be required to confirm its work programme for conducting the review by 7 July 2008.

The independent panel shall be required to provide a progress report to the responsible Ministers and the Chair of Te Pūtahi Paoho by 30 November 2008.

The independent panel shall be required to provide its draft final report to the responsible Ministers and the Chair of Te Pūtahi Paoho by 30 March 2009.

The responsible Ministers and the Chair of Te Pūtahi Paoho shall confirm the final report by 30 April 2009.

The responsible Ministers shall table the report in the House of Representatives by 7 May 2009.

What the Review will Consider

The review will consider the following issues:

Access

The review will consider the nature of MTS's broadcasting platform, including, inter alia: the UHF Right (s 21-24 refers); the convergence of broadcasting technology and other electronic media; the advent of digital television, including the establishment of the Freeview Group; and the establishment of MTS as a multi-channel broadcaster (s9 refers; cf Broadcasting Amendment Bill 2007).

Focus

The review will consider the focus of MTS on the Māori language and culture, including, inter alia: the role of MTS in promoting the Māori language and culture; the interface between MTS and other Māori language and culture agencies; and the level of specificity around these issues in the Act under Section 8(2).

Quality

The review will consider various aspects of the legislative framework that impact on the ability of MTS to provide high quality, cost effective services, including, inter alia: accountability documents (s25-44 refer); editorial independence (s10 refers); performance measurement arrangements; and funding mechanisms and quanta (s26 refers; cf Broadcasting Act 1989 s53).

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General Issues

The review will consider general issues, including, inter alia: governance arrangements (s18–20, Schedule 2 refers); composition, roles and operations of Te Pūtahi Paoho (s12–17, Schedule 1 refers); and the employment arrangement of the chief executive (Schedule 2 refers).

Other Matters

The independent panel may also consider other matters that it considers salient to the review, so long as these matters do not fall out-of-scope.

Out-of-Scope Matters

The following issues will not be considered in the review of the operation and effectiveness of the Māori Television Service Act:

1. the operational activities of MTS;
2. the quality and content of planning and reporting in accountability documents;
3. any decisions about programme content or timing, and other editorial matters;
4. the perceived quality of broadcast content;
5. ratings achieved by MTS over the course of its operations; and
6. the actual performance of MTS as reported in accountability documents (although this may inform whether or not the provisions of the Act are encouraging an appropriate level of accountability).

Miscellaneous Provisions

The independent panel shall be able to revise these terms of reference with the written approval of the responsible Ministers and the Chair of Te Pūtahi Paoho.

The proceedings and deliberations of the independent panel shall be confidential, and shall not be available for release until the final report is tabled in the House of Representatives by the responsible Ministers.

TE KĀHUI O MĀHUTONGA

Appendix 3: Te Kāhui o Māhutonga

An independent panel (Te Kāhui o Māhutonga) was selected by the responsible Ministers and Te Pūtahī Paoho in May 2008. The panel of three people have expertise in: Māori language revitalisation; the television industry in the New Zealand context; and broadcasting legislation. The three panel members are Tainui Stephens (Chair), Hone Edwards and Jane Huria.

Tainui Stephens (Te Rarawa) is an independent producer, director, executive producer, writer, and sometime presenter. He started his broadcasting career with Television One's *Koha* in 1984. Since then, some of his work has included *Waka Huia*, *Marae*, *Māori Battalion March to Victory*, *When The Haka Became Boogie*, *The New Zealand Wars*, *Mai Time*, *He Whare Kōrero*, *Anzac Day: Nā Rātou Mō Tātou*, *Waitangi – Kōtahi Te Rā*, and *Bub & Nen*. In 2002, Tainui's first short film as a drama director *The Hill*, was selected for the Sundance and Berlin festivals. He was a producer for the Vincent Ward feature films *River Queen* and *Rain of The Children*. He is the writer and director of the recent feature documentary on Iritana *Tāwhiwhirangi, Let My Whakapapa Speak*. He is the Māori advisor to New Zealand On Air, and a board member of the New Zealand Film Commission. His company Pito One Productions Ltd is based in Ngāruawāhia.

Hone Edwards (Ngāti Hikairo) has a broadcasting background spanning 25 years since he first joined Television New Zealand as a journalist. He further trained in production as a field director, studio director, producer, executive producer and presenter. Hone won the biennial Commonwealth Relations Trust Bursary in 1996 allowing him to carry out a comparative study of minority language television in the United Kingdom and Spain. He later returned to NZ to co-produce the award winning children's programme, *Pūkana* eventually leaving the field of television production to join the senior executive team at Television New Zealand in 2003 responsible for their Māori content and culture under the TVNZ Charter. He is now the Communications Manager for the Tainui group tribal entity and the Communication's Advisor to the board of the Kōhanga Reo National Trust. Hone was born and raised in Kāwhia and educated at Kings College.

Jane Huria (Ngāi Tahu) has a commercial background in law, insurance, market research and the financial markets. She now works nationally and internationally in the area of governance and strategic review. Jane is a partner in HSR Governance Limited, a governance consultancy which was set up in 1999 and operates from Christchurch. Jane serves on a number of boards, is a lay member of the Health Practitioners Disciplinary Tribunal and a member of the Management Advisory Group for the Secretary of Treasury. She develops and teaches public and in house governance courses for the Institute of Directors in New Zealand, the Tertiary Education Commission (for University, Polytechnic and Wānanga councils) and SPARC (for sport and recreation organisations).



Appendix 4: Panel Operations

The Character of The Times

The Review Panel conducted its activities between July 2008 and March 2009.

During this period of our most recent history: Interest in the Māori language continues slowly but steadily; Māori remain a resurgent force in society; Pākehā engagement with Māori grows; New Zealand's Government undergoes a shift to the centre right with the coming to power of the National Party; A political accommodation is reached with the Māori Party; Waitangi Day 2009 passes in relative calm; Broadcasting is on the brink of massive changes in technology; The international financial crisis enforces new economies, and new thinking.

Why the Name Te Kāhui o Māhutonga?

Ahakoia e rua ngā whetū rongonui hei arahi i a tātou i te ara ki te tonga, kāore hoki he hua o aua whetū e rua ki te kore a Māhutonga motuhake. Nā reira ai, i tikina atu ai Te Kāhui o Māhutonga hei ingoa mō tēnei rōpu, me āna whakatau. Koia tonu e tohu ana i te ara tika, i te ara ki te tonga kei mua i a Whakaata Māori hei takahitanga mōna, e wawatatia ai hoki ki tōna ture o Whakaata Māori 2003.³³

The name Te Kāhui o Māhutonga was given to the review panel by Professor Wharehuia Milroy. It is a cultural metaphor that aptly describes the nature of the work the panel is charged to carry out – under its Terms of Reference in the review of the Māori Television Service Act 2003.

Although there are two well-known stars that lead us on a southerly course, both stars are of no value without the presence of Māhutonga. The Māori name for the cluster of stars known as The Southern Cross has been applied to this Panel and its findings. They will guide the Māori Television Service's journey 'south' as envisioned by the Māori Television Service Act 2003.

What We Did

The collective skills of the panel reflect deep experience in language, governance, television broadcasting and production. We utilised our time to speak to many stakeholders: MTS; Television New Zealand; a representative range of industry professionals; and a select sample of Māori television viewers. We sought and received a full range of relevant documentation. We received some public submissions.

It is clear that we could have spoken to many more industry professionals and hundreds more Māori television viewers. Notwithstanding this, we believe we have received a full range of appropriate opinion for the matters under review.

With the excellent support of Te Puni Kōkiri's, Nadia Ward, we analysed our information, and formed views and recommendations which were shaped by our Terms of Reference. We have made comment on issues that we believe will assist us to ensure the on-going relevance of the legislation in rapidly changing times.

³³ He mea hōmai nā te Panekiretanga.



Appendix 5: Stakeholders Consulted

Te Kāhui o Māhutonga met the following stakeholders:

- The Chair and Board Members of Te Pūtahi Paoho
- The Board, CEO and Senior Management Team of the Māori Television Service.
- CEO and Senior Management Team of Te Māngai Pāho.
- CEO of Te Taura Whiri i Te Reo Māori
- The Chair, Board and Executive Officer of Ngā Aho Whakaari
- CEO of New Zealand on Air
- Auckland Girls Grammar Senior Māori Language Immersion Students
- Rongotai College Senior Māori Language Students
- Representatives from the Broadcasting Unit at the Ministry for Culture and Heritage
- Representatives from the Radio Spectrum Management Team at the Ministry for Economic Development
- Representatives from the Māori Language and Broadcasting and Risk and Assurance Teams at Te Puni Kōkiri
- Members of the Senior Management Team of TVNZ
- Informal and Individual Discussions with Members of the Public



Appendix 6: References

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3. Broadcasting Act 1990 (UK) s56-64
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17. Māori Television Proposals POL (01) 159
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35. Te Taura Whiri i te Reo Māori Strategic Directions 2008-2013
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37. Television New Zealand Act 2003
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39. Television New Zealand Māori Content Strategy 2008
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Appendix 7: Glossary & Acronyms

e-Media – refers to both analogue and digital broadcasting and extends to electronic equipment such as television, radio, internet, telephone, desktop computer, game console and handheld devices.

Freeview Group – Freeview Group consists of New Zealand's leading broadcasters including TVNZ, TV Works (owners of TV3 and C4), Māori Television Service, and Radio New Zealand. Freeview was set up to ensure New Zealanders would have access to digital TV and radio programmes for free (i.e. no monthly subscription).

Internet Protocol Television – typically referred to as a closed, subscription based television platform broadband managed by telecoms operator.

Mobile Television – television broadcasts accessed through a 3G mobile.

Output plan – an accountability document that sets out the outputs the Minister has agreed to purchase, their performance and attributes, costs and terms and conditions surrounding the agreement.

Public securities – any security issued under s63 of the Public Finance Act 1989 or any other Act; and includes any loan or credit agreement, guarantee, indemnity, bond, note, debenture, bill of exchange, Treasury bill, government stock, and any other security representing part of the public debt of New Zealand.

Statement of Intent – an accountability document that set out the entities medium term intentions and undertakings and provides a basis against which the entities actual performance can be measured.

Statement of Service Performance – entities from which the Government purchases a significant quantity of goods and services, are required to include audited statements of objectives and statements of service performance with their financial statements. These statements report whether the organisation has met its service objectives for the year.

Te Pūtahi Paoho – the Māori Electoral College established by the Māori Television Service Act 2003 to represent Māori stakeholder interests in MTS.

Web TV – broadcasting-like content received over a broadband network, via a PC

Technology convergence – previously separate technologies such as voice (and telephony features), data (and productivity applications) and video that now share resources and interact with each other, synergistically creating new efficiencies. The report refers to the convergence of broadcasting, telecommunications and the internet platforms.

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Acronyms

ASO – analogue switch off
DSO – digital switch over
MCH – Ministry for Culture and Heritage
MED – Ministry of Economic Development
MTS – Māori Television Service
TPP – Te Pūtahi Paoho
TTW – Te Taura Whiri i te Reo Māori
TVNZ – Television New Zealand
TMP – Te Māngai Pāho
SKY TV – SKY Network Television Limited (NZ)
PSB – Public Service Broadcasting
PSM – Public Service Media
RSPP – Radio Spectrum Policy and Planning group of MED
MED – Ministry of Economic Development
UHF – Ultra High Frequency

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Appendix 8: Interpretation of Poem

He puehu rā ko ahau
Nāu i poke e te Atua mai rā anō
Tōu wairua i whakahā atu
He tangata Māori ka puta ki te ao

E piko ana ko te rara
Ka whakaea manawa ki te ao
Nō tata rawa ki tōku manawa
Ka whai tokorua rāua, he rūruhi whaiāipo

He mahi whakamīharo
Nāu nei e te Kaihanga i whakamanganga
Ko te iwi Māori me tōna reo
Tuku iho ki a Koro, ki a Kui
ki a Mokopuna mā

Ka whati rā aku mahuri tōtara
Aku nohoanga whakanui i te rangi awatea
Kai rikiriki i ahau ko te aroha
Ki te reo i muri nei ka pania

Tērā te marama ka whakawhenua i te pae
Ka whakaata tāwera karere o te ata
Nāna te rongo e te reo ka whakahemo koe
Kapakapa kau ana te tau o taku ate rā

Ahakoia rā me whakapakari
Ki te hua o te rengarenga
Ki te hua o te kawariki
Kia ū, kia mau, kia piri ki te reo rangatira

Ko te reo rā
Te kākahu o te whakaaro
Te huarahi ki te ao tūroa
O te hinengaro

Ko te reo te mauri
O te mana Māori
Ko te tangata te kaiwhakapuaki
Kia tū tangata ai

I am but a speck of dust
Fashioned by you, my God
You breathed life into us
Māori emerged to the world

Within sheltering ribs
Breath is liberated
Close to my own heart
With a maternal embrace

This miraculous legacy
Is from you, Lord
The Māori and his voice
Is gifted from the aged
To the young

Will the young be broken
Will their hopes suffer jeopardy
The pain eats inside me
At the loss of their voice

As the moon settles yonder
The morning star reveals
An impending loss of language
I wither inside

Yet we must fortify
That which is precious
That which binds us
And cling to our voice

For the language
Is the clothing of thought
The apparel of
A mind that is free

My voice is the life force
of Māori power
I utter it
To stand tall

Nā Sir James Hēnare

TE KĀHUI O MĀHUTONGA



TE KĀHUI O MĀHUTONGA RESPONSE TO REQUEST FOR FURTHER CLARIFICATION BY TE PŪTAHI PĀOHO AND RESPONSIBLE MINISTERS ON ASPECTS OF THE DRAFT REPORT

**He Arotakenga i te Ture Te Aratuku Whakaata Irirangi Māori 2003
Māori Television Service Act 2003 Review**

A report to the Ministers of Māori Affairs and Finance from
Te Kāhui o Māhutonga

Paengawhāwhā 2009

TE KĀHUI O MĀHUTONGA



ISSUES

- 1 *Recommendation 2* – whether the recommendation to amend the definition of te reo Māori to read 'the language and voice of the Māori people' was suggested and supported by a majority of submissioners.

The issue was raised by the TKOM panel itself – and we reserve the right to have our own opinions. We were appointed as experts and are expected to have a point of view. This is one of them.

But we wanted to test the validity of the idea with the stakeholders we spoke to. They all understood and appreciated the point.

The panel wish to further clarify that the 'voice of the people' is merely all encompassing. It also refers to the voice of the person who is an individual part of the Māori people. He or she has a voice as a member of a whānau, hapu and iwi. He or she will express that voice in waiata or art or performance – as much as in language. It will also be a voice that preserves, protects and promotes the values of mana, manaakitanga, whakaiti, and aroha.

It makes absolute sense to protect the voice of the Māori – otherwise how will we know the language is Māori? Hence our extrapolation in the report on the potential dilution of our Māoriness through bad or indifferent quality language.

The fixation on language to date has preserved the notion of linguistic sanctity at the cost of cultural integrity.

- 2 *Recommendation 3* – what would the criteria and method for measuring the 'correctness of articulation' and 'appropriateness of expression' be (as proposed by the Panel as a definition for the quality of the language), and whether there are existing criteria that these are measured against.

The matter of the 'correct articulation of language' is easily assessed.

Fortunately, Māori linguistics is a much-studied discipline and decades of applied intellectual rigour have provided the rules for the construction and composition of Māori sentences, phrases and words. Grammar, syntax, and spelling are straightforward linguistic domains. Notwithstanding tribal dialects the physical construction of language is either correct or incorrect.

But even incorrect language can be an 'appropriate form of expression' – if its emotional construction is sound.

There are diverse levels of language. It can be simple or it can be metaphorical and rhetorical. People are schooled to speak by widely differing circumstances: education, health, and material well-being. Cultural awareness differs everywhere. It all contributes to the way we comprehend what we hear and shape what we speak.

To the broadcasters we comprise many audiences. 'Quality language' to us all is that which we understand and which we feel suits the circumstances of the moment. It could in fact be assessed by asking us...the viewers.

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Perhaps one way of measuring quality language (according to the definition we suggest) could be derived from a mix of professional and public opinion viz: those who are educated about language, and those who just use it.

- 3 *Recommendation 5* – whether the recommendation that MTS be required to broadcast an aggregated minimum of 50% of te reo Māori across all its platforms and channels is an aggregate across all the hours broadcast.

It is indeed. It could not be otherwise. The wording implies that anything that is broadcast per se would be of a certain duration (otherwise there would be no broadcast)...and that of the total language that is used to 'broadcast' – half of it will be in te reo.

It is not a comment on scheduled hours. The way MTS chooses to use its hours should be its decision.

The suggestion that it is prescriptive is obvious. Quota is by nature prescriptive and it is a concept that has proved its value in the past. It is merely a standard that is set to meet a desired end. The level by itself does not at all reduce flexibility – it gives boundaries within which flexibility can exist. This is a necessary stimulant for the creativity that lies at the core of the broadcast storytelling impulse. Creativity has to be controlled – for if there are no boundaries there are no creative answers to the questions or challenges posed.

We also wish to further clarify our thoughts on 'prime-time' and the 'broad viewing audience'. Along with recommendation 5, these matters are all interrelated.

Words in the Act like 'substantial' and 'mainly' are vague and diminish the impetus to do more, better. 'Prime-time' is an equally vague part of the language of broadcasting. It has become flexible.

There are those who say that prime-time is the time when most people are watching television. Usually that's between dinner-time and bed-time. There are those who say that prime-time is the time when the most members of their target audience are watching television. With children (for example) that may be the period after school and before dinner.

The TKOM report has already made comment on the user-driven platforms that are already a part of our lives and will become ever more so. Prime-time may one day become a personal term that refers to when you have time and the inclination yourself to watch the prime television that you chose to watch.

Nonetheless, and again as recognised by the report, there will always be some viewers for whom watching television will be a passive experience at the end of yet another hard working day. Their own prime-time will perhaps remain consistent with the present...until they themselves are overcome by the overwhelming tide of technology.

Te Kāhui o Māhutonga respects absolutely the important strategic role that the notion of prime-time played in the long legal process that led to the establishment of the Act under review. There is no doubt that having a recognised industry measure by which to enable te reo Māori to reach as many Māori viewers as possible, was an astute move.

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The strategic role of 'prime-time' in the struggle to create Māori television has been of immense value, but may have run its course. If that is so, it will be because of the success of Māori Television to date.

But there is another consideration: one that is in line with the philosophical underpinnings of the TKOM report. Specifically, that we do not remain complicit with the orthodoxy of the present; that we unbundle our thinking – and then rebundle it with a more Māori skew.

The concept of prime-time comes from the world of commerce. It is specifically designed to measure ways of delivering audiences to advertisers. Words like ratings and audience share have, as their primary function, commercial ends. The recent credit crisis offers grim evidence of what an excessive preoccupation with profit can do.

The supposed efficacy of various ratings systems and avenues that exist for measuring audiences is always contentious. Ratings is an inexact science – and indicative at best. It is nonetheless the model upon which business is constructed.

We are not suggesting MTS shies away from developing its business acumen and potential. Far from it. Much was made of this in the report. We suggest that a Māori model of business is more likely to work than a Pākehā model – and that includes the language of business. We need not remain complicit with Western ways that do not work – or at least may be somewhat 'shaky'. There will soon be other ways to measure audiences. Interactivity alone will change the ratings system overnight.

We see 'prime-time' as diminishing in importance. If we released ourselves from having to think about it, we would have to devise more effective ways to target our audiences. MTS (or indeed any broadcaster) would be less than effective if they screened programmes at times when a particular and desired audience was absent.

The panel notes that MTS already screens a diverse range of programmes to a diverse Māori audience and that a wider Pākehā audience is already able to appreciate the programming. However we (and some stakeholders) believe that there is a sometime and unnecessary deference to the Pākehā (or in particular the English speaking) audience. One small example will suffice:

On the recent Waitangi Day MTS broadcast (Kotahi Te Rā) there was an interview between presenter Julian Wilcox and Māori Language Commission Chair Erima Henare. At the channel's behest the korero was held in English.

Both men are delicious speakers of the Māori language. The fact that they spoke in English is seen by some as an admirable effort to be 'inclusive' for a wide audience. Others who are interested in preserving, protecting and promoting te reo Māori, saw it as a lost opportunity.

The recommendation to provide for a 50/50 quota of te reo is simple, sufficient and with a straightforward rationale. It allows for the controlled flexibility that a broadcaster requires to attract and hold its audiences.

- 4 *Recommendations 11, 13, 14 & 15* – further clarification regarding who the UHF right should be transferred to. There is an inconsistency regarding who the rights should be transferred to and the distinction between the management right and any licence issued.

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The panel agrees that there is an inconsistency in the delineation of the control of rights and management. We are happy for Recommendation 15 to be amended by replacing MTS with TPP. And that in the previous paragraph of the report the same change is effected (in both the English and Māori language versions).

- 5 *Recommendations 22 & 23* – regarding the composition of Te Pūtahi Paoho, including the rationale for the removal of the conflicted organisations, specifically, the extent the appointing organisations are actually conflicted; and evidence Te Pūtahi Paoho members lack skills in governance, the industry and business.

(refer later in document to point number 8. There are overlapping issues in both requests)

- 6 *Recommendation 17* – regarding whether direct funding means funding from the Crown or Te Māngai Pāho.

The panel is of the view that MTS possesses a significant production facility and creative work force. It remains a major provider of television product. Economies of scale are essential for such a core element of Māori broadcasting, and should be enhanced with a greater security of funding.

The panel was referring to the ring-fenced Te Māngai Pāho funding as opposed to the Crown funding: specifically that quotient which is currently utilised for commissioning and in-house production.

We make the point that if there was to be a further and better alignment of Māori language broadcasting strategies, a new system of funding may be required: one that streamlines funds that are available for overheads, administration, production, and language.

- 7 *Recommendation 19* – how a central Māori language broadcasting plan would align with the Māori Language Strategy (MLS) and the Māori Broadcasting and e-Media Outcomes Framework.

Te Kāhui o Māhutonga is not in a position to comment on the 'how' of such an alignment between the relevant language strategies. Before any alignment is even attempted, a stocktake of the current situation is essential. This would include the legislative aims, statements of intent, and operational activities and outcomes of various language and broadcasting agencies.

Any subsequent realignment is likely to be efficacious – especially in the long-term.

In the spirit of effecting a Māori paradigm it may be worth considering that a revamped MLS could be the tūpuna document from which springs the central Māori language broadcasting plan as the titular head of one of the branches of the wider family of language endeavours.

- 8 *Recommendations 22-25* – regarding the composition of Te Pūtahi Paoho, including: the conflicted organisations that should be removed from Te Pūtahi Paoho; what is envisaged by an iwi mandate being one of the specified skills to be reflected in the composition of Te Pūtahi Paoho; and the rationale for an eight year term of Te Pūtahi Paoho members.

Te Kāhui o Māhutonga's recommendations concerning TPP are designed to improve the Māori approach to governance. This particular model of partnership with the Crown is unique and TPP is responsible (and must be resourced) to ensure that it is proactive in its functions and fully able to fight for whatever cause or recognition it feels is warranted.

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The MTS has changed much over the past five years. Simply put, it has grown. We feel that Te Pūtahi Paoho needs to develop and mature in an equivalent but different way.

The composition of TPP needs an overhaul. It was fitting for national Māori language organisations to be the ideal constituents of TPP in the beginning, but times have changed and we need to be more sophisticated in our approach to governance – especially when it is the unique model it is.

It is of concern (and frankly embarrassing) to have to listen to stakeholders and others make remarks that (however gently) ultimately scoff at aspects of TPP's mandate. The fact that the National Māori Congress has representation on TPP yet scarcely exists in its own right is something which can be seen to strike at the integrity of this governance model. We are not saying that TPP 'lacks' anything specific – rather that there needs to be a further and agreed skills base, as well as iwi representative elements to ensure that Treaty partnership is equitable and effective. The Treaty relationship is not with a group of national organisation representatives. Rather it is with iwi.

We do not believe that modern thinking/practice has it that national organisations are appropriate Treaty partners. It is not likely that iwi would give up their Treaty relationship rights to 'national organisations' even if TPP members are active with their iwi.

TKOM feels that while the 'pan-Māori' voice is obviously useful, it is important that the fact of tribal concerns and expression is catered for in the new environment. We do not suggest that all tribes be represented on TPP. But we believe there must be a provision for a tribal point of view that currently does not exist.

The panel identifies Ngā Aho Whakaari as one of the organisations represented on TPP that has a direct conflict of interest. If an organisation routinely 'does business' with MTS, this generates conflict, which may be actual, potential or perceived – the point is that the conflict exists whether or not the members act in a self interested way. This is a basic premise in good governance and the fact that this does not appear to be understood or acknowledged is of concern. The Crown is fastidious in this area and requires the same fastidiousness of those who receive public money. The Crown requires a lot more than mere abstention from voting.

The evidence to support the panel's view here lies in the Crown's increasingly strict approach to conflicts where public money is involved (industry groups and private sector organisations do not necessarily have the same level of requirement around management of conflicts of interest).

These assertions of the panel are not to be seen as comment on the abilities or commitment of the individuals on TPP. We do not accuse anyone of acting in a self interested way. We have not seen any evidence of this. It is clear that TPP has done exceptional and important work to this point – but we are now looking to the future. It is obvious that industry experience needs to be one of the skills extant on TPP. Many sectors have difficulty finding people with industry knowledge who are not conflicted but that does not mean they are not out there. It might make sense (for example) for iwi to elect their own people with that broadcasting expertise.

The suggested tenure of eight years for membership is we feel a reasonable time period where members can acclimatise themselves and make positive contributions.

In line with the TKOM report and our stated wish to future-proof the Act we only wish to set out the underpinnings of a sound basis for what lies ahead. In one sense perhaps, we must cease to be

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talented amateurs and aspire to a new professionalism in Māori governance that will withstand any partisan or ignorant challenges to the value or functions of our kaupapa to use television broadcasting to preserve, protect and promote te reo Māori.

Kaati i konei. Tēnā koutou. Nā mātou noa, nā

Te Kāhui o Mahutonga

