

Māori Television Service Act 2003 Review

Discussion Paper

Introduction

1. 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.
2. 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).
3. The [Terms of Reference](#) for the review were established by the responsible Ministers in consultation with Te Pūtahi Paoho (s56(2) refers).
4. The review is considering issues under the following broad themes: *Focus*; *Access* and *Quality*. The discussion paper has been structured under these three themes, and also includes a section on general matters.
5. The Terms of Reference provides that the following issues will likely be considered under the *Focus* theme:
 - a. the focus of MTS on the Māori language and culture, including, inter alia: the role of MTS in promoting the Māori language and culture;
 - b. the interface between MTS and other Māori language and culture agencies; and
 - c. the level of specificity around these issues in the Act under Section 8(2).
6. With regard to *Quality*, the review will likely consider:
 - a. the 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

- b. funding mechanisms and quanta (s26 refers; cf Broadcasting Act 1989 s53).
7. With regard to *Access*, the review will likely consider:
- a. the nature of MTS's broadcasting platform, including, inter alia: the UHF Right (s 21-24 refers);
 - b. the convergence of broadcasting technology and other electronic media;
 - c. the advent of digital television, including the establishment of the Freeview Group; and
 - d. the establishment of MTS as a multi-channel broadcaster (s9 refers; cf Broadcasting Amendment Bill 2007).
8. The Terms of Reference also outlines general issues that are likely to be considered:
- a. governance arrangements (s18-20, Schedule 2 refers); composition, roles and operations of Te Pūtahi Paoho (s12-17, Schedule 1 refers); and
 - b. the employment arrangement of the chief executive (Schedule 2 refers).
9. The Terms of Reference also provides that 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 include:
- a. the operational activities of MTS;
 - b. the quality and content of planning and reporting in accountability documents;
 - c. any decisions about programme content or timing, and other editorial matters;
 - d. the perceived quality of broadcast content; rating achieved by MTS over the course of its operations; and
 - e. the actual performance of MTS as reported in accountability documents (although this may inform the provisions of the Act are encouraging an appropriate level of accountability).

Focus

1. The establishment of the Māori Television Service (Service) in which te reo Māori me ngā tikanga Māori have a secure place, 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.

2. Section 8(1) sets out the principle function of the Service which is to promote te reo Māori me ngā tikanga Māori. The Service must do this 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.
3. Section 8(2) sets out other functions of the Service. This subsection is more specific in its requirements for the promotion of te reo Māori by the Service, including the amount of Māori language to be broadcast and the needs and preferences of particular demographic groups.
4. Section 8(2)(a) provides that the Service broadcasts mainly in te reo Māori during prime-time, which is a minimum of 50%. Section 8(2)(b) requires the Service to broadcast a substantial proportion of its programmes in te reo Māori at all other times, which is a minimum of 25%.
5. A definition of prime-time is provided in the interpretation section of the Act (s6 refers). Prime-time means the times of broadcasting identified by the Service, as having the largest number of viewers for its particular target audiences. The Act currently requires the Service to specify in its Statement of Intent "the prime-times identified by the Service for particular audiences" (s 29(1)(g) refers).
6. Section 2(c) sets out that the Service must also ensure that, in its programming, it has regard to the needs and preferences of: a) children participating in te reo Māori immersion education; and b) all persons learning te reo Māori.

Question 1

- 1.1 To what extent should the role of the Māori Television Service be in promoting the Māori language and culture?
- 1.2 Are the functions under s8 still fit for purpose?
YES / NO
Please give reasons for your views.
- 1.3 Should the Māori language levels referred to in s8 (2)(a) and s8(2)(b) be changed or remain the same?
YES – it should be changed
NO – it should remain the same
Please give reasons for your views.
- 1.4 Should the Act make provision for community language development?
YES / NO
Please give reasons for your views.
- 1.5 Do words like 'prime time' retain any real benefit if enshrined in

legislation?
YES / NO
Please give reasons for your views.

Quality

Accountability Arrangements

7. The Māori Television Service (Service) is a statutory corporation (s7 refers). This model was chosen to reflect the partnership between the Crown and Māori, and the dual involvement of the Crown and Te Pūtahi Paoho in appointing members to the Board of the Service, and for accountability and reporting.
8. The accountability provisions in the Maori Television Service Act 2003 are similar to the accountability provisions in the Crown Entities Act 2004 and the Public Finance Act 1989. Some of the accountability provisions in the Maori Television Service Act 2003 were altered to reflect the governance arrangements of the Service. It should be noted that the Crown Entities Act 2004 was enacted after the Māori Television Service Act 2003, and therefore there are some differences in the requirements for the documents of accountability.
9. In terms of the accountability and reporting provisions, the Act requires the Service to prepare and deliver: an annual statement of intent; an output agreement; and the annual report (s26 refers).
10. The purpose of the statement of intent is to promote the accountability of the Service by providing the House of Representatives with contextual information about the Service and information about the intentions and commitment set by the Board of the Service (s27 refers). Section 29 outlines what must be included in the statement of intent. This section is largely the same (with the exception of s29(1)(g)) as other Crown entities which receive government funding. Both the responsible Ministers and Te Pūtahi Paoho are involved in finalising the statement of intent (s31 refers), amendments (s34 refers) and presenting the statement of intent to the House of Representatives.
11. The output agreement presents what the Responsible Ministers expect the Service to achieve with funds appointed for its operations. Te Pūtahi Paoho is not consulted on the output agreement in recognition of the government's primary funding role and the high-level nature of the output agreement.

Question 2

- 2.1 Do you agree with the current accountability provisions in the Act (sections 25-44 refers)?
YES/NO
Please give reasons for your views.
- 2.2 Do you agree that the Act should be aligned, where appropriate,

with the Crown Entities Act 2004?

YES/NO

Please give reasons for your views.

- 2.3** Should any future amendments to the Crown Entities Act 2004 apply to the Māori Television Service Act 2003, if they are appropriate?

YES/NO

Please give reasons for your views.

Access

Digital Environment

12. The Act only provides for the operation of a single channel analogue television service. Since the enactment of the Act, the convergence of telecommunications, broadcasting and internet platforms has grown rapidly in New Zealand. This has resulted in the fragmentation of audiences and a proliferation of media services /platforms, and presents both challenges and opportunities for public service broadcasters like the Māori Television Service.
13. The key challenge for the Service will be how to maintain and enhance the impact of its broadcast content in a digital environment. Public Service Broadcasters overseas are generally diversifying and building on their existing brand strength to take audiences onto new services and/or attract new audiences to digital platforms.¹

Question 3

- 3.1** To what extent should the Act enable MTS to engage in other media services / platforms now or yet to evolve e.g Internet Protocol Television (IPTV)² and Mobile TV³?

Please give reasons for your views.

- 3.2** Should all the s8 requirements apply across additional platforms and channels (both language levels and programming preferences s8(2) (b) &(c) refers)?

YES/NO

Please give reasons for your views.

UHF Management Right

14. The Māori Television Service Act 2003 allocates to the Service a 10 year management right. This right expires in November 2013 (s21 refers). The

¹ Digital Broadcasting: Review of Regulation, Volume Two: Discussion Paper, Ministry for Culture and Heritage and Ministry of Economic Development.

² IPTV is television content that, instead of being delivered through traditional broadcast and cable formats, is received by the viewer through the technologies used for computer networks.

³ Television broadcasts accessed through a 3G mobile.

maximum period a management right can be issued for is 20 years (s 33 Radiocommunications Act 1989 refers).

15. Section 23 of the Act allows for spectrum licences to be created or transferred to a third party. Should the Service cease to use the spectrum licences created for its use under the management right, section 24 of the Act allows for Te Pūtahi Paoho to decide on future use of the spectrum.
16. Due to reception degradation issues, the Service currently leases a UHF terrestrial nationwide network from Sky. In accordance with a Heads of Agreement between the two parties, the Service issued a series of non-interference licences to Sky that precluded other Māori Television Service licences being issued in those particular areas.
17. The Heads of Agreement expires in 2010. If the current arrangement is not rolled over, MTS may be required to fully utilise their own management right, and either buy or lease the required transmission equipment.⁴

Question 4

- 4.1** Are there any changes required to sections 21-24 regarding the UHF management right to ensure the more effective use of the spectrum?

YES/NO

Please give reasons for your views.

- 4.2** Should Te Pūtahi Paoho be the holders of the UHF management right in perpetuity?

YES/NO

Please give reasons for your views.

Governance Arrangements

18. The Act sets out the establishment and membership of Te Pūtahi Paoho (s12-17 refers). It also sets out the functions of Te Pūtahi Paoho and the joint responsibilities of the responsible Ministers and chairperson of Te Pūtahi Paoho.
19. Te Pūtahi Paoho represents Māori language stakeholder interests in the Māori Television Service. Te Pūtahi Paoho comprises representatives from 11 organisations, which have a role in promoting the Māori language. The organisations that may appoint representatives to Te Pūtahi Paoho are set out in Schedule 1 of the Act. Schedule 1 also sets out the procedures for Te Pūtahi Paoho, such as, the election of a chairperson and deputy chairperson and the conduct of meetings.
20. In terms of the board of directors, the Act establishes the board as the governing body of the Service. The Act also provides how the board of directors are appointed and the duties of directors (s18-20 refers). With regard to the appointment of the board of directors, the Act provides that

⁴ MTS currently use transmission equipment owned by Sky.

Te Pūtahi Paoho appoints four of the directors and that the responsible Ministers appoint three directors (s19 refers).

Question 5

- 5.1** Do you agree with the current provisions regarding Te Pūtahi Paoho (s12-17 refers)?
YES/NO
Please give reasons for your views.
- 5.2** Does the Act allow Te Putahi Paoho to be effective in its role?
YES/NO
Please give reasons for your views.
- 5.3** Do you agree with the current provisions regarding the board of directors (s18-20 refers)?
YES/NO
Please give reasons for your views.

Investments and Borrowing

21. The Act outlines how the Service can invest money that is surplus to its immediate requirements (Schedule 2, s32 refers). The Service can only make investments in a limited number of financial institutions (i.e. banks registered in New Zealand) or in public securities. Any other financial institutions, securities or investments require the approval of the Minister of Finance. This provision applies to taking a shareholding, partnership or joint venture positions with other entities.
22. In terms of borrowing, the Act specifies that the Service cannot enter into any debt, borrowing or guarantee arrangement without the approval of the Minister of Finance and the chairperson of Te Pūtahi Paoho (Schedule 2, s33 refers).

Question 6

- 6.1** Should the Service be able to make investments, up to a certain amount, without the need for approval from the Minister of Finance?
YES/NO
Please provide reasons for your views.
- 6.2** Should the Service be able to enter into debt arrangement up to a certain amount, without the need for approval from the Minister of Finance?
YES/NO
Please provide reasons for your views.

Review of Act

23. Section 56 of the Act provides that the operation and effectiveness of the Act be reviewed five years after the Act came into force i.e. 7 May 2008. Should five yearly or seven yearly reviews be maintained so that the Act can be updated to reflect any future developments in the digital environment, for example?

Question 7

7.1 Should the Act be reviewed every 5 years or 7 years?

YES – 5 years

YES – 7 years

NO

Please provide reasons for your views.

General

Question 8

8.1 Are there any other changes or additions to the Act which would proactively assist the Service in meeting their objectives under the Act?

Submission Instructions

Responses to these questions are invited from interested parties, and should be returned to Te Puni Kōkiri by 27 February 2009. Please respond to the numbered questions in the discussion paper.

Emailed submissions are encouraged and should be emailed to mtsactreview@tpk.govt.nz.

Submissions can also be submitted online at www.mtsa.govt.nz

Written submissions should be sent to:

MTS Act 2003 Review

Te Puni Kōkiri

PO Box 3943

WELLINGTON

Te Puni Kōkiri may publish all written responses on the website www.mtsa.govt.nz. Te Puni Kōkiri will consider you to have consented to the publication of your response, unless clearly specified otherwise in your response.

Please clearly indicate in your written response if you do not wish your name to be published, including in any summary, or material Te Puni Kōkiri may prepare for public release on responses received.

Please advise Te Puni Kōkiri of any objection to the release of any information contained in a written response to this document and, in particular, which parts should be withheld, together with reasons for withholding them. Te Puni Kōkiri will take into account all such objections when responding to requests for information on written responses to this document under the Official Information Act 1982.

