Submission on the Māori Language Strategy

E te Kōmiti, tēnā koutou.

I am going to address my (brief and hurried) submission to the question that the very last articulated in the consultation document:

Questions: what are your aspirations for a new Māori Language Act? What should be considered during the Act's review?

I was surprised to see this question at the very back of the document, under 'supporting workstreams', as if the questions were really an afterthought. Perhaps they were afterthoughts. The only suggested amendments to the Act itself were that some new principles be inserted into the Act, along the lines of the principles in the New Zealand Sign Language Act 2006:

- The Deaf Community should be consulted on matters relating to New Zealand Sign Language (including, for example, the promotion of the use of New Zealand Sign Language);
- New Zealand Sign Language should be used in the promotion to the public of government services and in the provision of information to the public; and
- Government services and information should be made accessible to the Deaf community through the use of appropriate means (including the use of New Zealand Sign Language).

Principles statements in legislation can be very useful, particularly in assisting the Courts to determine Parliamentary intention. Nevertheless, given that it is nearly 30 years since the passage of the Act, I would have thought some more consideration might have been given to the efficacy or otherwise of what was thought to be a progressive piece of legislation at the time it was passed.

Perhaps this neglect reflects a mistaken presumption that the Act can only really speak to the right to speak Māori in the courts and setting up te reo as an official language, and even within this narrow sphere, it fails. That it fails is true, but the reason why the Act must be accorded more attention is because it is (or should be) the nexus or linchpin that unites the Crown and Māori in the re-establishment of te reo Māori as an ordinary language, not only of the home, but also of the civic sphere. Current and future plans for the revitalisation and development of te reo Māori as a language of intergenerational transmission must not ignore the fact that Māori has been a language of civic engagement in New Zealand's bilingual history. Attention must be paid to retaining and growing te reo Māori as a civic language and, despite the Crown's hand in almost destroying the language, the Crown is a necessary partner for this retention and growth to occur. The focus for the new Strategy appears to be very much on te reo Māori as a language of the home (e pai ana tērā), pointing away from the

Crown as an entity that ought or should have control over the direction over future efforts in Māori language revitalisation, following on from the thinking in the 2011 report from Te Puni Kōkiri *Te Reo Mauriora*. Perhaps this is the key reason why the Act has been all but ignored.

My observations below seek to demonstrate a couple of things:

1. Māori, as a language of the civic sphere must not be overlooked. Māori must regain its status as a language of public affairs, law, politics and so on in the battle for normalisation and in making the choice to speak Māori an easy one to make.
2. The Māori Language Act is therefore key to the above aim, and it must be strengthened, and seen as a central plank of any future development of te reo Māori. It currently fails to assist bilinguals to make a choice of using te reo Māori, and must be substantially amended.

Māori as a civic language

A comparative review of certain kinds of law-related documents generated in the nineteenth, twentieth and early twenty-first centuries reveals the importance of Crown policy and legislation in facilitating the use of te reo Māori by Māori as a civic language. The Crown's current major instrument for such facilitation, the Māori Language Act (1987), is relatively ineffective for such a task in this contemporary era. Today Māori is ***not*** the language of choice for most Māori speakers engaging with the Crown in matters of civic importance. This remains the case even twenty-seven years after the passage of the Act and its (limited) statutory entitlement that is supposed to encourage the use of Māori 'as of right,' as an 'official language' of New Zealand. Crown policy and Crown practice can make a difference.

In 2011 the ministerial review of the 2003 *Rautaki Reo Māori* (Māori Language Strategy) – *Te Reo Mauriora* - was released (see Te Puni Kōkiri, 2011). In the same year the Waitangi Tribunal (2011a; 2011b) released *Ko Aotearoa Tēnei,* the long-awaited report of the Wai 262 claim, featuring an extensive section on te reo Māori. Both reports evaluate and critique the Crown's performance in regards to the current state of health of te reo Māori. Both reports emphasise the tension between the desire of Māori communities to exercise their own rangatiratanga in the revitalisation of te reo Māori and the need for the Crown to play a vital role in that revitalisation. On the role of the Crown, however, both reports diverge significantly. *Te Reo Mauriora* is somewhat reluctant to accept the Crown as a central role. Likening the revitalisation of te reo Māori to the rebuilding of a house, the writers of the report identify that Māori people, in the building of this language house, must design it, be the architects, live in it, and be responsible for its upkeep. The role for the Crown, by contrast, is to coordinate the tradespeople and to finance the rebuild (Te Puni Kōkiri, 2011: 43). The Crown is necessary, and, on this view, separate from Māori. The Tribunal on the other hand, strongly promotes the notion, in *Ko Aotearoa Tēnei,* that much of the success of language revitalisation will be determined, at least in part, by the full

co-option and involvement of the Crown. The Tribunal (2011b: 451), it appears, accepts that the Crown should also live in the language house.

> Fundamentally, there is a need for a mindset shift away from the pervasive assumption that the Crown is Pākehā, english-speaking, and distinct from Māori rather than representative of them. Increasingly, in the twenty-first century, the Crown is also Māori. If the nation is to move forward, this reality must be grasped. If the Crown is serious about preserving and promoting the language it must also endeavour to speak te reo itself. This not only leads by example but provides symbolic as well as tangible support to keeping the language alive. Māori should be able to use their own language, given its official status, in as many of their dealings with the New Zealand State as practicable – particularly since the public face of the Crown will often be a Māori one. The idea of the Crown speaking Māori is of course not novel; by necessity, this was the status quo for a large proportion of New Zealand's colonial past.

These positions are in significant tension. This tension is resolvable, however, by viewing *Te Reo Mauriora* as focusing more on te reo Māori as a language of the private sphere in which the Crown ought only have a supportive role, while the Tribunal's statement (as one part only of the whole chapter) focuses attention on te reo Māori as a language of the civic sphere. In this sphere Crown policy, Crown action and Crown co-option are absolutely necessary.

For te reo Māori to survive, it must, of course, primarily be a language of intergenerational transmission, it must be a language of the informal; of the vernacular. As Joshua Fishman (1996: 171) said:

> We can organize for languages of school; we can organize for languages of church; we can organize for languages of government; we can organize for languages of the upper work sphere. Yet none of the forgoing [sic] result in informal, intergenerational, mother-tongue transmission.

However, if te reo Māori is ever to be a language of more than one domain - a language in which the political, economic and legal direction of this country is to be set - Māori must also be a language of the institutional, civic sphere of the New Zealand state, not only of the private sphere. The civic sphere includes the organs of civic activity such as government, institutions of law and its enforcement, business, the economy, politics and the like.[1] Civic language (as opposed to day-to-day private language of domains such as the home, playground, sports-ground and shopping centre) ultimately determines the rights and obligations of New Zealand citizenship, because only civic language

[1] Civic language is not necessarily the same thing as 'public' language. Māori as a private language can be heard in public, for example Māori language sports commentary on Māori Television; but this kind of language is not civic, insofar as it does not connect substantively to those organs of civic activity.

can be used to enforce and protect such rights and obligations. Almost exclusively, English is the civic language of New Zealand. While Māori has remained the dominant language of the pre-eminent Māori civic realm, the marae ātea Māori has not retained a significant civic role in the New Zealand state for well over a century.

Documentary evidence shows a wealth of evidence of Māori/Crown engagement with the legal system in te reo Māori, and therefore within the civic sphere; the sphere of government, law, politics and the economy. Thousands of pages of such texts were generated directly by Māori by way of petitions, correspondence with, and submissions to, the Crown. Many more thousands of pages of such texts were generated by the Crown as a means of instructing Māori in how to use the legal system (for example), responding to correspondence, submissions and petitions in te reo Māori, as well as in the communication of matters of civic importance to Māori communities. Of course the Crown generated many of those texts only when Crown saw fit to engage with Māori on such matters. Nevertheless the Crown did use te reo Māori to seek Māori engagement to a significant, if inconsistent degree. The texts discussed here were collated for the Legal Māori Corpus, a digitised collection of thousands of pages of Māori language legal and law-related texts dated between 1828 and 2009.[2]

That Māori was a civic language during the nineteenth century is reflected in the fact that the Treaty of Waitangi, the Declaration of Independence, and almost all private deeds of land sale prior to the establishment of the Native Land Court in 1862 were enacted in Māori and English. Even after 1862, confiscation agreements and pre-emption agreements were also often enacted in Māori and in English (Boast, 2006: 547). The colonial state thus understood the need to *utilise* the Māori language to disseminate Western ideas of law and government, and to establish mutually understood legal consequences. In 1858, under the governorship of Gore-Browne, extracts of the Native District Regulation Act 1858 and the Native Circuit Courts Act 1858 were printed in Māori, but no regular provision was made for printing legislation of relevance to Māori until 1878 (Parkinson, 2001). Nevertheless, the Crown did see fit, for a number of years to facilitate Māori access to the civic sphere by the provision and dissemination of such texts. Over succeeding decades until 1910 many such acts and bills, as collected in the Corpus were also disseminated in compendia, although the quantity of such dissemination varied considerably, and Māori language versions were never enacted.

In addition to translations of legislation, a number of official proclamations and circular letters were also disseminated by the Crown among Māori communities particularly during the height of the land wars, between the late 1850s and the

[2] The Legal Māori Corpus was designed and compiled to provide evidence of the use of Māori terms for Western legal concepts. It was designed as a large lexicographic corpus (approximately 8 million words of legal Māori texts) to provide information to underpin the writing of entries for *He Papakupu Reo Ture: A Dictionary of Māori Legal Terms* (Stephens & Boyce (eds.), 2013). A fair idea of the range of texts included in the Corpus can be garnered by looking at the source references at the end of this introduction. More information on the Legal Māori Corpus is available at http://www.victoria.ac.nz/law/research/research-projects/legal-maori/corpus

1880s.[3] The Crown's limited, but nonetheless significant engagement with Māori communities in the Māori language shows that Māori retained its civic role and authority for Māori communities during of the nineteenth century. This observation is also supported by the fact that Māori-led governance movements and bodies such as the Kotahitanga Parliaments, the synod of the Waiapu Diocese of the Anglican Church, and the Kingitanga often recorded their decisions and enactments in Māori even until the 1890s and beyond.[4]

Māori then, as a civic language, beyond the home, has always been important to Māori to some degree.

The 1980s did see a number of changes that led to improved status for the Māori language as both a civic and private language. The Māori Language Petition of 1972, signed by 30,000 people, requested that Māori language be offered in all schools. Other political actions were carried out by groups such as Ngā Tamatoa, and societies for the protection of the language such as the Te Reo Māori Society, and the Wellington Māori Language Board, Ngā Kaiwhakapūmau i te Reo Māori (Ngā Kaiwhakapūmau). In 1984 Ngā Kaiwhakapūmau lodged a claim (Wai 11) before the Waitangi Tribunal. The Waitangi Tribunal (1986: 4.2.4) subsequently found the language to be a taonga for the purposes of the Treaty of Waitangi.

Even before the Tribunal released its report, however, the Māori Language Bill had already been introduced to parliament, and enacted shortly thereafter. The Māori Language Act is, however, far less revolutionary than might be expected, given long history of the use of Māori as a civic language in New Zealand between the 1860s and up until 1962.

The Māori Language Act 1987

Section 3 of the Māori Language Act merely states 'The Māori language is hereby declared to be an official language of New Zealand.' There is little guidance in the Māori Language Act or elsewhere as to what this status really means. Certainly, this status is a step up from the earlier 'official recognition' afforded Māori under s 77A of the Māori Affairs Act 1953. While denoting Māori as an official language was not one of the recommendations of the Waitangi Tribunal, applying this status appears to have been a response to some of the Waitangi Tribunal's (1986: 8.2.8) concerns from the *Te Reo Māori Report*:

> Official recognition must be seen to be real and significant which means that those who want to use our official language on any public occasion or when dealing with any public authority ought to

[3] See Parkinson and Griffith (2004) which contains records of more than 100 discrete examples of printed Māori language proclamations and circular letters from the Crown to Māori (letters intended to be circulated widely). Many more official notices are also annotated in this collection, and many such documents were also published in serial publications such as the *Kāhiti* (Gazette).

[4] The documents mentioned here, where printed, (except the *Kāhiti*) are also available online as part of the Legal Māori Archive at http://www.nzetc.org/tm/scholarly/tei-corpus-legalMaori.html

be able to do so. To recognise Maori officially is one thing, to enable its use widely is another thing altogether.

Clearly Tribunal did not accept that 'official language' status merely gave rise to a right to use Māori in the courts.

Section 4 of the Māori Language Act creates a statutory right to speak Māori in certain legal proceedings.[5] It is important to know the exact legal circumstances in which this right can be enforced. 'Legal proceedings' are defined in s2:

Legal proceedings means—
(a) Proceedings before any court or tribunal named in Schedule 1 to this Act; and
(b) Proceedings before any Coroner; and
(c) Proceedings before—
  (i) Any Commission of Inquiry under the Commissions of Inquiry Act 1908; or
  (ii) Any tribunal or other body having, by or pursuant to any enactment, the powers or any of the powers of such a Commission of Inquiry, that is required to inquire into and report upon any matter of particular interest to the Māori people or to any tribe or group of Māori people.

Schedule 1 of the Act sets out the relevant courts and tribunals in which the right can be enforced. All courts are included, but only a small number of tribunals are included. Schedule 1 currently provides for Māori to be used in the following tribunals:

- The Waitangi Tribunal
- The Employment Relations Authority
- The Equal Opportunities Tribunal [now replaced by the Human Rights Review Tribunal]
- The Tenancy Tribunal
- Planning Tribunals [now replaced by the Environment Court]
- Disputes Tribunals established under the Disputes Tribunals Act (1988)

As the Ministry of Justice administers twenty-five tribunals and statutory authorities through its Tribunals Unit (not including the Waitangi Tribunal as a permanent Commission of Inquiry) this list is small. The circumstances under which the right to use Māori in legal proceedings are also quite limited:

4(1) In any legal proceedings the following persons may speak Māori, whether or not they are able to understand or communicate in English or any other language:
  a. Any member of the court, tribunal, or other body before which the proceedings are being conducted
  b. Any party or witness
  c. Any counsel; and
  d. Any other person with the leave of the presiding officer.

[5] This right is now provided in s 24(g) of the New Zealand Bill of Rights Act 1990.

(2) The right conferred by subsection 1 of the section to speak Māori does **not**
    a. Entitle any person referred to in that subsection to insist on being addressed or answered in Māori; or
    b. Entitle any such person other than the presiding officer to require that the proceedings or any part of them be recorded in Māori. [emphasis added]
(3) Where any person intends to speak Māori in any legal proceedings, the presiding officer shall ensure that a competent interpreter is available.
(4) Where, in any proceedings, any question arises as to the accuracy of any interpreting from Māori into English or from English into Māori, the question shall be determined by the presiding officer in such manner as the presiding officers thinks fit.
(5) Rules of court or other appropriate rules of procedure may be made requiring any person intending to speak Māori in any legal proceedings to give reasonable notice of that intention, and generally regulating the procedure to be followed where Māori is, or is to be spoken in such proceedings.
(6) Any such rules of Court or other appropriate rules of procedure may make failure to give the required notice a relevant consideration in relation to an award costs, but no person shall be denied the right to speak Māori in any legal proceedings because of any such failure.

As shown above the right provided under s4 is a right to speak Māori only. Unsurprisingly, given its limited reach, the passage of the Māori Language Act has had little effect on increasing the use of Māori in the civic sphere, or improving the status of Māori as a language of civic discourse, let alone within intergenerational transmission.

Since the passage of the Māori Language Act use of Māori beyond the Māori Land Court and Waitangi Tribunal is uncommon. In the Waitangi Tribunal witnesses are able to give their evidence in Māori pursuant to clause 6(2) of Schedule 2 of the Treaty of Waitangi Act 1975. In a manner similar to Parliament, the Waitangi Tribunal Unit, as a special unit of the Ministry of Justice providing support to the Tribunal itself, now provides a simultaneous interpretation service covering all hearing days except for days notified by the presiding officer as not requiring that service. The use of at least some Māori words and phrases was estimated by ministry officials in early 2011 to occur in one hundred percent of hearings in the Maori Land Court, but the percentage of cases where Māori is used in more than an introductory or formal way is less easy to determine.

Records of notices of intention to speak Māori under the Māori Language Act are not held by the Ministry of Justice. While such notices form part of the Court record, the Courts are excluded from the application of the Official Information Act 1982 under section 2(6)(a) of that Act, therefore information about language usage in the courts can only be gleaned on a case-by-case basis. However, the case management database by early 2011 had only revealed six instances in total of recording by the High and District Courts of notices of intention to speak Māori. Those notices all related to civil cases. The only specialised tribunal that has any significant number of applications to speak Māori is the Environment

Court that receives one or two requests annually, generally directed to the Auckland Registry.[6] Indeed, as observed in *Ko Aotearoa Tēnei* (Waitangi Tribunal, 2011: 455) the notice requirements imposed under the Māori Language Act frustrates the use of Māori:

> [T]he High Court requires at least 10 working days' advance notice of any intention to speak Māori. Under the Maori Language Act, court participants do not have the right to be addressed in Māori and there is no requirement for the proceedings to be recorded in Māori. Even in the Māori Land Court, applicants must inform the registrar of their intention to speak Māori in court so that an interpreter can be arranged. Thus, it is no easier to use Māori in court than any other language besides English. In fact, foreign nationals are catered for by means of interpreters so they can actually communicate and understand proceedings, whereas the ability of Māori court participants to communicate in English is effectively excused by the provisions of the Maori Language Act.

Cumbersome notice requirements inevitably make the choice to use Māori in such an environment more problematic. In reality English remains the default language of the courts; even in the Māori Land Court, the right to use Māori in these legal environments is more theoretical than real.

So if bilinguals are not choosing to use te reo Māori in legal domains because of obstacles to its use, what about the status of Māori as an official language. Has that encouraged the use of Māori for bilinguals? Of course Māori medium education is a result of Māori having official language status. But what about in Māori engagement with public bodies? Outside of the legal context, in the public domain, the kinds of documents now generated in te reo Māori, are not often seen to either contribute to any genuine civic discourse in te reo Māori, or to help bilinguals make the choice to use Māori in the civic realm. Public documents issued in te reo Māori since the passage of the Act have included select committee reports, strategic plans, statements of intent and other corporate documents. They have been important as outward manifestations of Māori's official language status, and they are a valuable resource for academics like me. But these documents are unproductive. Few people ever read them, cite them, debate them, let alone truly understand them, and they don't serve to make more people speak or write in te reo.

So the Māori Language Act 1987 does not help people to exercise the limited rights they receive under that legislation. That must change, and change to the Act is necessary to expand the nature of the right, to facilitate the use of te reo, to eradicate bureaucratic obstacles. Change must also communicate the notion that ***official status is normalisation.***

Kua kati au i konei, kia ora.

Māmari Stephens (Te Rarawa)

---

[6] Nichola McKinney Acting General Manager, District Court's response to OIA request, 2 March 2011.

Project Leader
Legal Māori Project
School of Law
Victoria University of Wellington