

'Kia ita!'

Te Taura Whiri i te Reo Māori

MĀORI LANGUAGE COMMISSION



BRIEFING TO THE INCOMING MINISTER

Whiringa-ā-nuku 2014

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Te Taura Whiri i te Reo Māori – our vision and mission

Our vision statement

Kia haruru a Aotearoa whānui i to tātou reo taketake

The landscape of Aotearoa will resonate with our indigenous language

Our mission statement

Ki te tautoko i te iwi nui tonu kia ora ai te reo Māori, hei reo kōrero, hei reo tipu

To support people so that the Māori language is a living and developing language

He Mihi

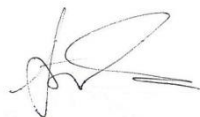
Tuatahi, e mihi ana ki a rātou katoa kua rūpeke mai ki tua o pae. Katoa ngā mihi ki a rātou kei te tū tonu, haere ngā mate, haere, haere, haere. Kāti mō rātou.

Tuarua, ānei ngā mihi a tō Poari ki a koe kua tū nei hei ārahi i te ao Māori me ōna tini āwhero kia eke rātou ki ngā taumata kua roa kē nei e wawatatia ana. Ko te tino rerekētanga i tēnei wā kua tau mai ērā āhuatanga ki runga ki a koe te mokopuna a Te Ururoa, tupuna tuarā whānui.

Mā Te Wāhi Ngaro koe, kōrua ko Erana me te whānau e tauawhi i roto i ngā mahi nui kei mua i a koe e tū mai ana. Kei konei mātou ō tō Poari mēnā koe i te āwhina, ahanoa.



Erima Henare
Toihau, Chairman
Board of Te Taura Whiri i te Reo Māori
13 o ngā rā o Whiringa-ā-nuku, 2014



Te Awanuiārangi Black
Kaiwhiri, Commissioner
Board of Te Taura Whiri i te Reo Māori
13 o ngā rā o Whiringa-ā-nuku, 2014

PART ONE: Te Taura Whiri i te Reo Māori organisation and responsibilities

Te Taura Whiri i te Reo Māori

Te Taura Whiri i te Reo Māori [Te Taura Whiri / Te Taura Whiri i te Reo Māori] was established under the Māori Language Act 1987 to initiate, develop, co-ordinate, review, advise upon, and assist in the implementation of policies, procedures, measures, and practices designed to give effect to the declaration of the Māori language as an official language of New Zealand, and generally to promote the Māori language, in particular, its use as a living language and as an ordinary means of communication.

The Māori language is a taonga guaranteed to Māori by the Treaty of Waitangi. The creation of Te Taura Whiri i te Reo Māori was a key recommendation of the Waitangi Tribunal in its report on the Māori Language Claim, Wai 11, lodged by Huirangi Waikerepuru on behalf of Ngā Kaiwhakapūmau i te Reo in 1986. Te Taura Whiri i te Reo Māori acknowledges the significant role it has to play in ensuring localised iwi, hapū and whānau language priorities are fully promoted and supported. Te Taura Whiri i te Reo Māori also understands the importance of its role as a national advocate for the Māori language.

As an autonomous Crown Entity we provide independent advice to the Minister of Māori Development about issues affecting the Māori language. Our independence enables us to work comfortably between language stakeholders and the government to ensure government priorities and resources are aligned with stakeholder aspirations.

We undertake the following specific duties:

- administering several funds which provide financial support to community-led Māori language revitalisation initiatives;¹
- establishing a research unit to support the development of a national Māori Language research agenda;
- training and certifying Māori language translators and interpreters;
- testing the proficiency level of Māori language speakers through level finding examinations;
- supporting key events - Te Wiki i te Reo Māori and Ngā Tohu Reo Māori;
- ensuring that the linguistic and cultural integrity of the Māori language is preserved by maintaining robust quality standards and technical language support provided to stakeholders.

Te Taura Whiri i te Reo Māori works to support the development of a high-quality Māori language workforce that is valued by employers in both the public and private sectors. We are unique in our national role and singular focus and, as such, we provide a critical point of reference and support for Māori language revitalisation and regeneration efforts in New Zealand.

Te Taura Whiri i te Reo Māori receives funding through Vote Māori Affairs and is bound by the provisions of legislation such as the Crown Entities Act, Public Finance Act and State Sector Act, and is required to report to Parliament through our Annual Report.

¹ Mā te Reo, He Kāinga Kōrerorero, He Kura Whānau Reo and Community Based Language Initiatives (CBLI). In 2014/15 these budgets total \$6.3 million out of our total operating budget of \$11.5 million.

The Minister of Māori Development is the Minister responsible for Te Taura Whiri i te Reo Māori under the Māori Language Act 1987 and Crown Entities Act 2004.² We are responsible to the Minister of Māori Development for the expenditure of public funds to support our mission statement and outcomes. Each year the Minister issues a Letter of Expectations outlining the specific objectives he/she would like us to focus on during the following financial year.

Te Taura Whiri i te Reo Māori has the statutory functions under the Māori Language Act 1987 of:

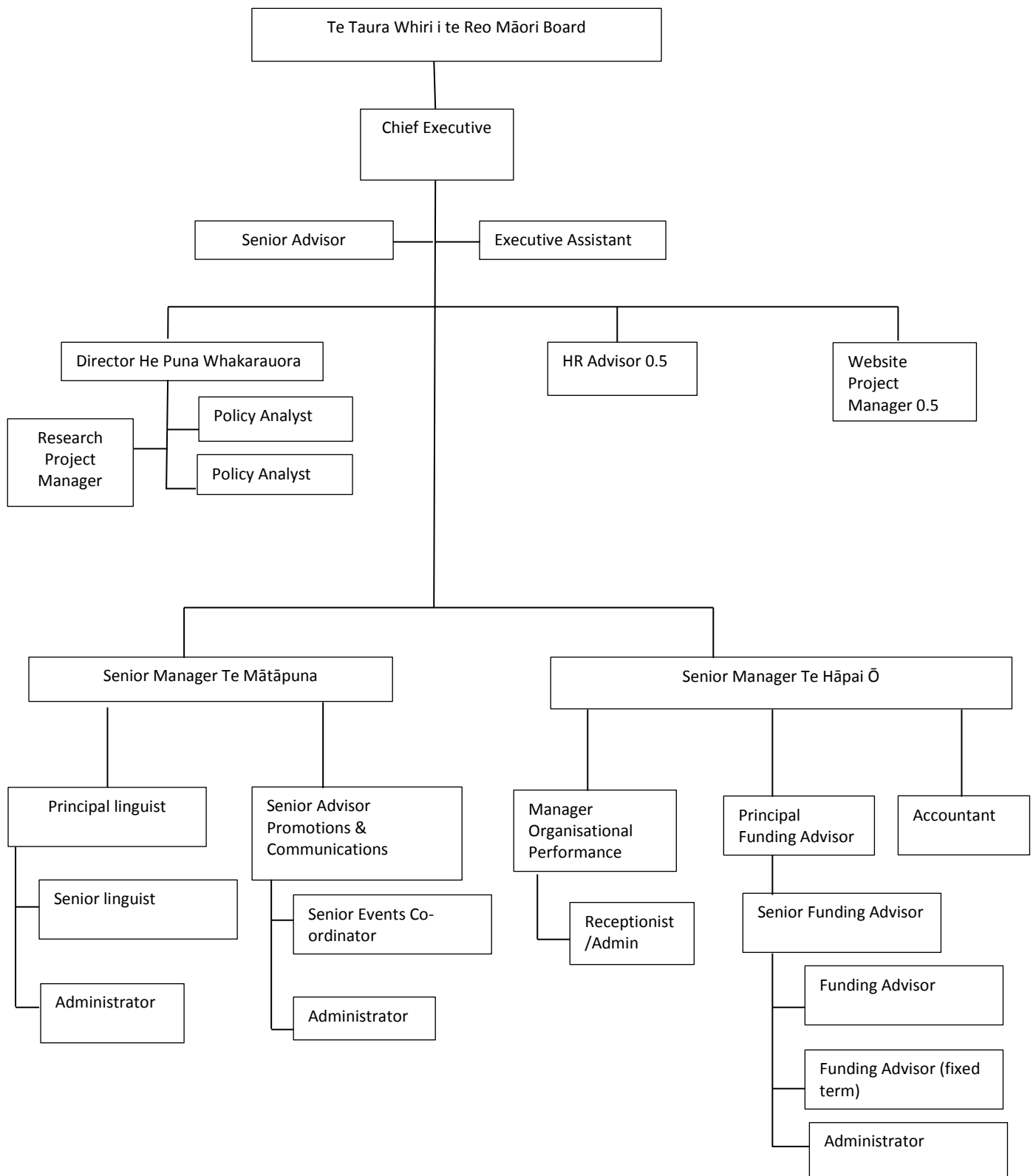
- Initiating, developing, coordinating, reviewing, advising upon, and assisting in the implementation of policies, procedures, measures, and practices designed to give effect to the declaration in section 3 of the Māori Language Act 1987 of the Māori language as an official language of New Zealand;
- Generally promoting the Māori language and, in particular, its use as a living language and as an ordinary means of communication;
- Granting certificates of competency in the translation and interpretation of the Māori language;
- Considering and reporting to the Minister upon any matter relating to the Māori language that the Minister may from time to time refer to the Commission for its advice;
- Such other functions as may be conferred upon the Commission by any other enactment.

The following duties have been agreed with the previous Minister of Māori Affairs for 2014:

- Administration of the Mā te Reo Fund and He Kāinga Kōrerorero programme;
- Administration of the Community Based Language Initiative Fund;
- Supporting research and development projects that support the revitalisation of the Māori language.

² The Māori Language Act 1987 states that the responsible Minister for Te Taura Whiri i te Reo Māori is the Minister of Māori Affairs. This BIM uses the up-to-date name for the portfolio.

Organisational structure of Te Taura Whiri i te Reo Māori



Governance

Te Taura Whiri i te Reo Māori is governed by a Board comprising five commissioners. Their governance responsibilities include:

- confirming the strategic direction of Te Taura Whiri i te Reo Māori, setting strategies and priorities;
- communicating with the Minister and other key Māori language stakeholders to ensure their views are reflected in the organisation's strategies and priorities;
- appointing the Chief Executive and delegating responsibility for achieving specific priorities;
- monitoring organisational performance;
- maintaining effective internal controls; and
- being accountable to the Minister for delivering agreed plans and services, and achieving priorities.

Te Taura Whiri i te Reo Māori Commissioners are appointed because of their extensive experience within the Māori language sector, and proven knowledge of issues affecting the language on a local and regional basis. Commissioners are representatives of a community, regional or tribal voice. Their representation ensures the organisation is continually kept in touch with local issues.

As at September 2014, the members of the Te Taura Whiri i te Reo Māori Board are:

- Mr Erima Henare – Te Toihau (Chair);
- Mr Te Awanuiārangi Black – Kaiwhiri (Commissioner);
- Dr Katarina Edmonds - Kaiwhiri (Commissioner);
- Dr Poia Rewi - Kaiwhiri (Commissioner); and
- One position of Kaiwhiri (Commissioner) is vacant

Te Taura Whiri i te Reo Māori is managed operationally by the Tumuaki / Chief Executive Glenis Philip-Barbara, who was appointed in 2010.

Relationship with our Minister

Te Taura Whiri i te Reo Māori is responsible to the Minister of Māori Development (the Minister). Te Taura Whiri i te Reo Māori will continue to operate on a no surprises basis with the Minister, will continue to provide free and frank advice, and will report to the Minister on:

- any matter relating to the Māori language that the Minister may refer to Te Taura Whiri i te Reo Māori for its advice; and
- any other matter relating to the Māori language that Te Taura Whiri i te Reo Māori considers should be drawn to the Minister's attention.

Te Taura Whiri i te Reo Māori will continue to work closely with the Minister on the progress of the Māori Language Bill and the new Māori Language Strategy. Te Taura Whiri i te Reo Māori reports to the Minister of Māori Development through:

- Annual Report – as per the Crown Entities Act 2004 and the Public Finance Act 1989 requirements;
- Quarterly reporting against the performance measures established in the Statement of Performance Expectations (SPE) 2014/15 and against budget; and

- Briefing papers to the Minister on opportunities or issues pertaining to the Māori language.

The Minister's responsibilities

The Minister's responsibilities in relation to Te Taura Whiri i te Reo Māori are to:

- Appoint Commissioners to Te Taura Whiri i te Reo Māori;
- Delegate monitoring of Te Taura Whiri i te Reo Māori to Te Puni Kōkiri;
- Receive regular reports and briefings on any matter relating to the Māori language that the Commission considers should be drawn to the Minister's attention; and
- Refer to Te Taura Whiri i te Reo Māori for its advice any matter relating to the Māori language.

Funding (Vote Māori Affairs)

Appropriations in Vote Māori Affairs for the 2014/2015 financial year include "a total of over \$82 million for the promotion of Māori language and culture through direct funding of broadcasting entities (Te Māngai Pāho and Māori Television Services) Te Pūtahi Paoho and Te Taura Whiri i te Reo Māori (Māori Language Commission)."³

Of the \$82 million allocated to Vote Māori Affairs for Māori language and culture, the budget for Te Taura Whiri i te Reo Māori in 2014/2015 of approximately \$11.5 million is allocated to ensure that:

- Māori are protecting, sustaining and growing their reo, tikanga, mātauranga and tikanga;
- Māori are sustainably growing and developing their resources;
- Māori are acquiring skills and knowledge.⁴

In addition to our core functions we also administer funds to enable community and whānau-led development:

- Mā te Reo Fund - \$2.5 million per annum;
- Community Based Language Initiatives (CBLI) – Iwi language development – approximately \$1.548 million per annum;
- He Kāinga Kōrerorero - \$1.5 million per annum;
- Te Kura Whānau Reo (from the CBLI Fund) - \$3.841 million; and
- He Puna Whakarauora - research fund - \$2 million per annum.⁵

Māori language sector

The regeneration of a Māori language that is living and an ordinary means of communication is an aspiration that cannot be achieved by Te Taura Whiri i te Reo Māori in isolation. There are many stakeholders involved, who all have a critical role to play, including:

³ New Zealand Government (2014) The Estimates of Appropriations for the Government of New Zealand for the Year Ending 30 June 2015– Māori, Other Populations and Cultural Sector B.5 Vol.8, pp.129-177. Available at The Treasury URL: <http://www.treasury.govt.nz/budget/2014/estimates/v8>

⁴ New Zealand Government (2014) The Estimates of Appropriations for the Government of New Zealand for the Year Ending 30 June 2015– Māori, Other Populations and Cultural Sector B.5 Vol.8, p.158. Available at The Treasury URL: <http://www.treasury.govt.nz/budget/2014/estimates/v8>

⁵ Office of the Minister of Māori Affairs to Cabinet Social Policy Committee, (2014) 'A New Māori Language Strategy: Paper 1', pp.8-9.

- Iwi organisations, individual iwi, hapū and whānau ;
- Ministries (for example, Te Puni Kōkiri, Ministry of Education) ;
- Crown and statutory entities (such as Te Māngai Pāho, Māori Television Service);
- Community, business, and charitable organisations;
- Māori language education service providers.

PART TWO: Major Policy and Implementation issues

Māori Language Strategy 2014

In May 2014, Cabinet approved a new Māori Language Strategy (MLS), replacing the former strategy adopted in 2003.

The MLS 2014 asserts that the Māori language is a taonga of iwi and Māori people, guaranteed by the Treaty of Waitangi, and that iwi and Māori are kaitiaki of the language. The new strategy seeks to strengthen the leadership roles of iwi and Māori in the revitalisation of te reo and build stronger Crown-iwi relationships in the Māori language sector, as well as enabling the Crown to meet on-going obligations to support the language and manage enduring public accountability.

The MLS 2014 has five key result areas replacing the previous five goals of strengthening language skills, language use, education opportunities in the Māori language, community leadership and recognition of te reo. The new key result areas are:

- Te mana o te reo – increasing the status of the Māori language in New Zealand society;
- Te ako i te reo – increasing the number of whānau Māori and other New Zealanders who can speak Māori;
- Te marama pū ki te whakaora reo – increasing critical awareness about Māori language revitalisation;
- Te kōunga o te reo – supporting the quality and appropriate use of the Māori language, and iwi dialect maintenance; and
- Te kōrerotanga o te Reo – increasing the use of the Māori language among whānau Māori and other New Zealanders, especially in the home.

The MLS 2014 is the result of a programme of reviews and consultation beginning in 2010. One of the outcomes of the strategy is proposed changes to the status and governance arrangements for Te Taura Whiri i te Reo Māori, Te Māngai Pāho and the Māori Television Service. These are intended to be given effect through the Māori Language Bill 2014, which received its first reading in July 2014. Te Taura Whiri i te Reo Māori is working towards aligning the five results areas to its Statement of Performance Expectations (SPE) and Statement of Intent (SOI) outcomes.

The value and importance of the Māori Language

Te Taura Whiri i te Reo Māori mission is to ensure the Māori language is sustained through use, innovation, and development, and to uphold the integrity of the Māori language in respect to the important status and ongoing use of the Māori language in Aotearoa/New Zealand. The Māori language is protected under the Treaty of Waitangi and is of significant value to whānau, iwi, and hapū. Active engagement in the Māori language by all New Zealanders helps raise the status of the Māori language by broadening the domains in which the Māori language can be heard and spoken.

Māori language regeneration and revitalisation

Te Taura Whiri i te Reo Māori supports new key results areas in the 2014 MLS as inter-related language revitalisation targets. While Te Taura Whiri i te Reo Māori has a priority focus on Māori whānau, hapū and iwi, other Te Taura Whiri i te Reo Māori functions also support the promotion of the Māori language to all New Zealanders.

International research on language regeneration and revitalisation show that a number of factors need to be measured when assessing a language's vitality. A decline in the number of speakers is just one factor to be considered in relation to other factors including a language's status and proximity to a more widely spoken language and its domains. Te Taura Whiri i te Reo Māori, in consultation with Te Puni Kōkiri, will be working towards creating a matrix of indicators for the Māori Language Strategy's result areas to assist the measurement of Māori language vitality as it applies in the Aotearoa / New Zealand context.

Current measures for Māori language vitality are mainly derived from New Zealand Census data, Statistic New Zealand's 2013 Te Kupenga survey of Māori,⁶ and the Ministry of Education. The 2013 Census indicates that 21.3% of Māori (ethnic) and 3.7% of New Zealanders say they can have a conversation in the Māori language "about everyday things". The 2013 Census data shows that Gisborne, Northland, and Bay of Plenty have the highest proportion of Māori speakers per population group, but Auckland has the highest number of speakers. Of speakers working in industry aged 15 and above most were employed in the private industry sector but there was a small increase in the numbers of speakers employed in the government sector. Hamer (2012⁷) found that by 2011 nearly 10,000 Māori speakers had moved to Australia, so one of the proposed indicators of language vitality will need to monitor Māori migration patterns. Te Kupenga survey found that 55% of Māori (ethnic) report fluency levels of more than basic words and phrases. 23% said they could speak Māori language very well, well, or fairly well. Te Kupenga survey depicts the important role of Māori immersion education, whānau size and composition, access to Māori language speaking communities, cultural identification with Māori, and cultural activities as having a positive impact on Māori language use and proficiency.

Te Taura Whiri i te Reo Māori has recently established a research centre, He Puna Whakarauora, and is in the process of procuring research services to engage with Māori language stakeholders to ensure that Māori language revitalisation policies and activities are informed and led by the experiences and insights of those who are actively involved and engaged with the Māori language. Te Taura Whiri i te Reo Māori is also working to develop an evaluation framework to assess language revitalisation initiatives and activities.

Te Taura Whiri i te Reo Māori values, recognises, and supports the efforts that whānau, hapū and iwi are making to regenerate and revitalise the Māori language within their communities. Te Taura Whiri i te Reo Māori also understands that language regeneration and vitality is achieved through a variety of means and approaches including the activities of nationally and locally based, pan-Māori, urban, and inter-ethnic groups established to support and speak the Māori language.

Māori Language (Te Reo Māori) Bill 2014

In our view, some of the detail in the Māori Language Bill may require amendment in order to ensure the effective implementation and workability of the Māori Language Strategy 2014. We set out Te Taura Whiri i te Reo Māori proposals regarding the Bill as Part Three of this briefing to the incoming Minister.

⁶ Statistics New Zealand (2014) *Ka Mārō Te Aho Tapu, ka tau te korowai: Te reo Māori findings from Te Kupenga 2013*.

⁷ Hamer, Paul (2012) *Māori in Australia: an update from the 2011 Australian census and the 2011 general election*. Available from Social Science Research Network http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2167613

PART THREE: Pending actions and decisions for the incoming Minister

Appointments

There is currently one vacancy for one Commissioner to the Board of Te Taura Whiri i te Reo Māori to be appointed by the Minister. Te Puni Kokiri administers the appointment process.

Upcoming Events

The Minister attends Ngā Tohu Reo Māori [Māori Language Awards], this year held in Rotorua on 7 November 2014. Te Taura Whiri i te Reo Māori sponsors the Kāwanatanga / Government Māori Language Award which the Minister presents. The Minister has the opportunity to deliver a speech at the Ngā Tohu Reo Māori Awards ceremony. Te Taura Whiri i te Reo Māori can provide you with briefing information and draft speech notes for this event.

Māori Language (Te Reo Māori) Bill 2014

Summary of Bill

The Māori Language (Te Reo Māori) Bill (the Bill) was introduced on 3 July 2014 and referred to the Māori Affairs Committee on 24 July 2014. If reinstated by the new Parliament, it will be returned to the Māori Affairs Committee, which is due to report to the House on 24 January 2015.

The Bill is intended to implement the Māori Language Strategy by strengthening Crown-iwi and Māori relationships in the Māori language sector and strengthening iwi and Māori leadership of Māori language issues. In particular, the Bill is intended to give effect to the following aspects of the Māori Language Strategy:

- (a) Affirming that the Māori language is a taonga of iwi and Māori, and that iwi and Māori are the kaitiaki of the Māori language
- (b) Establishing an independent entity, Te Mātāwai, to provide leadership on behalf of iwi and Māori regarding the health of the Māori language
- (c) Providing for iwi and Māori language stakeholder organisations to appoint 10 members to Te Mātāwai, and for the Crown to appoint two members
- (d) Transferring responsibility and oversight for Te Taura Whiri i te Reo Māori and Te Māngai Pāho from the Crown to Te Mātāwai
- (e) Disestablishing Te Pūhaki Paoho and transferring its functions to Te Mātāwai.

Te Taura Whiri i te Reo Māori (Te Taura Whiri i te Reo Māori) has the following concerns with the current drafting of the Bill:

- (a) The Bill makes changes to the te reo sector which appear to be inconsistent with the policy intentions behind the Bill
- (b) Those changes are not necessary to achieve the purposes of the Bill or the Māori Language Strategy
- (c) The Bill's representative mechanisms are inadequate and create a risk of discord among unrepresented Māori organisations, iwi and hapū
- (d) The proposed model that the Bill will create will be unworkable in practice, and is likely to result in impaired delivery of Māori language services

- (e) As a result, the Crown may be exposed to adverse publicity, litigation or further claims in the Waitangi Tribunal about its responsibilities regarding the Māori language.

In particular, Te Taura Whiri i te Reo Māori is concerned that the Bill creates an unintended and unnecessary confusion of function and role between Te Mātāwai and Te Taura Whiri i te Reo Māori. These issues are elaborated on in detail below, but, in essence, Te Taura Whiri i te Reo Māori had understood that it would retain its functions and responsibilities, while its governance relationship shifted from the Minister of Māori Development to Te Mātāwai.

However, as drafted, the Bill goes further than this and appears to transfer operational Māori language policy functions from Te Taura Whiri i te Reo Māori to Te Mātāwai. This transfer is not consistent with the policy intention behind the Bill, nor is it necessary to fulfil any of the aims of the Māori Language Strategy. Instead, Te Taura Whiri i te Reo Māori considers that this transfer is due to drafting ambiguities that should be corrected.

As a result of this confusion, there are a number of consequential issues with the governance and accountability provisions Te Taura Whiri i te Reo Māori considers need to be resolved before the Bill can proceed. In particular, the extent of Te Mātāwai powers of oversight and intervention in Te Taura Whiri i te Reo Māori appear to go much further than is necessary and will exacerbate the issues with confusion of function and role between Te Taura Whiri i te Reo Māori and Te Mātāwai.

Te Taura Whiri i te Reo Māori also considers that there are other aspects of the Bill which could be strengthened or otherwise improved. In particular, both the provision relating to the right to speak te reo Māori before Courts and tribunals; and the provision setting out the principles government departments should follow in terms of consultation and use of te reo Māori.

A draft Supplementary Order Paper that Te Taura Whiri i te Reo Māori considers would resolve the issues and ambiguities it has identified with the Bill is attached at the end of this briefing as Appendix A.

Policy Intention behind Māori Language Bill

As noted above, Te Taura Whiri i te Reo Māori had understood that the intention behind the Bill is that it would retain its role and responsibilities, but with its governance relationship shifted to Te Mātāwai. This is consistent with the statements made by the previous Minister of Māori Affairs, Dr Hon Pita Sharples, during the Bill's first reading debate and in the Explanatory Note to the Bill.

During the debate on the first reading of the Bill, the former Minister explained:

In short, the authority for these Māori language entities will be transferred from the Crown to tribes and Māori people.

[...]

This Bill also amends the Crown Entities Act 2004 by removing the Māori Language Commission and the Māori Broadcasting Funding Agency from Part 2, Schedule 1 of that Act as these two organisations will cease to be crown entities. They will retain their current functions and responsibilities and all board members including staff will be retained under existing employment terms and conditions.

The significant change is that the Māori Language Commission and the Māori Broadcasting Funding Agency will be accountable to Te Mātāwai in the first instance. Through it they will ultimately be responsible and accountable to tribes and Māori people.

These statements are consistent with the Bill's explanatory note, which states, in relation to the functions of Te Taura Whiri i te Reo Māori and Te Māngai Pāho:

Clauses 25 and 26 set out the functions and powers of Te Taura Whiri and Te Māngai Pāho. These are essentially carried over from, respectively, the Māori Language Act 1987 and Part 4A of the Broadcasting Act 1989. Te Taura Whiri continues to have its policy and operational roles in relation to the Māori language, including responsibility for certifying translators and interpreters.

As the former Minister said, it was intended that the significant change for Te Taura Whiri i te Reo Māori be primarily in its governance relationship, which would shift from the Minister to Te Mātāwai. However, for the reasons set out below, the Bill substantially transfers Te Taura Whiri i te Reo Māori functions and roles to Te Mātāwai. This transfer was not foreshadowed by the Māori Language Strategy or by the Minister; and runs the risk of being unworkable in practice.

Summary of Inconsistencies between Policy Intention and Drafting of the Bill

The primary concern Te Taura Whiri i te Reo Māori has with the Bill is that as drafted it does not clearly delineate between the functions and responsibilities of Te Taura Whiri i te Reo Māori, and the functions and responsibilities of Te Mātāwai. For example, clause 25 of the Bill states that Te Taura Whiri i te Reo Māori functions are (in part):

To take such steps as are reasonably necessary in the opinion of Te Taura Whiri to give effect to the status of Māori as an official language of New Zealand; and

to promote the Māori language—

- (i) as a living language; and
- (ii) as an ordinary means of communication;

This provision appears, at face value, to give Te Taura Whiri i te Reo Māori a broad remit in terms of Māori language policy. However, clause 13 of the Bill states that Te Mātāwai functions include:

to provide expert advice to the Minister of Māori Affairs on issues relating to the Māori language, including advice on reviewing and developing the Māori Language Strategy on a 3-yearly cycle;

As a result, the Bill introduces significant unwarranted ambiguity into the respective roles of Te Taura Whiri i te Reo Māori and Te Mātāwai as regards Māori language policy. For example, which entity is intended to take the lead on providing expert Māori language advice to the Minister?

Policy role

The policy intention behind the Bill is that this role should stay with Te Taura Whiri i te Reo Māori, which currently performs it. But Te Mātāwai functions will specifically include providing expert advice to the Minister of Māori Development on issues relating to the Māori language. Having regard to the general rule of statutory interpretation that specific provisions override general ones, together with Te Mātāwai oversight of Te Taura Whiri i te Reo Māori Statement of Intent and its role in negotiating Te Taura Whiri i te Reo Māori funding contracts, the Bill potentially creates scope for this activity to be assumed by Te Mātāwai.

Similar concerns apply to almost all of the functions and responsibilities Te Taura Whiri i te Reo Māori currently performs, with the exception of its role in certifying interpreters and translators. Contrary to the Bill's stated intention, as drafted, the Bill will impose significant and apparently unintended change on the Māori language sector as roles and responsibilities are transferred to Te Mātāwai.

Te Taura Whiri i te Reo Māori is also concerned that the oversight and reporting structure to be established by the Bill may be unworkable in practice.

The Right to Speak Māori before Courts and Tribunals

Clause 6 of the Bill restates the right to use te reo Māori in ‘legal proceedings’, simply replicating the current wording of section 4 of the Māori Language Act 1987. Te Taura Whiri i te Reo Māori considers that this is a missed opportunity to strengthen the right to use Māori before the Courts and tribunals and should be updated to reflect recent decisions and changes in the structure of the judicial system.

Preventing disadvantage from speaking te Reo Māori

To date the Courts have consistently interpreted section 4 of the Māori Language Act 1987 to mean that the persons listed in section 4(1) may speak te reo Māori in any legal proceedings, whether or not they are able to understand or communicate in English.⁸ However, in the case of *Green v Waitangi Tribunal* [2014] NZHC 23, the High Court found that proceedings before the Waitangi Tribunal are governed by different principles and constraints than courts. In the end the Court found that the time limits imposed by the Tribunal on hearing time apply whether the person elects to speak English or te reo Māori: the Tribunal is not required to allow extra time to parties who elect to speak te reo Māori.

Power to direct

Te Taura Whiri i te Reo Māori will have both a Board and a Chief Executive, as will Te Mātāwai. As currently drafted, Te Mātāwai will set the strategy under which Te Taura Whiri i te Reo Māori must operate and, further, can issue Te Taura Whiri i te Reo Māori with ‘directions’ as to how it must carry out its role and functions. This power to direct is broadly stated and suggests that Te Taura Whiri i te Reo Māori will be kept under close operational oversight by Te Mātāwai and will have very limited freedom of action. Further, Te Mātāwai is given the power to negotiate service contracts with the Crown for Te Taura Whiri i te Reo Māori and affirm its services. It is unclear how Te Mātāwai power to direct is consistent with the stated intention of the Minister (and the Explanatory Note) that Te Taura Whiri i te Reo Māori continue as before and how, in practice, the two Boards will work together.

Representation on Te Mātāwai

A further issue relates to the nature of the Te Mātāwai itself. The Board of Te Mātāwai will have 12 members, which will constitute seven representatives from each of the iwi clusters listed in Schedule 3 to the Bill; three members from Te Reo Tūkūtu (a Māori language stakeholder group comprising ten organisations); and two Crown representatives. The Bill (clause 2 of Schedule 4) sets out the process that the iwi clusters and Te Reo Tūkūtu must follow before making appointments. This involves a process of nominations, the formation of selection groups, and the appointment of members of Te Mātāwai from those groups. If there are delays, the Minister may take over the appointment process.

Te Taura Whiri i te Reo Māori supports the idea of a representative, community-based organisation such as Te Mātāwai playing a key role in Māori language strategy. But Te Taura Whiri i te Reo Māori is conscious of the complexity involved in these various voices reaching a consensus. Te Taura Whiri i te Reo Māori is a national body, with a focus on weaving the various strands of the language together to offer a unified, national perspective. Without Te Taura Whiri i te Reo Māori being involved in the development of policy, there is the potential for a regional, iwi-based, dialectical focus to develop. Te Taura Whiri i te Reo Māori considers that there is a place for both a representative and a national focus in the revitalisation of te reo Māori.

Te Taura Whiri i te Reo Māori is also concerned that the membership of Te Reo Tūkūtu and the seven iwi clusters which make appointments to Te Mātāwai may inadvertently exclude groups with

⁸ For example, *R v Taylor* (HC Hamilton T4/95, 20 September 1995).

an interest in the Māori language or particular hapū and/or iwi. Te Taura Whiri i te Reo Māori considers that this oversight exposes the Crown to the risk of adverse findings in the Waitangi Tribunal. Te Taura Whiri i te Reo Māori considers that it would be prudent for the Minister to satisfy himself that the arrangements for representation through Te Reo Tūkūtuku and the seven iwi clusters are adequate before proceeding further with the Bill.

Strategic Oversight

In the view of Te Taura Whiri i te Reo Māori, the Bill needs to be amended to resolve these issues and clearly establish Te Mātāwai as a governance organisation with strategic oversight of Te Taura Whiri i te Reo Māori, which will retain its policy and operational functions as intended when the Māori Language Strategy was prepared. Unless it is amended, the Bill will fail to reflect the purposes for which it was introduced.

Te Taura Whiri i te Reo Māori has analysed the Bill clause by clause, and has included proposed amendments to the Bill to resolve the issues which it has identified. These proposed amendments are discussed in detail below, and a proposed Supplementary Order Paper to implement them is appended to this briefing.

Proposed amendments to Māori Language (Te Reo Māori) Bill

The Purpose of the Bill

- 1 As drafted, the purpose clause of the Bill states that Te Mātāwai will provide leadership on behalf of iwi and Māori in their role as kaitiaki of the Māori language, but does not state how Te Mātāwai will do this. Te Taura Whiri i te Reo Māori considers that, as a result, the purpose clause fails to adequately reflect the true purpose of the Bill, and should be clarified to remove any ambiguities.
- 2 Te Taura Whiri i te Reo Māori considers that this clause should be clarified by accurately setting out the role of Te Mātāwai in making appointments to Te Taura Whiri i te Reo Māori and Te Māngai Pāho and the Māori Television Service; and setting the strategic direction for the Māori language sector.

3	Purpose of this Act
(1)	This Act—
	(a) replaces the Māori Language Act 1987; and
	(b) amends the Broadcasting Act 1989; and
	(c) amends the Māori Television Service (Te Aratuku Whakaata Irirangi Māori) Act 2003.
(2)	The purpose of these changes is to affirm the status of the Māori language as a taonga of iwi and Māori and an official language of New Zealand by—
	(a) establishing Te Mātāwai as an independent statutory entity to provide leadership on behalf of iwi and Māori in their role as kaitiaki of the Māori language, by making appointments to Te Taura Whiri and Te Māngai Pāho, and in conjunction with the Minister of Māori Affairs and the Minister of Finance, to the Māori Television Service, and setting the strategic direction for the Māori language sector; and
	(b) in support of that role, providing for the roles of Te Taura Whiri i te Reo Māori and Te Māngai Pāho under the leadership of Te Mātāwai.

The Right to Speak Māori before Courts and Tribunals

- 3 Clause 6 of the Bill restates the right to use te Reo in 'legal proceedings'. Clause 6 simply replicates the current wording of section 4 of the Māori Language Act 1987. Te Taura Whiri i te Reo Māori considers that this is a missed opportunity to strengthen the right to use Māori before Courts and tribunals and should be updated to reflect recent decisions and changes in the structure of the judicial system.

Preventing disadvantage from speaking te reo Māori

- 4 The Courts have consistently interpreted section 4 of the Māori Language Act 1987 to mean that the persons listed in section 4(1) may speak te reo Māori in any legal proceedings, whether or not they are able to understand or communicate in English.⁹
- 5 However in the case of *Green v Waitangi Tribunal* [2014] NZHC 23, the High Court found that proceedings before the Waitangi Tribunal are governed by different principles and constraints than courts, on the basis that the Tribunal has the power to limit the extent to which a party may participate in the hearing and impose conditions to limit or define the extent of the oral participation. The Court found that the time limits imposed by the Tribunal on hearing time apply whether the person elects to speak English or te reo Māori: the Tribunal is not required to allow extra time to parties who elect to speak te reo Māori.
- 6 The Judge in *Green* effectively refused to allow the right to speak te reo Māori to override the time restrictions, which he said applied equally to everyone. However, the practical effect of the decision is that it may not be possible to speak te reo Māori in the Tribunal where time is limited because translation of te reo Māori will inevitably require more time than speaking in English.
- 7 Te Taura Whiri i te Reo Māori considers that this is inconsistent with the general position affirmed in the Bill that te reo is an official language of New Zealand. New Zealanders should not be disadvantaged in the Courts for choosing to exercise their right to speak or use one of the country's official languages.
- 8 Te Taura Whiri i te Reo Māori considers that this provision should be strengthened in line with approaches taken overseas. For example, the Republic of Ireland's Official Languages Act 2003 provides at section 8(2):

Every court has, in any proceedings before it, the duty to ensure that any person appearing in or giving evidence before it may be heard in the official language of his or her choice, and that in being so heard the person will not be placed at a disadvantage by not being heard in the other official language
- 9 Canada's Official Languages Act 1985 includes similar wording at section 15(1).
- 10 Te Taura Whiri i te Reo Māori therefore recommends that clause 6 of the Bill be strengthened through the addition of a clause to remove any doubt that the right to use Māori in courts and tribunals is absolute and not subject to a court or tribunal's power to regulate its own procedure.

⁹ For example, *R v Taylor* (HC Hamilton T4/95, 20 September 1995).

6	Right to use Māori in legal proceedings
(1)	In any legal proceedings, the following persons may communicate in Māori, whether or not they are able to understand or communicate in English or any other language: <ul style="list-style-type: none"> (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: (d) any other person with leave of the presiding officer.
(2)	The right conferred by subsection (1) to communicate in Māori does not— <ul style="list-style-type: none"> (a) entitle any person referred to in that subsection to insist on being addressed or answered in Māori; or (b) entitle any person referred to in that subsection, other than the presiding officer, to require the proceedings or any part of them to be recorded in Māori.
(3)	If a person intends to communicate in Māori in any legal proceedings, the presiding officer must ensure that a competent interpreter is available.
(4)	If, in any proceedings, any question arises as to the accuracy of any interpreting from Māori into English or from English into Māori, the question must be determined by the presiding officer in any manner that the presiding officer thinks fit.
(5)	Rules of court or other appropriate rules of procedure may be made requiring any person intending to communicate in Māori in legal proceedings to give reasonable notice of that intention, and generally regulating the procedure to be followed if Māori is, or is to be, used in those proceedings.
(6)	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 of costs, but no person may be denied the right to communicate in Māori in any legal proceedings because of that failure.
(7)	To avoid doubt: <ul style="list-style-type: none"> (a) every court, tribunal, or other body before which legal proceedings are being conducted must ensure that any person to whom subsection (1) applies may be heard in Māori if he or she so chooses; and (b) subject to subsection (6), every court, tribunal or other body before which legal proceedings are being conducted must ensure that no person to whom subsection (1) applies is disadvantaged by choosing to communicate in Māori; and (c) any power that a court, tribunal, or other body to which this section applies has to regulate its own procedure is subject to, and may only be exercised consistently with, the duties imposed by this section; and (d) this section applies despite the decision of the High Court in <i>Green v Te Rōpu Whakamana i te Tiriti o Waitangi</i> [2014] NZHC 723.

Updating the definition of legal proceedings

- 11 'Legal proceedings' are defined in clause 8 of the Bill as proceedings before a court or tribunal named in Schedule 2 of the Bill. The combined effect of clause 8 and Schedule 2 is very similar to the position under the current Māori Language Act, although updated so that it no longer refers to tribunals which no longer exist.
- 12 There are many tribunals to which the Act does not apply and to which the Bill will not apply. For example, the soon-to-be-introduced Courts and Tribunals Enhanced Services Legislation Bill amends the powers and functions of a number of tribunals to which neither the Bill nor the Act apply.

- 13 There is no clear reason why these tribunals have been excluded from the Bill, and Te Taura Whiri i te Reo Māori suggests that the Bill's coverage be expanded to include these tribunals as well.

Schedule 2 Courts and tribunals before which Māori may be used	
	<i>Part A</i>
	<i>Courts</i>
The Supreme Court	
The Court of Appeal	
The High Court	
District Courts	
The Environment Court	
The Employment Court	
Family Courts	
Children and Young Persons Courts	
Youth Courts	
The Māori Land Court	
The Māori Appellate Court	
	<i>Part B</i>
	<i>Tribunals</i>
The Waitangi Tribunal	
The Employment Relations Authority	
The Equal Opportunities Tribunal	
The Tenancy Tribunal	
Disputes Tribunals	
Copyright Tribunal	
Customs Appeal Authority	
Human Rights Review Tribunal	
Immigration Advisers Complaints Disciplinary Tribunal	
Immigration and Protection Tribunal	
Lawyers and Conveyancers Disciplinary Tribunal	
Legal Aid Tribunal	
Legal Complaints Review Officer	
Second-hand Dealers and Pawnbrokers Licensing Authority	
Motor Vehicle Disputes Tribunal	
Private Security Personnel Licensing Authority	
Real Estate Agents Disciplinary Tribunal	
Review Authority (Legal Aid)	
Social Security Appeal Authority	
Student Allowance Appeal Authority	
Taxation Review Authority	
Victims Special Claims Tribunal	
Weathertight Homes Tribunal	

Principles

- 14 Clause 7 of the Bill sets out a series of principles which 'government departments' should be guided by, so far as reasonably practicable. Te Taura Whiri i te Reo Māori considers that the principles in the Bill should be strengthened to establish binding principles that apply across a range of Government entities, instead of guidance that applies only to the core public service.

Broadening application of principles

- 15 As drafted, the principles in clause 7 are only applicable to government departments named in Schedule 1 of the State Sector Act 1988. They do not apply at all to Crown entities, local government, or indeed to Te Mātāwai and the other organisations such as Te Taura Whiri i te Reo Māori which are established or continued by the Bill. Te Taura Whiri i te Reo Māori considers that this is a drafting oversight which should be remedied by updating and expanding the list of organisations to which the principles apply.

Binding principles

- 16 Further, clause 7 does not create a binding obligation on government departments to apply or give effect to the principles set out in clause 7(1):
- (a) Government departments are only required to be ‘guided’ by the principles ‘so far as is reasonably practicable’ when exercising their functions and powers.
 - (b) Clause 7(2) further says that the principles ‘do not confer on any person any legal right that is enforceable in a court of law’. Although te reo Māori is declared to be an official language, the Bill does not **require** government departments to make government services and information available in te reo.
 - (c) Clause 7(3) provides that the consultation under section 7(1)(a) ‘is to be carried out’ by the Chief Executive consulting, to the extent that is reasonably practicable, with the persons or organisations they consider are representative of the interests of iwi and Māori. This is a significant limitation on the real effect of this requirement. Further, Chief Executives will have significant discretion as to who they choose to consult and it will be difficult to enforce this principle if a person or entity was not consulted in respect of a particular proposal and feels that they should have been.
 - (d) This clause **requires** Chief Executives to consult with representative persons or organisations – in other words, consultation with Māori as a whole will not meet the requirements of clause 7(3). In a practical sense, it is possible that in many cases consultation will simply be carried out with Te Mātāwai, which is intended to ‘provide leadership on behalf of iwi and Māori regarding the health of the Māori language’.
- 17 In essence, the principles in their current form are effectively unenforceable and cannot be relied on to require an organisation to which they apply to consult Māori on matters relating to the Māori language, to use the Māori language in the promotion of government services and information, or to make information accessible in Māori.
- 18 Te Taura Whiri i te Reo Māori is concerned that the enactment of this clause in its current form will not prevent future claims under the Treaty of Waitangi that organisations have failed to adequately consult with Māori or to give effect to the principles of the Treaty. In particular, Te Taura Whiri i te Reo Māori is concerned that this clause will not adequately discharge the Crown’s duty to actively protect the Māori language unless it is significantly strengthened.

7	Principles
(1)	An organisation to which this section applies must, when exercising its functions and powers, give effect to the following principles: <ul style="list-style-type: none">(a) iwi and Māori must be consulted on matters relating to the Māori language (including, for example, the promotion of the use of the language):(b) the Māori language must be used in the promotion to the public of that organisation’s services and in the provision of information to the public:(c) services provided by the organisation and information held by the organisation

	must be made accessible to iwi and Māori through the use of appropriate means (including the use of translations or interpretations of English documents into the Māori language by persons holding appropriate certificates issued by Te Taura Whiri).
(2)	Consultation by an organisation under subsection (1)(a) is to be carried out by the organisation's principal officer consulting with the persons or organisations that the officer considers to be representative of the interests of Māori.
(3)	This section applies to the following organisations:
(a)	government departments;
(b)	Crown entities as defined in section 7(1) of the Crown Entities Act 2004;
(c)	organisations listed in Schedule 4 of the Public Finance Act 1989;
(d)	the New Zealand Police as constituted under Part 2 of the Policing Act 2008;
(e)	the New Zealand Defence Force as constituted under Part 2 of the Defence Act 1990;
(f)	the Parliamentary Service as continued by the Parliamentary Service Act 2000;
(g)	the Auditor-General as defined in section 4 of the Public Audit Act 2001;
(h)	Ombudsmen as appointed under section 3 of the Ombudsmen Act 1975;
(i)	the Parliamentary Commissioner for the Environment as appointed under section 4 of the Environment Act 1986;
(j)	regional councils and territorial authorities as defined in the Local Government Act 2002;
(k)	Te Mātāwai;
(l)	Te Taura Whiri;
(m)	Te Māngai Pāho; and
(n)	the Māori Television Service.

Membership of Te Reo Tukutuku

- 19 Te Taura Whiri i te Reo Māori is concerned that there are relevant bodies with an interest in the Māori language that have not been included in the membership of Te Reo Tukutuku. Failure to include relevant groups potentially exposes the Crown to claims under the Treaty of Waitangi. Te Taura Whiri i te Reo Māori does not consider that the Bill should be progressed further until the Minister is satisfied that the membership of Te Reo Tukutuku adequately reflects the full range of organisations with an interest in the Māori language.
- 20 Te Taura Whiri i te Reo Māori notes in particular that the New Zealand Māori Council, the National Urban Māori Authority and the Māori Education Trust appear to have been excluded from membership. Te Taura Whiri i te Reo Māori considers that it would be prudent to amend clause 8 to include these organisations and any others the Minister considers should be part of Te Reo Tukutuku.
- 21 Te Taura Whiri i te Reo Māori has proposed some additional members below, but recommends that the Minister carefully consider whether there are any other organisations which ought to be represented on Te Reo Tukutuku.

Te Reo Tukutuku means the Māori language stakeholder group consisting of the following organisations:

- (a) Te Kōhanga Reo National Trust; and
- (b) Te Rūnanga Nui o Ngā Kura Kaupapa Māori o Aotearoa; and
- (c) Te Ringa Raupā o ngā Kura-a-Iwi; and
- (d) Te Tauihu o Ngā Wānanga; and
- (e) Te Ataarangi; and
- (f) Te Whakaruruhau o ngā Reo Irirangi Māori o Aotearoa; and

- (g) Ngā Aho Whakaari; and
- (h) Ngā Kaiwhakapūmau i te Reo Māori; and
- (i) Māori Women's Welfare League Incorporated; and
- (j) Te Huarahi Tika Trust
- (k) New Zealand Māori Council
- (l) Ngā Pū Waea Panel
- (m) National Urban Māori Authority
- (n) Māori Education Trust
- (o) Me Uru Kahikatea
- (p) NZ Māori Wardens Association
- (q) Federation of Māori Authorities
- (r) Komiti Māori
- (s) Tuhono Research Panel.
- (t) Māori Association of Social Scientists (Universities)

Te Mātāwai

Powers of Te Mātāwai

- 22 Clause 11(1) establishes Te Mātāwai as an independent statutory entity. This means that it is not a Crown entity and the Crown Entities Act 2004 does not apply to it. Despite this, many of the operational provisions in the Crown Entities Act have been mirrored in Schedule 4 of the Bill and will apply to Te Mātāwai and Te Taura Whiri i te Reo Māori. The provision dealing with Te Mātāwai powers is an exception. Clause 11(3) of the Bill provides that Te Mātāwai can 'undertake any business or activity, do any act, or enter into any transaction' for the purposes of performing its functions. This provision appears to have been brought forward from section 9 of the Māori Television Service (Te Aratuku Whakaata Irirangi Māori) Act 2003, which predates the Crown Entities Act 2004.
- 23 It is unclear why the wording in clause 11(3) has been chosen instead of the newer drafting in sections 16, 17 and 18 of the Crown Entities Act 2004 (which currently applies to Te Taura Whiri i te Reo Māori), which provides as regards the powers of Crown entities:

16 Core things statutory entities can do

A statutory entity may do anything authorised by this Act or the entity's Act.

17 Other things statutory entities can do

- (1) A statutory entity may do anything that a natural person of full age and capacity may do.
- (2) Subsection (1) applies except as provided in this Act or another Act or rule of law.

18 Acts must be for purpose of functions

A statutory entity may do an act under section 16 or section 17 only for the purpose of performing its functions.

- 24 Te Taura Whiri i te Reo Māori recommends that, for clarity and the avoidance of doubt, all of the clauses in the Bill relating to entity powers are brought into line with the more modern provisions of the Crown Entities Act 2004.

11 Te Mātāwai established

- (1) Te Mātāwai is established as an independent statutory entity.
- (2) Te Mātāwai is a body corporate with perpetual succession.
- (3) For the purpose of performing its functions, Te Mātāwai may do:

- (a) anything authorised by this Act; and
- (b) anything that a natural person of full age and capacity may do.
- (4) Subsection (3) applies subject to the provisions of this Act, or another Act or rule of law.
- (5) Te Mātāwai is a public authority for the purpose of the Inland Revenue Acts, unless either of those Acts or this Act provides otherwise.

Purpose of Te Mātāwai

25 As drafted, clause 12 of the Bill uses broad and ambiguous terms such as ‘oversight’ and “direction” to describe how Te Mātāwai will give effect to its leadership role. It is unclear what these terms will mean, in a practical sense. Te Taura Whiri i te Reo Māori suggests that this clause is amended, consistent with the amendments proposed to the overall purpose clause, to state specifically how Te Mātāwai will exercise its leadership. This will be by setting the strategic direction for the sector; and appointing members of Te Taura Whiri i te Reo Māori and the other entities.

12 Purpose of Te Mātāwai

The purpose of Te Mātāwai is to act on behalf of iwi and Māori:

- (a) to provide overall leadership regarding the health and wellbeing of the Māori language; and
- (b) to give practical effect to that leadership by:
 - (i) setting the strategic direction for the Māori language sector; and
 - (ii) appointing the members of Te Taura Whiri, Te Māngai Pāho and, in conjunction with the Minister of Māori Affairs and the Minister of Finance, the Māori Television Service; and
- (c) to give effect, through its association with the Minister of Māori Affairs, to the relationship of the Crown with iwi and Māori contemplated by the Treaty of Waitangi in relation to the Māori language.

Functions of Te Mātāwai

26 The functions of Te Mātāwai are set out in clause 13 of the Bill. Te Taura Whiri i te Reo Māori is concerned that the drafting of the proposed functions is unclear and introduces ambiguities and contradictions that are not consistent with the policy intent behind the Bill. In particular, there is significant crossover between the proposed functions of Te Mātāwai and Te Taura Whiri i te Reo Māori, which is inconsistent with the clear intention that Te Taura Whiri i te Reo Māori should retain its operational and policy functions.

Requirement to consult with Te Taura Whiri i te Reo Māori on strategy

- 27 Clause 13(1)(a) requires Te Mātāwai to prepare a statement of strategic direction, in accordance with clauses 17 and 18. While Te Mātāwai is required to consult with the Minister and ‘at its sole discretion’ groups that it considers appropriate, it is not required to consult with Te Taura Whiri i te Reo Māori.
- 28 As this statement will incorporate the intended operations of Te Taura Whiri i te Reo Māori for the given period, Te Mātāwai should be required to consult with Te Taura Whiri i te Reo Māori about its content.

Advice to the Minister of Māori Development

- 29 Clause 13(1)(b) of the Bill provides that Te Mātāwai will have the function of providing expert advice to the Minister on issues relating to the Māori language, including advice on reviewing and developing the Māori Language Strategy.
- 30 This function overlaps with Te Taura Whiri i te Reo Māori proposed function of '[taking] such steps as are reasonably necessary in the opinion of Te Taura Whiri i te Reo Māori to give effect to the status of Māori as an official language of New Zealand', and with Te Taura Whiri i te Reo Māori existing policy function under sections 7(a), 8(2)(d) and (e) of the Māori Language Act 1987 to 'initiate, develop, co-ordinate, review, advise upon, and assist in the implementation of policies, procedures, measures, and practices designed to give effect to the declaration in section 3 of the Māori language as an official language of New Zealand', 'publish information relating to the use of the Māori language' and to 'report to the Minister on any matter relating to the Māori language that the Commission considers should be drawn to the Minister's attention'.
- 31 It therefore appears that some policy functions will be transferred from Te Taura Whiri i te Reo Māori to Te Mātāwai, in line with the general principle that specific statutory provisions override general ones. In particular, Te Mātāwai will effectively assume the role of lead policy advisor on Māori language matters, a role currently held by Te Taura Whiri i te Reo Māori. Te Taura Whiri i te Reo Māori considers that this is not what was intended by the Bill, which was that Te Taura Whiri i te Reo Māori would retain its existing policy and operational functions. The risk therefore arises of a dispute between Te Mātāwai and Te Taura Whiri i te Reo Māori about their respective roles and responsibilities, which would be to the detriment of the Māori language sector as a whole. This ambiguity should therefore be clarified by deleting clause 13(1)(b) and incorporating its wording, to avoid doubt, into Te Taura Whiri i te Reo Māori functions at clause 25.
- 32 Te Taura Whiri i te Reo Māori observes that Te Mātāwai would retain the broad function of providing independent comment on Māori language policy under clause 13(1)(c), which Te Taura Whiri i te Reo Māori agrees is appropriate.

Te Mātāwai power to direct Te Taura Whiri i te Reo Māori

- 33 Clause 13(1)(e) states that Te Mātāwai will 'give directions' to Te Taura Whiri i te Reo Māori about Te Taura Whiri i te Reo Māori obligations under [the Bill]'. This directive function appears to be additional to Te Mātāwai power to direct Te Taura Whiri i te Reo Māori on the preparation of its Statements of Intent (clause 29(1) of the Bill).
- 34 It is unclear what is meant by this broad power. It appears to suggest that Te Mātāwai will not simply supervise Te Taura Whiri i te Reo Māori at a governance level by having input into its strategic direction and monitoring its performance; but in practice will actually instruct Te Taura Whiri i te Reo Māori as to how it is to carry out its operations. This power of direction is inconsistent with the stated intention of Te Taura Whiri i te Reo Māori retaining its policy and operational roles, for which it needs an appropriate level of autonomy (and will have its own Board and Chief Executive).
- 35 In addition, the legal status of 'directions' of this kind is unclear. Is Te Taura Whiri i te Reo Māori obliged to comply with them? What happens if it does not? This Bill is silent on these questions.
- 36 By comparison, the Crown Entities Act 2004 sets out specific provisions and a process for giving directions relating to government policy or otherwise as permitted by a particular entity's own

Act, together with specific provisions at sections 110 and 114 requiring Crown entities to ‘comply’ with directions. Section 114(2) provides that compliance means ‘to give effect to the direction or to have regard to the direction, as the context requires’. There is also a specific prohibition in section 113(1) on directions from Ministers in relation to statutorily independent functions, or requiring the performance or non-performance of a particular act, or the bringing about of a particular result, in respect of a particular person or persons.

- 37 The closest analogy to the directive relationship established by this Bill appears to be in the current Māori Television Service (Te Aratuku Whakaata Irirangi Māori) Act, which permits Ministers and the Chair of Te Pūtahi Paoho to give directions to the Māori Television Service about its Statement of Intent. Te Mātāwai will assume this role, as the Bill disestablishes Te Pūtahi Paoho. But it is unclear why an additional, broad directive power is necessary or appropriate, especially when Te Mātāwai is able to set the strategy for Te Taura Whiri i te Reo Māori and Te Māngai Pāho through its input into their Statements of Intent and its over-arching role in setting the strategy for the Māori language sector.
- 38 Significantly, what Cabinet actually agreed in CAB Min (14) 17/13 is that Te Mātāwai would be responsible for ‘the preparation and publication of directions to [Te Taura Whiri i te Reo Māori] and Te Māngai Pāho about the **overall direction of these entities**’ [emphasis added]. However, unintentionally or otherwise, the drafting of the Bill suggests that Te Mātāwai will have a much greater, more specific, directive power.
- 39 Te Taura Whiri i te Reo Māori therefore recommends that clause 13(1)(e) be deleted to remove any ambiguity about the relationship between Te Taura Whiri i te Reo Māori and Te Mātāwai. Te Mātāwai will have overall governance responsibility for Te Taura Whiri i te Reo Māori and input into its Statement of Intent. But it is not necessary or appropriate for Te Mātāwai to exercise a specific directive function as regards the policy and operational activities of Te Taura Whiri i te Reo Māori.

Affirmation of Services and Negotiation of Contracts

- 40 Clause 13(f) provides for Te Mātāwai to ‘affirm the services to be delivered by Te Taura Whiri’, but ‘not in relation to specific funding decisions’. Clause 13(g) provides for Te Mātāwai to ‘negotiate and confirm contracts with the Crown for the purchase and delivery, from Te Māngai Pāho and Te Taura Whiri, of Māori language programmes and services that align with the Māori Language Strategy’.
- 41 Paragraph 37 of the Regulatory Impact Statement for the Bill confirms that clauses 13(f) and (g) reflect a new approach, involving a tripartite negotiation between the Crown, Te Taura Whiri i te Reo Māori and Te Mātāwai for te reo Māori services:

The Crown would contract with Te Taura Whiri and Te Māngai Pāho for the purchase of Māori language programmes and services, to the value of \$65m (in line with current expenditure on the programmes and services of these entities). This will require a tripartite negotiation between the Crown, Te Mātāwai, and Te Taura Whiri or Te Māngai Pāho. In this negotiation, the Crown would seek to purchase services that align with the MLS. This will require negotiation of the outputs to be delivered, the purchase price for these outputs, and how these outputs will be delivered.

- 42 It appears that although the contracts for services will be with Te Taura Whiri i te Reo Māori and not Te Mātāwai, Te Mātāwai will take the lead in contract negotiation and will ‘affirm’ what services are to be provided by Te Taura Whiri i te Reo Māori. It does not appear from the legislation that Te Taura Whiri i te Reo Māori will play a significant role in the negotiation of its service contracts, even though Te Taura Whiri i te Reo Māori will be required to perform them. Nor is it clear what the ‘affirmation’ of Te Taura Whiri i te Reo Māori services will mean in either a practical or legal sense.

- 43 A tripartite contracting model for service delivery in the te reo Māori sector has not been tried before, and Te Taura Whiri i te Reo Māori is concerned about how this will work in practice. Te Taura Whiri i te Reo Māori is particularly concerned that it will be forced into contracts for services which it cannot perform, are outside its statutory mandate, or are uneconomic, with corresponding impacts on quality of service and on the Crown's discharge of its Treaty of Waitangi obligations.
- 44 It is unclear what practical benefit the tripartite model will deliver. Te Taura Whiri i te Reo Māori notes that Te Mātāwai will retain oversight of Te Taura Whiri i te Reo Māori contracts and will be able to take steps if it considers that our performance of its contractual obligations is deemed inadequate.
- 45 Te Taura Whiri i te Reo Māori proposes that the process for contract negotiation and affirmation is amended, so that Te Taura Whiri i te Reo Māori retains the power to negotiate its service contracts itself and the ambiguous "affirmation" of its services is removed.

13	Functions of Te Mātāwai
(1)	The functions of Te Mātāwai are,—
(a)	after consulting the Minister, Te Taura Whiri, Te Māngai Pāho, and any other individuals or organisations that it considers appropriate, to prepare and publish its statement of strategic direction in accordance with section 17:
(c)	to make independent comment, as it sees fit, on Māori language policy:
(d)	to appoint, reappoint, and remove any or all of the members of Te Taura Whiri or Te Māngai Pāho:
(e)	to give directions to Te Taura Whiri and Te Māngai Pāho on the matters which their Statements of Intent prepared under section 29 must address
(h)	to appoint, reappoint, and remove 4 of the 7 directors of the board of the Māori Television Service:
(i)	jointly with the Minister of Finance and the Minister of Māori Affairs,—
(i)	to exercise leadership and oversight of the Māori Television Service under the Māori Television Service (Te Aratuku Whakaata Irirangi Māori) Act 2003:
(ii)	to confirm the Statement of Intent of the Māori Television Service:
(j)	to manage the spectrum management rights under the Māori Television Service (Te Aratuku Whakaata Irirangi Māori) Act 2003:
(k)	all other functions undertaken by Te Pūtahi Paoho under the Māori Television Service (Te Aratuku Whakaata Irirangi Māori) Act 2003:
(l)	other functions conferred on Te Mātāwai by this Act or any other enactment.
(2)	Despite anything in subsection (1), Te Mātāwai must not direct Te Māngai Pāho, the Māori Television Service, or any other broadcaster or programme maker in respect of—
(a)	a specific programme; or
(b)	the gathering or presentation of news; or
(c)	the preparation or presentation of current affairs programmes; or
(d)	any specific funding decisions or contractual arrangements.

Matters Relevant to Appointment Decisions

- 46 Clause 15 sets out the matters each selection group must consider when making nominations for membership and appointing members of Te Mātāwai. This selection group should be

required to consider whether candidates have sufficient relevant experience and expertise to fulfil their functions, duties and responsibilities.

15 Matters relevant to appointment decisions

In making nominations for membership, and appointing members, of Te Mātāwai, each selection group—

- (a) must consider the purpose and functions of Te Mātāwai; and
- (b) must not be directed by anybody or group but may seek advice from any person or body that the selection group considers appropriate;
- (c) must appoint persons, who, in the selection group's opinion, have sufficient relevant experience and expertise to fulfil their individual duties as members of Te Mātāwai and the functions, duties and responsibilities of Te Mātāwai; and
- (d) must not appoint persons who would be disqualified under section 30 of the Crown Entities Act 2004.

Accountability of Te Mātāwai

- 47 Clause 17 requires Te Mātāwai to publish its statement of strategic direction and operating intentions before 20 July each year, and to consult with the Minister about the content of that statement. As Te Mātāwai statement of strategic direction will be relevant to the strategic direction of Te Taura Whiri i te Reo Māori, the legislation should state that Te Mātāwai must consult with Te Taura Whiri i te Reo Māori when preparing it. The date for submission of the statement of strategic direction should be amended to 20 October to allow for this consultation.
- 48 Further, consistent with the intended division of responsibilities between Te Mātāwai and Te Taura Whiri i te Reo Māori, the references to operating intentions should be removed. As intended by the Bill, Te Mātāwai role will be essentially one of governance; and Te Taura Whiri i te Reo Māori will retain the operational role.

17 Statement of strategic direction

- (1) Te Mātāwai must, not later than 20 October each year, prepare and publish a statement of its strategic direction.
- (2) The statement required by subsection (1) must relate to the 3 financial years immediately following the date of the statement.
- (3) Te Mātāwai must consult the Minister of Māori Affairs, Te Taura Whiri and Te Māngai Pāho about the content of a statement of strategic direction before publishing the statement.
- (4) As soon as practicable after the commencement of this section, Te Mātāwai must comply with subsections (1) to (3) as if that date were the start of its first financial year.

18 Contents of strategic direction

The statement of strategic direction to be prepared by Te Mātāwai must contain the following information for the full period to which it relates:

- (a) background information about Te Mātāwai and its operating environment;
- (c) in specific terms, the objectives, outcomes, and impacts that Te Mātāwai seeks to achieve or contribute to; and
- (d) how Te Mātāwai intends to perform its functions to achieve those objectives, outcomes, and impacts; and
- (f) the main measures and standards by which its future performance may be judged.

19 Annual report

- (1) Te Mātāwai must, as soon as practicable after the end of each financial year, prepare a

report for that year on—

- (a) its financial position for that year; and
 - (b) its oversight of Te Taura Whiri, Te Māngai Pāho, and the board of the Māori Television Service; and
 - (c) the operations and financial position of Te Taura Whiri and Te Māngai Pāho.
- (2) Te Mātāwai must provide its annual report to the Minister as soon as is reasonably practicable after receiving the audit report required by section 21.
- (3) The Minister must present the annual report to the House of Representatives as soon as is reasonably practicable after receiving it from Te Mātāwai or, if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament.

20 Contents of annual report

The annual report prepared by Te Mātāwai must contain the following information in respect of Te Mātāwai, Te Taura Whiri, and Te Māngai Pāho for the financial year to which the report relates:

- (a) the information necessary to enable an informed assessment to be made of the operations and performance of Te Mātāwai, Te Taura Whiri, and Te Māngai Pāho, including an assessment of the performance of each against the statement of strategic direction prepared at the beginning of the financial year; and
- (b) a statement of service performance for Te Mātāwai, Te Taura Whiri, and Te Māngai Pāho; and
- (c) the annual financial statements for Te Mātāwai, Te Taura Whiri, and Te Māngai Pāho; and
- (d) a statement of responsibility to accompany the financial report; and
- (e) the audit reports for Te Mātāwai, Te Taura Whiri, and Te Māngai Pāho; and
- (f) a report on the total value of remuneration and other benefits provided to each member of Te Mātāwai, Te Taura Whiri, and Te Māngai Pāho during the financial year; and
- (g) a statement of compliance with the policy of being a good employer; and
- (h) a report on the number of employees of Te Mātāwai, Te Taura Whiri, and Te Māngai Pāho receiving remuneration and other benefits in their capacity as employees the total value of which exceeds \$100,000 per year, and the number of employees in brackets of \$10,000 in remuneration and other benefits.

Te Taura Whiri i te Reo Māori

Functions of Te Taura Whiri i te Reo Māori

- 49 Te Taura Whiri i te Reo Māori new functions are set out in clause 25(1) of the Bill. The Explanatory Note to the Bill says that Te Taura Whiri i te Reo Māori functions and powers are ‘essentially carried over from...the Māori Language Act 1987’, and that it ‘continues to have its policy and operational roles in relation to the Māori language, including responsibility for certifying translators and interpreters.’ This is supported by the Minister’s statements on the introduction of the Bill, as set out above. However, the functions of Te Taura Whiri i te Reo Māori set out in new clause 25(1) are in some areas significantly different from those set out in section 7 of the Māori Language Act. The only area in which the provisions appear broadly unchanged is in relation to the issue of certificates of competency for translators.
- 50 In particular, clause 25(1)(a) of the Bill can be contrasted with section 7(a) of the existing Act. Clause 25(1)(a) of the Bill states Te Taura Whiri i te Reo Māori functions include:

to take such steps as are reasonably necessary in the opinion of Te Taura Whiri to give effect to the status of Māori as an official language of New Zealand.

51 Whereas the existing clause 7(a) states that Te Taura Whiri functions include:

to initiate, develop, co-ordinate, review, advise upon, and assist in the implementation of policies, procedures, measures, and practices designed to give effect to the declaration in section 3 of the Māori language as an official language of New Zealand.

52 The Bill should be amended to remove any doubt that Te Taura Whiri i te Reo Māori will retain its existing function of initiating, developing, co-ordinating, reviewing, advising upon, and assisting in the implementation of policies, procedures, measures, and practice to give effect to the status of Māori as an official language of New Zealand, as stated in the Explanatory Note to the Bill, as well as any other steps which Te Taura Whiri i te Reo Māori considers reasonably necessary to give effect to the status of Māori as an official language of New Zealand.

53 Consistent with the amendment proposed to the functions of Te Mātāwai above, Te Taura Whiri i te Reo Māori should retain its existing function under section 7(e) of reporting to the Minister on matters relating to the Māori language. Further, Te Taura Whiri i te Reo Māori should have explicit responsibility for negotiating its service contracts with the Crown.

25	Functions and powers of Te Taura Whiri i te Reo Māori
(1)	The functions of Te Taura Whiri are: <ul style="list-style-type: none">(a) to take such steps as are necessary in the opinion of Te Taura Whiri to give effect to the status of the Māori language as an official language of New Zealand, including, without limitation, initiating, developing, co-ordinating, reviewing, advising upon, and assisting in the implementation of policies, procedures, measures, and practices to give effect to the status of Māori as an official language; and(b) to take such steps as are necessary in the opinion of Te Taura Whiri to promote the Māori language:<ul style="list-style-type: none">(i) as a living language; and(ii) as an ordinary means of communication; and(c) to make provision for, and grant, certificates in accordance with Schedule 5; and(d) to prepare, maintain and publish a register of persons who hold certificates granted under this Act, including any endorsement of a certificate; and(e) to provide expert advice to the Minister of Māori Affairs on issues relating to the Māori language, including advice on reviewing and developing the Māori Language Strategy on a 3-yearly cycle; and(f) to enter into contracts with the Crown for the purchase of Māori language programmes and services which align with the Māori Language Strategy.

Powers of Te Taura Whiri i te Reo Māori

54 Section 25(2) states that Te Taura Whiri i te Reo Māori has ‘the powers necessary to carry out its functions’. This is different to Te Mātāwai stated powers in clause 11(3), which are to ‘undertake any business or activity, do any act, or enter into any transaction’ for the purposes of performing its functions’. Unlike Te Mātāwai, Te Taura Whiri i te Reo Māori does not have a specific power to enter into transactions, which is surprising because it is supposed to contract with the Crown to provide services. Also, none of Te Taura Whiri i te Reo Māori powers under section 8 of the Māori Language Act (additional powers to its general powers it held as a Crown entity) have been brought forward in the Bill.

- 55 Te Taura Whiri i te Reo Māori considers that the clause dealing with its powers should be modelled on the modern approach to entity powers in sections 16 to 18 of the Crown Entities Act 2004. Te Taura Whiri i te Reo Māori should also, to avoid doubt, retain the specific powers set out in section 8 of the Māori Language Act 1987. This is consistent with the intention that Te Taura Whiri i te Reo Māori should continue to perform its existing policy and operational functions.

25	Functions and powers of Te Taura Whiri i te Reo Māori
(2)	For the purpose of performing its functions, Te Taura Whiri may do: <ul style="list-style-type: none"> (a) anything authorised by this Act; and (b) anything that a natural person of full age and capacity may do.
(3)	Subsection (2) applies subject to the provisions of this Act, or any other Act or rule of law.
(4)	Without limiting subsection (2), Te Taura Whiri may— <ul style="list-style-type: none"> (a) conduct, hold or attend all such enquiries, hearings or meetings as Te Taura Whiri thinks desirable to enable to determine the views and wishes of the Māori community in relation to the promotion and use of the Māori language; (b) undertake or commission research into the use of the Māori language; (c) consult with and receive reports from government departments and other bodies on the use of Māori language in the course of the conduct of the business of those departments or other bodies, whether by their staff or by people with whom they have official dealings; (d) publish information relating to the use of the Māori language; and (e) report to the Minister or Te Mātāwai on any matter relating to the Māori language that Te Taura Whiri considers should be drawn to the Minister's or Te Mātāwai attention.

Statement of Intent and Quarterly and Annual Reports

- 56 Clause 29 sets out the process by which Te Taura Whiri i te Reo Māori and Te Mangai Paho will prepare their statements of intent and provide them to Te Mātāwai. Te Taura Whiri i te Reo Māori considers that this clause could be improved by adopting the process set out in the recently amended Crown Entities Act 2004 for the preparation of statements of intent by Crown entities. In essence, this will require Te Taura Whiri i te Reo Māori to provide Te Mātāwai with its Statement of Intent in draft for comment before finalising it.
- 57 Clause 30 concerns the preparation of quarterly and annual reports by Te Taura Whiri i te Reo Māori and Te Mangai Paho and currently states that these should be prepared in accordance with any direction given by Te Mātāwai. Te Taura Whiri i te Reo Māori considers that this power of direction is an unnecessary intrusion into its operational autonomy and should be deleted; given that Te Mātāwai has the ability to direct it on its statement of strategic direction.

29	Statements of intent
(1)	At or before the start of each financial year, Te Taura Whiri and Te Māngai Pāho must each prepare and provide to Te Mātāwai a Statement of Intent for that financial year in accordance with this section and any direction given by Te Mātāwai.
(2)	The purpose of each entity's Statement of Intent is to provide information about the operating models for the delivery of the entity's programmes and services.
(3)	The process which Te Taura Whiri and Te Māngai Pāho must follow in providing a Statement of Intent is: <ul style="list-style-type: none"> (a) Te Taura Whiri and Te Māngai Pāho must provide draft statements of intent to Te Mātāwai not less than 2 months before the start of the first financial year to

	which the statements of intent relate;
(b)	Te Mātāwai must provide to Te Taura Whiri and Te Māngai Pāho any comments that it may have on the drafts not later than 15 working days after receiving them;
(c)	Te Taura Whiri and Te Māngai Pāho must consider the comments (if any) on the drafts and provide final statements of intent to Te Mātāwai as soon as practicable after receiving the comments (if any) but before the start of the first financial year to which the Statement of Intent relates.
(4)	After it receives a Statement of Intent, Te Mātāwai must publish the Statement of Intent no later than 20 October in the year in which it received it from the entity.
30	Quarterly and annual reports
(1)	Te Taura Whiri and Te Māngai Pāho must each prepare and provide to Te Mātāwai quarterly and annual reports-
(2)	The annual report of Te Taura Whiri and Te Māngai Pāho must include the audit report for the entity.
(3)	The purpose of each entity's quarterly and annual reports is to provide information about the delivery of the entity's programmes and services during the reporting period.

Crown Intervention

- 58 Clauses 31 and 32 of the Bill provide the Minister with the ability to intervene in the operation and management of Te Taura Whiri i te Reo Māori, through the appointment of Crown advisers or a statutory manager. Te Taura Whiri i te Reo Māori has a number of serious concerns about these provisions.
- 59 First, the concept of the erosion of confidence in the entity in clause 31(1)(b) is vague and undefined, meaning the threshold for the appointment of Crown advisers is uncertain and potentially very low.
- 60 Second, as currently drafted, the Minister must consult with Te Mātāwai, but not Te Taura Whiri i te Reo Māori, before intervening. The principle of natural justice affirmed by section 27(1) of the New Zealand Bill of Rights Act (which applies to institutions as well as individuals) requires consultation with Te Taura Whiri i te Reo Māori before such an appointment is made. This is especially so given the reputational impact of a Ministerial intervention on the Te Taura Whiri i te Reo Māori Board and Chief Executive. At the very least, Te Mātāwai should be required to consult with Te Taura Whiri i te Reo Māori before responding to Ministerial proposals for intervention.
- 61 Third, the power to appoint a statutory manager is unprecedented, inappropriate and unnecessary. There is no equivalent power to appoint statutory managers to Crown entities under the Crown Entities Act 2004 or to Schedule 4 entities under the Public Finance Act. There are already adequate mechanisms to govern the Board of Te Taura Whiri i te Reo Māori and intervene if necessary; through the appointment and removal of Board members.
- 62 For the reasons set out above, Te Taura Whiri i te Reo Māori considers that clauses 31 and 32 are unnecessary and should be deleted.

Review of Act

- 63 Clause 33 provides that the Minister must conduct a review after three years on the effectiveness of the Act.
- 64 Review dates for Māori language-related legislation, such as the Māori Television Service (Te Aratuku Whakaata Irirangi Māori) Act 2003 have usually been set as being within three years of

the legislation's enactment, and in some cases within shorter periods. Similarly, the New Zealand Sign Language Act 2006 was reviewed three years following its enactment.

- 65 Nevertheless, the Bill creates a totally new and unprecedented framework for the te Reo sector, which may require longer than three years to 'bed in'. Te Taura Whiri i te Reo Māori suggests that a longer review date is appropriate, such as five years post-enactment, bearing in mind that a review can be commenced earlier if the Minister wishes.

33	Review of Act
(1)	The Minister must, as soon as practicable after the expiry of 5 years from the commencement of this Act,—
(a)	commence a review of the operation and effectiveness of the Act in accordance with the terms of reference set by the Minister and Te Mātāwai; and
(b)	prepare a report on that review.
10	Outline of Act
(1)	This section is a guide to the general scheme and effect of this Act, but does not affect its interpretation or application.
(2)	Part 1 provides for recognition of the Māori language as a taonga of which iwi and Māori are the kaitiaki. It affirms the status of the Māori language as a taonga of iwi and Māori, states that the Māori language is and continues to be an official language of New Zealand, and confirms that it may be used in legal proceedings. This Part also provides that this Act binds the Crown and sets out the definitions of terms used in this Act.
(3)	Part 2 establishes Te Mātāwai as an independent statutory entity, provides for its functions, and prescribes its reporting obligations.
(4)	Part 3 provides for the establishment of Te Taura Whiri and Te Māngai Pāho and sets out the functions of each and their accountability to Te Mātāwai. It also provides for the disestablishment of Te Pūtahi Paoho and for Te Mātāwai to assume the functions of Te Pūtahi Paoho.
(5)	Part 4 provides for—
(a)	the review of the Act by the Minister after 5 years, and the repeal of the Māori Language Act 1987 and of Part 4A of the Broadcasting Act 1989; and
(b)	the removal of Te Taura Whiri i te Reo Māori (the Māori Language Commission) and Te Reo Whakapuaki Irirangi (the Māori Broadcasting Funding Agency) from Part 2 of Schedule 1 of the Crown Entities Act 2004; and
(c)	the application of the Ombudsmen Act 1975, the Official Information Act 1982, and the Public Audit Act 2001 and the schedules that set out transitional provisions and consequential amendments.

Schedule 1 – Transitional Provisions

Continuation of Employment

- 66 The Chief Executive and all employees of Te Taura Whiri i te Reo Māori continue to be employees of Te Taura Whiri i te Reo Māori, on terms and conditions no less favourable to those prior to the commencement of the Act. In addition, clause 3 records that the change of entity status will not impact on any period of unbroken employment. This excludes payment of redundancy or severance payments by reason only of the change in status of Te Taura Whiri i te Reo Māori.

- 67 The conditions of employment will continue in force ‘until they are varied by agreement between the employee and the entity concerned’. This opens the way for renegotiation without any expectation of continuing terms (although existing employees are not obliged to agree to any changes). In particular, employees will not be entitled to a continuation of their current employment conditions if they are appointed to new roles in the event that Te Taura Whiri i te Reo Māori restructures following the enactment of the Bill. Te Taura Whiri i te Reo Māori considers that this Schedule should be clarified so that staff who are appointed to substantially similar positions at Te Taura Whiri i te Reo Māori are not disadvantaged.

3	Continuation of existing employment
(1)	The chief executive and all persons employed by Te Taura Whiri and Te Māngai Pāho at the commencement of this clause—
(a)	do not, solely because of the coming into force of this Act, cease to be employees; and
(b)	continue to be employed on terms and conditions no less favourable to each employee than those applying immediately before the commencement of this Act.
(2)	Subclause (1)—
(a)	continues to apply to the terms and conditions of employment until they are varied by agreement between the employee and the entity concerned; but
(b)	does not apply to an employee who receives a subsequent appointment with the entity that is not substantially the same as their role immediately before the commencement of this Act.
(3)	Despite the coming into force of this Act, for the purpose of an enactment, rule of law, determination, contract, or agreement relating to the employment of persons by or on behalf of an entity,—
(a)	the agreement or contract of employment must be treated as having been unbroken; and
(b)	the period of employment with the entity must be treated as an unbroken period of employment.
(4)	A person who becomes an employee of an entity under this clause is not entitled to receive any payment or other benefit solely because of the coming into force of this Act.

Schedule 3 – Regional Clusters of iwi

- 68 This schedule sets out the regional clusters of iwi. Te Taura Whiri i te Reo Māori has a number of concerns about this schedule. It is questionable whether seven cluster representatives will deliver adequate representation for all of the iwi, particularly bearing in mind that iwi and Māori are the kaitiaki of te reo Māori. The groupings are essentially dialect-based, but it is not necessarily the case that dialect groupings should drive structural arrangements.
- 69 Te Taura Whiri i te Reo Māori does not consider that the Bill can proceed until the Minister is satisfied that all iwi and hapū are satisfied with their grouping. Te Taura Whiri i te Reo Māori is also concerned that a number of recognised iwi appear to have been omitted from Schedule 3.
- 70 For example, Te Taura Whiri i te Reo Māori has identified the following additional iwi which have been excluded from the list in Schedule 3 of the Bill: Ngāti Hine, Rangitāne o Wairau (recognised in Ngāti Apa ki te Rā Tō, Ngāti Kuia, and Rangitāne o Wairau Claims Settlement Act 2014) and Ngāti Raukawa ki te Tonga (recognised in the schedule of the Māori Fisheries Act 2004).

Schedule 4 – Provisions relating to Entities, Chairperson, and Members or Directors

Appointment of members to Te Mātāwai

- 71 Clause 2 of Schedule 4 sets out the process for the appointment of members to Te Mātāwai. Te Taura Whiri i te Reo Māori submits that it should be an explicit legislative requirement that the selection group consider whether candidates have enough relevant experience and expertise to fulfill their duties.

2	Appointment of members of Te Mātāwai
(1)	This clause applies to the process for nominating persons to be appointed as members of Te Mātāwai.
(2)	For the purposes of section 14(1)(a) and (b), selection groups must be set up, as required by section 14(2).
(3)	To form a selection group for the purpose of section 14(1)(a) (which relates to the 7 members to be appointed by iwi clusters), each iwi included in an iwi cluster listed in Schedule 3 must nominate a representative to participate on behalf of that iwi in the selection group.
(4)	To form a selection group for the purpose of section 14(1)(b) (which relates to the 3 members to be appointed by Te Reo Tūkutuku), each of the organisations that comprise Te Reo Tūkutuku must nominate a representative to participate on behalf of that organisation in the selection group.
(5)	Each selection group must— <ul style="list-style-type: none">(a) determine its own procedures for appointing members to Te Mātāwai; and(b) meet its own costs of setting up a selection group; and(c) meet the costs of its representative who participates in the group; and(d) not appoint persons to Te Mātāwai who would be disqualified under section 30 of the Crown Entities Act 2004.(e) if there are any current members of Te Mātāwai, consult with those members about the knowledge, skills and experience the entity requires, before making an appointment to an entity; and(f) must appoint people who (in the selection group’s opinion) have enough relevant experience and expertise to fulfill their individual duties as members of the relevant entity and the functions, duties and responsibilities of the entity.
(6)	Each selection group ceases to exist when it has completed its sole function of appointing the members of Te Mātāwai, though a selection group may be reconvened if required to fill a vacancy in the membership of Te Mātāwai.

Appointment and removal of directors to Te Taura Whiri

- 72 The process for the appointment of new members is set out in clause 3 of Schedule 4. Te Mātāwai must have regard to the functions of Te Taura Whiri i te Reo Māori when making appointments, may not appoint its own members, and must keep the Minister informed about how it makes appointments and who it has appointed, but otherwise Te Mātāwai may determine its own process as to appointments to Te Taura Whiri i te Reo Māori.
- 73 Te Taura Whiri i te Reo Māori recognises that the intention of the Bill is that iwi and Māori should determine the makeup of the Board of Te Taura Whiri i te Reo Māori. However, it is equally important that the Board of Te Taura Whiri i te Reo Māori is made up of persons who are capable of discharging the role of Board member, or who have experience and knowledge that will assist Te Taura Whiri i te Reo Māori in carrying out its functions. Te Taura Whiri i te Reo Māori considers that before making a board appointment, Te Mātāwai should also have to

consult with the existing board of Te Taura Whiri i te Reo Māori as to the knowledge, skills and experience needed on that board at that particular time to assist Te Taura Whiri i te Reo Māori to perform its functions; and must take the results of that consultation into account. Further, Te Mātāwai should be required to only appoint people who have enough relevant experience and expertise to fulfil their individual duties.

74 Te Mātāwai may also remove a member of Te Taura Whiri i te Reo Māori at any time, for failing to meet individual or collective duties under the Bill, or entirely at its discretion. This broad power creates significant reputational risk for Board members of Te Taura Whiri i te Reo Māori and Te Taura Whiri i te Reo Māori proposes that the legislation state that members can only be removed by Te Taura Whiri i te Reo Māori for just cause.

75 For the avoidance of doubt, the Bill should state that Te Mātāwai must observe the principles of natural justice in making decisions on appointments and removals.

3	Appointment of members of Te Taura Whiri, Te Māngai Pāho, and directors of board of Māori Television Service
(1)	Te Mātāwai—
(a)	must determine its own procedures for appointing, reappointing, and removing members of Te Taura Whiri, Te Māngai Pāho, and the directors of the board of the Māori Television Service appointed by Te Mātāwai under this Act; and
(b)	must not appoint its own members to one of those entities; and
(c)	must not appoint persons to those entities who would be disqualified under section 30 of the Crown Entities Act 2004; and
(d)	when making appointments to those entities, must be guided by the purpose and functions of the entity to which the appointments are being made; and
(e)	if there are any current members or directors of the entity, consult with those members about the knowledge, skills and experience the entity requires, before making an appointment to an entity;
(f)	must appoint people who (in the opinion of Te Mātāwai) have enough relevant experience and expertise to fulfill their individual duties as members of the relevant entity and the functions, duties and responsibilities of the entity; and
(g)	must comply with the principles of natural justice in making decisions under this clause.
(2)	Appointments are made by giving written notice to the person concerned.
(3)	A person appointed must agree in writing to the appointment.
(4)	A notice under subclause (2) must—
(a)	state the date on which the appointment takes effect, which must not be earlier than the date on which the notice is received; and
(b)	state the term of the appointment.
(5)	Te Mātāwai must advise the Minister annually—
(a)	about the procedures it has adopted under subclause (1)(a); and
(b)	as to the persons who are currently members or directors of those entities.
(6)	The provisions of the Māori Television Service (Te Aratuku Whakaata Irirangi Māori) Act 2003 apply to the directors appointed under this Act as if those directors were appointed under that Act.
7	Removal of members
(1)	Te Mātāwai may at any time, in accordance with clause 22(4) or 29(2) or for just cause, remove a member of an entity from office.

- (2) The Minister may at any time, and for any reason, remove a member appointed by the Minister under section 14(1)(c),
- (3) A removal made under subclause (1) or (2) must be made by written notice to the member (with a copy to the entity).
- (4) The notice must state the date on which the removal takes effect, which must not be earlier than the date on which the notice is received.
- (5) To avoid doubt, Te Mātāwai may not remove a member unless Te Mātāwai has properly considered the matter and complied with the principles of natural justice.

11 Removal of chairperson or deputy chairperson

- (1) Te Mātāwai may, after consultation with the person concerned, remove a chairperson or deputy chairperson of an entity from that office for just cause, with or without also removing that person as a member by written notice to the person (with a copy to the entity).
- (2) The notice of removal must state the date on which the removal takes effect.
- (3) To avoid doubt, Te Mātāwai:
 - (a) may not remove a chairperson or deputy chairperson unless Te Mātāwai has properly considered the matter and complied with the principles of natural justice; and
 - (b) may not remove a member of an entity from office as a member of that entity without also complying with clause 7.

Power to delegate

- 76 As currently drafted, the Bill requires Te Taura Whiri i te Reo Māori to secure the approval of Te Mātāwai to its delegation of functions to a member, the Chief Executive or any other employee or office holder. Te Taura Whiri i te Reo Māori considers that this requirement of approval is unnecessary and an inappropriate intrusion into Te Taura Whiri i te Reo Māori operational functions.

18 Te Mātāwai and other entities may delegate functions and powers

- (1) Te Mātāwai, Te Taura Whiri, and Te Māngai Pāho may delegate any of their functions and powers generally or specifically, by resolution and with written notice to the delegate.
- (2) Functions may be delegated to—
 - (a) a member or members of the relevant entity; or
 - (b) the chief executive of that entity; or
 - (c) any other employee or office holder of that entity.
- (3) An entity must not delegate the general power to delegate.
- (4) An entity must not make a delegation under this clause unless the entity is satisfied that,—
 - (a) given the nature of the decision to be made by the delegate and the level of funding involved, the delegation will result in a more efficient and effective decision-making process than if the entity had made the decision; and
 - (b) conditions are imposed by the delegation that will enable the entity to verify that the delegate has complied with the terms of the delegation.

Appendix A: Draft Supplementary Order Paper

House of Representatives Supplementary Order Paper

[insert date]

Māori Language (Te Reo Māori) Bill

Proposed amendments

The Minister of Māori Development, in Committee, to move the following amendments:

Clause 3

In clause 3(2)(a), after “the Māori language”, insert “by making appointments to Te Taura Whiri and Te Māngai Pāho, and in conjunction with the Minister of Māori Affairs and the Minister of Finance, to the Māori Television Service, and setting the strategic direction for the Māori language sector;”.

Clause 6

In the heading of clause 6, replace “speak” with “use”.

In clause 6(1), replace “speak” with “communicate in”.

In clause 6(2), replace “speak” with “communicate in”.

In clause 6(3), replace “speak” with “communicate in”.

In clause 6(5), replace “speak” with “communicate in”.

In clause 6(6), replace “speak” with “communicate in” and “spoken” with “used”.

Insert new clause 6(7):

- “ (7) To avoid doubt:
- (a) every court, tribunal, or other body before which legal proceedings are being conducted must ensure that a person to whom subsection (1) applies may be heard in Māori if he or she so chooses; and
 - (b) subject to subsection (6), every court, tribunal or other body before which legal proceedings are being conducted must ensure that no person to whom subsection (1) applies is disadvantaged by choosing to communicate in Māori; and
 - (c) any power that a court, tribunal, or other body to which this section applies has to regulate its own procedure is subject to, and may only be exercised consistently with, the duties imposed by this section; and

- (d) this section applies despite the decision of the High Court in *Green v Te Ropu Whakamana i te Tiriti o Waitangi* [2014] NZHC 723.”

Clause 7

In clause 7(1), replace “As far as is reasonably practicable, a government department should” with “An organisation to which this section applies must”, and “be guided by” with “give effect to”.

In clause 7(1)(a), replace “should” with “must”.

In clause 7(1)(b), replace “should” with “must”, and “government” with “that organisation’s”.

In clause 7(1)(c), replace “should” with “must”, and “government services and information” with “services provided by the organisation and information held by the organisation”. Insert “translations or interpretations of English documents into” after “the use of”, and “by persons holding appropriate certificates issued by Te Taura Whiri” after “the Māori Language”.

Delete clause 7(2).

In clause 7(3), replace “(3)” with “(2)”. After “Consultation by”, replace “government department” with “an organisation”; replace “the chief executive of the government department” with “the organisation’s principal officer”; and, after “with the persons or organisations that the”, replace “chief executive” with “officer”. Delete “, to the extent that it is reasonably practicable,” and “iwi and”.

Insert new clause 7(3):

- “ (3) This section applies to the following organisations:
- (a) government departments;
 - (b) Crown entities as defined in section 7(1) of the Crown Entities Act 2004;
 - (c) organisations listed in Schedule 4 of the Public Finance Act 1989;
 - (d) the New Zealand Police as constituted under Part 2 of the Policing Act 2008;
 - (e) the New Zealand Defence Force as constituted under Part 2 of the Defence Act 1990;
 - (f) the Parliamentary Service as continued by the Parliamentary Service Act 2000;
 - (g) the Auditor-General as defined in section 4 of the Public Audit Act 2001;
 - (h) Ombudsmen as appointed under section 3 of the Ombudsmen Act 1975;
 - (i) the Parliamentary Commissioner for the Environment as appointed under section 4 of the Environment Act 1986;
 - (j) regional councils and territorial authorities as defined in the Local Government Act 2002;
 - (k) Te Mātāwai;
 - (l) Te Taura Whiri;
 - (m) Te Māngai Pāho; and
 - (o) the Māori Television Service.”

Clause 8

Delete “**Te Puni Kōkiri** means the Ministry of Māori Development”.

In the definition of “**Te Reo Tukutuku**”, after “(j) Te Huarahi Tika Trust”, insert:

- “
- (k) New Zealand Māori Council
 - (l) Ngā Pū Waea Panel
 - (m) National Urban Māori Authority
 - (n) Māori Education Trust
 - (o) Me Uru Kahikatea
 - (p) NZ Māori Wardens Association
 - (q) Federation of Māori Authorities
 - (r) Komiti Māori
 - (s) Tuhono Research Panel
 - (t) Māori Association of Social Scientists (Universities)”

Clause 10

In clause 10(5)(a), replace “3 years” with “5 years”.

Clause 11

Replace clause 11(3):

- “
- (3) For the purpose of performing its functions, Te Mātāwai may do:
 - (a) anything authorised by this Act; and
 - (b) anything that a natural person of full age and capacity may do.

In clause 11(4), replace “any other enactment, and the general law” with “or another Act or rule of law”.

Clause 12

In clause 12(b) replace “through its oversight and direction of with” with “by”.

Replace clause 12(b)(i):

- “
- (i) setting the strategic direction for the Māori language sector; and”.

Replace clause 12(b)(ii):

- “
- (ii) appointing the members of Te Taura Whiri, Te Māngai Pāho and in conjunction with the Minister of Māori Affairs and the Minister of Finance, the Māori Television Service; and”.

Delete clause 12(b)(iii).

Clause 13

In clause 13(1)(a), replace “and, at its sole discretion, groups” with “,Te Taura Whiri, Te Māngai Pāho, and any other individuals or organisations”. Delete “and operating intentions”.

Delete clause 13(1)(b).

In clause 13(1)(e), replace “their obligations under this Act” with “the matters which their statements of intent under section 29 must address”.

Delete clause 13(1)(f).

Delete clause 13(1)(g).

Clause 15

Replace clause 15(c):

“ (c) must appoint persons, who, in the selection group’s opinion, have sufficient relevant experience and expertise to fulfil their individual duties as members of Te Mātāwai and the functions, duties and responsibilities of Te Mātāwai; and”.

Insert new clause 15(d):

“ (d) must not appoint persons who would be disqualified under section 30 of the Crown Entities Act 2004.”

Clause 17

Replace clause 17(1):

“ (1) Te Mātāwai must, not later than 20 October each year, prepare and publish a statement of its strategic direction”.

Delete clause 17(1)(a).

Delete clause 17(1)(b).

In clause 17(2), replace “statements” with “statement”.

In clause 17(3), after “the Minister of Māori Affairs”, insert “Te Taura Whiri and Te Māngai Pāho”. Delete “and operating intentions”.

Clause 18

In clause 18, delete “and operating intentions”.

Delete clause 18(b).

In clause 18(d), delete “and conducts its operations”.

Delete clause 18(e).

In clause 18(f), delete “financial and non-financial”.

Clause 19

In clause 19(1)(a), delete “its operations and”.

Clause 20

In clause 20(a), delete “intentions, measures, and standards set out in the” and “and operating intentions”.

Clause 25

In clause 25(1)(a), replace “Māori” with “the Māori language”. After “as an official language of New Zealand,” insert “including, without limitation, initiating, developing, co-ordinating, reviewing, advising upon, and assisting in the implementation of policies, procedures, measures, and practices to give effect to the status of Māori as an official language;”.

In clause 25(1)(b), insert “to take such steps as are necessary in the opinion of Te Taura Whiri” before “to promote the Māori language”.

In clause 25(1)(c), after “and”, delete “to”.

In clause 25(1)(d), after “certificate;”, insert “and”.

Insert new clause 25(1)(e):

“ (e) to provide expert advice to the Minister of Māori Affairs on issues relating to the Māori language, including advice on reviewing and developing the Māori Language Strategy on a 3-yearly cycle; and”.

Insert new clause 25(1)(f):

“ (f) to enter into contracts with the Crown for the purchase of Māori language programmes and services which align with the Māori Language Strategy.”

Replace clause 25(2):

“ (2) For the purpose of performing its functions, Te Taura Whiri may do:
 (c) anything authorised by this Act; and
 (d) anything that a natural person of full age and capacity may do.”

Insert new clause 25(3):

“ (3) Subsection (2) applies subject to the provisions of this Act, or any other Act or rule of law.”

Insert new clause 25(4):

“ (4) Without limiting subsection (2), Te Taura Whiri may—
 (a) conduct, hold or attend all such enquiries, hearings or meetings as Te Taura Whiri thinks desirable to enable to determine the views and wishes of the Māori community in relation to the promotion and use of the Māori language;
 (b) undertake or commission research into the use of the Māori language;
 (c) consult with and receive reports from government departments and other bodies on the use of Māori language in the course of the conduct of the business of those departments or other bodies, whether by their staff or by people with whom they have official dealings;
 (d) publish information relating to the use of the Māori language; and
 (e) report to the Minister or Te Mātāwai on any matter relating to the Māori language that Te Taura Whiri considers should be drawn to the Minister’s or Te Mātāwai’s attention.”

Clause 29

In clause 29(1), replace “for its approval a Statement of Intent for that financial year in accordance with any direction given by Te Mātāwai” with “a Statement of Intent for that financial year in accordance with this section and any direction given by Te Mātāwai”.

Replace clause 29(3):

- “ (3) The process which Te Taura Whiri and Te Māngai Pāho must follow in providing a Statement of Intent is:
- (a) Te Taura Whiri and Te Māngai Pāho must provide draft statements of intent to Te Mātāwai not less than 2 months before the start of the first financial year to which the statements of intent relate;
 - (b) Te Mātāwai must provide to Te Taura Whiri and Te Māngai Pāho any comments that it may have on the drafts not later than 15 working days after receiving them;
 - (c) Te Taura Whiri and Te Māngai Pāho must consider the comments (if any) on the drafts and provide final statements of intent to Te Mātāwai as soon as practicable after receiving the comments (if any) but before the start of the first financial year to which the Statement of Intent relates.”

Insert new clause 29(4):

- “ (4) After it receives a Statement of Intent, Te Mātāwai must publish the Statement of Intent no later than 20 October in the year in which it received it from the entity.”

Clause 30

In clause 30(1), delete “in accordance with any direction given by Te Mātāwai”.

Clause 31

Delete clause 31.

Clause 32

Delete clause 32.

Clause 33

In clause 33(1), replace “3 years” with “5 years”.

Schedule 1

In Schedule 1, clause 3(2)(b), following “with the entity” insert “that is not substantially the same as their role immediately before the commencement of this Act”.

Schedule 2

In the heading of schedule 2, replace “spoken” with “used”.

In schedule 2, Part B, after “Disputes Tribunals”, insert:

“Copyright Tribunal

Customs Appeal Authority

Human Rights Review Tribunal

Immigration Advisers Complaints Disciplinary Tribunal

Immigration and Protection Tribunal

Lawyers and Conveyancers Disciplinary Tribunal

Legal Aid Tribunal

Legal Complaints Review Officer

Second-hand Dealers and Pawnbrokers Licensing Authority

Motor Vehicle Disputes Tribunal

Private Security Personnel Licensing Authority

Real Estate Agents Disciplinary Tribunal

Review Authority (Legal Aid)

Social Security Appeal Authority

Student Allowance Appeal Authority

Taxation Review Authority

Victims Special Claims Tribunal

Weathertight Homes Tribunal”.

Schedule 4

In Schedule 4, after clause 2(5)(d), insert:

- “
- (e) if there are any current members of Te Mātāwai, consult with those members about the knowledge, skills and experience the entity requires, before making an appointment to an entity; and
 - (f) must appoint people who (in the selection group’s opinion) have enough relevant experience and expertise to fulfill their individual duties as members of the relevant entity and the functions, duties and responsibilities of the entity. “

In Schedule 4, clause 3(1)(d), replace “.” with “; and”.

In Schedule 4, after clause 3(1)(d), insert:

- “
- (e) if there are any current members or directors of the entity, consult with those members about the knowledge, skills and experience the entity requires, before making an appointment to an entity;
 - (f) must appoint people who (in Te Mātāwai’s opinion) have enough relevant experience and expertise to fulfill their individual duties as members of the relevant entity and the functions, duties and responsibilities of the entity; and
 - (g) must comply with the principles of natural justice in making decisions under this clause.”

In Schedule 4, clause 7(1), replace “or entirely at its discretion” with “or for just cause”.

In Schedule 4, clause 11(1), after “from that office”, insert “for just cause”.

In Schedule 4, replace clause 11(3):

- “ (3) To avoid doubt, Te Mātāwai:
- (a) may not remove a chairperson or deputy chairperson unless Te Mātāwai has properly considered the matter and complied with the principles of natural justice;
and
 - (b) may not remove a member of an entity from office as a member of that entity without also complying with clause 7.”

In Schedule 4, delete clause 18(1)(a).

In Schedule 4, delete clause 18(1)(b).