

BEFORE THE WAITANGI TRIBUNAL  
TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

WAI 381  
WAI 2700

IN THE MATTER of the Treaty of Waitangi Act 1975

AND

IN THE MATTER of the Mana Wāhine Kaupapa Inquiry (Wai 2700)

AND

IN THE MATTER of a claim filed by **DAME ARETA KOOPU** on behalf of herself and on behalf of the Māori Women's Welfare League Incorporated and by **DAME WHINA COOPER, DAME MIRA SZASZY, DR ERIHAPETI MURCHIE, DAME GEORGINA KIRBY, VIOLET POU, DAME JUNE MARIU, HINE POTAKA, AROHA RERITI-CROFTS** (being past Presidents of the Maori Women's Welfare League) and on behalf of themselves and **RĪPEKA EVANS** of Ngāpuhi, Te Aupouri, Ngāti Kahu and Ngāti Porou for herself and on behalf of Māori women and by **MARY-JANE PAPAARANGI REID** of Te Rarawa and Te Aupouri for herself and on behalf of Māori women and by **DONNA AWATERE-HUATA** of Ngāti Whakaue and Ngāti Porou for herself and on behalf of Māori women and by **LADY ROSE HENARE** for herself and on behalf of Ngāti Hine and by **KATERINA HOTERENE** for herself and on behalf of Ngāti Hine and by **TEPARA MABEL WAITITI** for herself and on behalf of Ngāti Hine and by **KARE COOPER-TATE** for herself and on behalf of Ngāti Hine (Wai 381)

RECEIVED Waitangi Tribunal
<b>27 Jan 2020</b>
Ministry of Justice WELLINGTON

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**SECOND AMENDED STATEMENT OF CLAIM**

**24 January 2020**

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Presented for filing by:

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## **MAY IT PLEASE THE TRIBUNAL**

### **THE CLAIMANTS**

1. This amended statement of claim is filed pursuant to section 6 of the Treaty of Waitangi Act 1975 (the **TOW Act**) by:
  - (a) Dame Areta Koopu of Ngāti Kahu, Ngāti Konohi and Te Aitanga a Hauiti for herself and on behalf of wāhine Māori generally represented by Te Mata Law;
  - (b) Aroha Reriti-Crofts of Ngāi Tuahuriri and Ngāi Tahu for herself and on behalf of the Maori Women's Welfare League and wāhine Māori generally represented by Dixon & Co Lawyers;
  - (c) Rīpeka Evans of Ngāpuhi, Te Aupouri, Ngāti Kahu and Ngāti Porou for herself and on behalf of wāhine Māori generally represented by Kāhui Legal;
  - (d) Mary-Jane Papaarangi Reid of Te Rarawa and Te Aupouri for herself and on behalf of wāhine Māori generally represented by Kāhui Legal; and
  - (e) Donna Awatere-Huata of Ngāti Whakaue and Ngāti Porou for herself and on behalf of wāhine Māori generally represented by Annette Sykes & Co.

(the **Claimants**).
2. The Claimants are Māori and meet the requirements for bringing a claim before the Waitangi Tribunal under section 6(1) of the TOW Act.
3. The original Wai 381 claim was filed by the Claimants and others on 26 July 1993.<sup>1</sup> The original Wai 381 claimants included the following:
  - (a) Dame Whina Cooper, Dame Mira Szaszy, Dr Erihapeti Murchie, Dame Georgina Kirby, Violet Pou, Dame June Mariu, Hine Potaka (being past presidents of the Maori Women's Welfare League); and

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<sup>1</sup> Wai 381, #1.1.

- (b) Lady Rose Henare, Katerina Hoterene, Teparā Mabel Waititi and Kare Cooper-Tate for themselves and on behalf of Ngāti Hine.
4. The Claimants acknowledge those original named claimants who have now passed and who played an instrumental role in the inception and progression of the claim.
5. The claim was particularised on 9 August 1993.<sup>2</sup> This second amended statement of claim seeks to further particularise the aspects of the original Wai 381 claim.

### THE CLAIM

6. This claim concerns Crown laws, policies, practices, actions and omissions in relation to the interests and rights of wāhine Māori.
7. The Claimants say that the Crown has denied the inherent mana of wāhine Māori and the role they play in the practice of tikanga as individuals and as iwi, hapū and whānau members.
8. This denial of mana wāhine Māori was evident at the signing of te Tiriti o Waitangi (**te Tiriti**) where many wāhine Māori were denied their role as rangatira and not permitted to sign te Tiriti.
9. The denial of mana wāhine is also evident in the historical and on-going Crown failure to protect the rangatiratanga of wāhine Māori in respect of whakapapa, whenua, hapū, whānau and whai rawa.
10. The effect of the Crown's denial of the inherent mana and role of wāhine Māori has resulted in systemic discrimination, deprivation and inequities. This is evident in:
- (i) the appointment, representation and participation of wāhine Māori in governance and decision-making across all sectors; and
  - (ii) all areas of wellbeing including cultural, spiritual, political, health, justice, social, economic, education and environmental.

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<sup>2</sup> Wai 381, #1.1(a).

11. The Claimants say that these laws, policies, practices, actions and omissions have, do or are likely to prejudicially affect the Claimants and breach the principles of, and the Crown's obligations under, te Tiriti.

## **BACKGROUND**

### **Mana wāhine and the customary role of wāhine Māori**

"Mana Wahine is a term that encompasses our own tikanga and which upholds and elucidates the mana that is inherent in our lives as hine, as wāhine, in its many forms. It embeds our wellbeing and our ways of being within particular cultural understandings, beliefs and practices that affirm who we are within our whakapapa and whanaungatanga, our roles, our positioning, our responsibilities, our obligations. Mana wāhine is not, and should never be considered only about gender relations. It is much more and moves beyond the colonial definitions of gender identity that is constructed within dualist notions of biology, femaleness or maleness. Mana wāhine is always located within our wider relationships as Māori. And it is within such a framework that we can ensure that we are cognisant of our relationships, responsibilities and obligations to each other as Māori, to our Indigenous relations and to those that live here on our lands."<sup>3</sup>

12. According to Māori belief, the mana and value of wāhine Māori stems from the atua (gods) Papatūānuku and Ranginui. This whakapapa (genealogy) is what connects people to the whenua and forms our identity as individuals, whānau, hapū and iwi members, and as Māori.
13. In te ao Māori, wāhine are the whare tangata (the house of humanity) and are respected for their role as the creator of life.<sup>4</sup> This is referenced by the connection to whenua as both the land and placenta.
14. The significance of wāhine as the whare tangata means that it is women who maintain and preserve the lineage of whakapapa, which is paramount to the sustainability of whānau, hapū and iwi.
15. The value of wāhine in te ao Māori is best described by the following whakatauki/whakatauāki:
  - (a) "*He wāhine, he whenua, ka ngaro te tangata*" which translates to mean "humanity would be lost without women and land" and speaks of the

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<sup>3</sup> Leonie Pihama, Linda Tuhiwai Smith, Naomi Simmonds, Joeline Seed-Pihama and Kirsten Gabel (eds) *Mana Wahine Reader: A Collection of Writings 1987-1998 Volume I* (Te Kotahi Research Institute, Hamilton, 2019) at V.

<sup>4</sup> Paul, W.T. (2014). *A Mana Wahine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Master thesis, Victoria University of Wellington, Wellington).

relationship between humankind and land which forms our whakapapa and refers to the nourishing role that women and land fulfil, without which humanity would be lost;<sup>5</sup> and

- (b) “*He wāhine he whenua riro ai te whenua. He wāhine he whenua ngaro ai te whenua*”<sup>6</sup> which translates to mean that it is from women that land derives, but it is also from women that land can be lost. This whakatauāki expresses the special mana of wāhine in the preservation of whakapapa.
16. These proverbs underpin the distinction between the significance of wāhine Māori in Māoridom and in the Western world. This is that the rights and whakapapa of people to land derive from women, in contrast to British concepts where women were prevented from any rights to land.
17. One of the overriding principles of tikanga Māori is the need to maintain balance. An important part of this principle is the need to “preserve a state of equilibrium between the genders” to ensure the spiritual, political, social and economic viability of communities.<sup>7</sup>
18. Wāhine Māori play a critical role in the practice of tikanga Māori within their whānau, hapū and iwi, and the maintenance of iwi history and knowledge which co-exist alongside the roles and responsibilities of tāne.<sup>8</sup> As such, Māori women too, held leadership roles and positions of status as representatives for their whānau, hapū and iwi.<sup>9</sup>

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<sup>5</sup> Rose, P. “*To us Dreamers are Important*”, Cox S (ed) Public and Private Worlds (1987) 59.

<sup>6</sup> Hohaia, TH. (2018) at *Te Reo Wānanga o Ngāti Rehia*.

<sup>7</sup> Ani Mikaere *The Balance Destroyed* (Te Tākupu – Te Wānanga o Raukawa, 2017) at 70.

<sup>8</sup> Mikaere, A (1994). *Māori Women: Caught in the contradictions of a colonised reality*.

Waikato Law Review 2. Retrieved from

[https://www.waikato.ac.nz/law/research/waikato\\_law\\_review/pubs/volume\\_2\\_1994/7](https://www.waikato.ac.nz/law/research/waikato_law_review/pubs/volume_2_1994/7).

<sup>9</sup> Turner, T.V (2007). *Tu Kaha: Nga Mana Wahine Exploring the role of Mana Wahine in the Development of Te Whare Rokiroki Māori Women’s Refuge* (Master thesis, School of Geography, Environment and Earth Sciences Victoria University of Wellington)

## Colonial ideologies and the role of women

19. Colonisation involved the forced imposition of Western patriarchal systems and standards onto Māori and the corresponding diminution of traditional Māori values and philosophies regarding the role of wāhine.<sup>10</sup>
20. British settlers brought with them to Aotearoa the English common law and Christianity and the related Western patriarchal ideologies of the role and status of women as chattels and property of their husbands who did not possess any form of authority or autonomy.<sup>11</sup>
21. Wāhine Māori were increasingly pressured into fulfilling the role of housewife and mother within the context of the nuclear family model, becoming dependant on their husbands as breadwinners.
22. These colonial ideologies, as they became imbedded into societal norms and Crown practices and policies, disempowered and marginalised the importance of wāhine Māori. The ideologies became so imbedded into societal norms that relationships between tāne Māori and wāhine Māori became imbalanced.<sup>12</sup>
23. The Claimants say that the processes of colonisation have left a negative legacy for wāhine Māori that will continue unless there is purposeful intervention.

## TE TIRITI O WAITANGI

24. The duties and obligations of the Crown to Māori arise from te Tiriti and its principles. The Claimants assert that the following duties of the Crown are paramount to this claim:

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<sup>10</sup> Turner, T.V (2007). *Tu Kaha: Nga Mana Wahine Exploring the role of Mana Wahine in the Development of Te Whare Rokiroki Māori Women's Refuge* (Master thesis, School of Geography, Environment and Earth Sciences Victoria University of Wellington).

<sup>11</sup> Mikaere, A (1994). *Māori Women: Caught in the contradictions of a colonised reality*. Waikato Law Review 2. Retrieved from [https://www.waikato.ac.nz/law/research/waikato\\_law\\_review/pubs/volume\\_2\\_1994/7](https://www.waikato.ac.nz/law/research/waikato_law_review/pubs/volume_2_1994/7) .

<sup>12</sup> Law Commission (1999). *The Experiences of Māori Women: Te Tikanga o te Ture: Te Matauranga o nga Wahine Māori e pa ana ki Tenei*.(Report 53) at p 17.

- (a) the Crown guaranteed tino rangatiratanga including the full, exclusive and undisturbed possession of their lands, estates, forests, fisheries, other properties, rivers, waterways and taonga;<sup>13</sup>
  - (b) the Crown promised to protect the rights guaranteed to Māori under te Tiriti and to perform their obligations arising out of te Tiriti; and
  - (c) the Crown promised to afford to Māori all the rights and privileges of British subjects<sup>14</sup>.
25. The Claimants assert the following principles of te Tiriti are relevant to this claim:
- (a) **Autonomy** – the Crown guaranteed to protect Māori autonomy. Inherent in Māori autonomy is their own customary laws and institutions, and the right to determine their own decision-makers and land entitlements.
  - (b) **Active Protection** – the duty of the Crown to actively protect the interests and rights of Māori.
    - (i) At the core of the principle of active protection is the principle of tino rangatiratanga, that the Crown will protect tino rangatiratanga. In Article II, tino rangatiratanga is defined as the “unqualified exercise of chieftainship and confirms and guarantees to Māori their property and other rights”.<sup>15</sup> This limits the Crown’s authority to govern<sup>16</sup> and obliges the Crown not only to recognise Māori interests specified in the Treaty but to actively protect them.<sup>17</sup>
    - (ii) The principle of active protection of tino rangatiratanga is not merely a simple recognition of tribal autonomy and self-management, it also includes a requirement that the Crown

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<sup>13</sup> Article II.

<sup>14</sup> Article III.

<sup>15</sup> I. H. Kawharu, “Treaty of Waitangi - Kawharu Translation” (2011) Waitangi Tribunal – Te Rōpū Whakamana i te Tiriti o Waitangi. Retrieved from:

<http://www.waitangitribunal.govt.nz/treaty/kawharutrtranslation.asp%3E>.

<sup>16</sup> Waitangi Tribunal, *Te Whanganui a Tara Me Ona Takiwa: Report on the Wellington District* (Wai 145, 2003) at 74.

<sup>17</sup> Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim* (Wai 8, 1985) at 69.

actively protects and supports Māori in the exercise of their rangatiratanga.

- (c) **Partnership** – the duty to act with the utmost good faith, the duty to consult Māori and obtain the full, free and informed consent of the correct right holder in any transaction for their land;
- (d) **Consultation** – the duty of Māori and the Crown to act reasonably and with the utmost good faith towards one another.<sup>18</sup> The obligation to consult includes the duty to obtain the full, free, and informed consent of the correct right holders in any transaction for their land.<sup>19</sup>
  - (i) The Crown’s duty of consultation requires open and honest dealing with Māori which includes the Crown’s duty to gain the full, free and informed consent of the correct right holders to any land transactions.
- (e) **Equity** – the duty of equity not only requires the Crown to afford Māori equal access and resources to those of British subjects, but also requires the Crown to take active measures to restore balance where Māori have been disadvantaged.<sup>20</sup>
- (f) **Right to Development** – this principle encapsulates the right of Māori to develop as a people, in cultural, social, economic and political senses.<sup>21</sup> It is the Crown’s responsibility to ensure Māori have the right to develop; as such development is essential to Māori wellbeing.<sup>22</sup>
- (g) **Options** – the duty to ensure Māori were afforded options when settlement and the new society developed.<sup>23</sup> Māori were to have the option to continue their tikanga and way of life largely as it was, to

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<sup>18</sup> *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 (CA) at 663-664.

<sup>19</sup> Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui* (Wai 785, 2008) at 3.

<sup>20</sup> Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui* (Wai 785, 2008) at 5.

<sup>21</sup> Waitangi Tribunal, *He Maungo Rongo* (Wai 1200, 2008) at 914.

<sup>22</sup> Waitangi Tribunal, *Report of the Waitangi Tribunal on Claims Concerning the Allocation of Radio Frequencies* (Wai 26 & 150, 1990) at 41-43; and Waitangi Tribunal, *Radio Spectrum Management and Development Claims (Interim)* (Wai 776, 1999) at 7.

<sup>23</sup> Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui* (Wai 785, 2008) at 5.



assimilate to the new society and economy, or to combine elements of both.<sup>24</sup> Māori choices were to be free and unconstrained.<sup>25</sup>

- (h) **Reciprocity** – a reciprocal partnership is one of fundamental exchanges for mutual advantage and benefits.<sup>26</sup>
- (i) **Redress** – the duty to provide adequate redress to Māori where the Crown have acted in breach of the principles and its duties under te Tiriti and that consequently, Māori have been prejudiced.

## **CROWN BREACHES OF TE TIRITI O WAITANGI**

26. The Claimants say that the Crown has breached the principles of te Tiriti by:
- (a) failing to recognise and protect the inherent mana of wāhine Māori and the role they play in the practice of tikanga as individuals and as iwi, hapū and whānau members. Examples include:
    - (i) preventing many wāhine Māori from signing te Tiriti, thereby denying the role of wāhine Māori as rangatira; and
    - (ii) failing to protect the rangatiratanga of wāhine Māori in respect of whakapapa, whenua, hapū, whānau and whai rawa; and
  - (b) failing to remedy the effects caused by the Crown's denial of the inherent mana and role of wāhine Māori, and, in particular, systemic discrimination, deprivation and inequities. Examples of this inequity can be seen in:
    - (i) the appointment, representation and participation of wāhine Māori in governance and decision-making across all sectors; and
    - (ii) all areas of wellbeing including cultural, spiritual, political, health, justice, social, economic, education and environmental.
27. The Claimants say that laws, policies, practices, actions and omissions have, do or are likely to prejudicially affect the Claimants and breach the principles of, and the Crown's obligations under, te Tiriti.

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<sup>24</sup> Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui* (Wai 785, 2008) at 4; Waitangi Tribunal, *Report on the Muriwhenua Fishing Claim* (Wai 22, 1988) at 195.

<sup>25</sup> Waitangi Tribunal, *Report on the Muriwhenua Fishing Claim* (Wai 22, 1988) at 195.

<sup>26</sup> Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui* (Wai 785, 2008) at 4.

**First cause of action: failing to recognise and protect the inherent mana and role of wāhine Māori**

28. The Claimants say that the Crown has breached the principles of te Tiriti by failing to recognise and protect the inherent mana of wāhine Māori and the role they play in the practice of tikanga as individuals and as iwi, hapū and whānau members.
29. In particular, the Claimants say that the Crown failed to recognise and protect the rangatiratanga of wāhine Māori and the role they play in the practice of tikanga, including preserving whakapapa, whenua, hapū, whānau and whai rawa.
30. The Claimants say that the process of colonisation and the implementation of Crown legislation and policies eroded traditional Māori practices, values and beliefs regarding the role and significance of wāhine Māori.
31. The Claimants say that the Crown breached the principles of te Tiriti by denying wāhine Māori the option and autonomy to continue their own customary law or tikanga and way of life.

***Particulars: Rangatiratanga and signing te Tiriti***

32. In 1840, Māori wāhine exercised rangatiratanga and made important decisions on behalf of their whānau, hapū and iwi as leaders. The signing of te Tiriti in 1840 was a clear illustration of this, where many wāhine held the mana and mandate to sign te Tiriti on behalf of their hapū.
33. For example, in the case of Ngāti Toa and Ngāti Raukawa, the rangatira Rangitopeora, with support from her uncle Te Rauparaha, resisted several missionaries who attempted to block her and signed te Tiriti on 28 May 1840 at Rangiuuru Pa, Ōtaki.<sup>27</sup>
34. However, the Crown's agents did not permit many wāhine Māori to sign te Tiriti, completely undermining and disregarding the mana and significance of wāhine Māori and with it, the mana of te Tiriti. The Crown's policy resulted in

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<sup>27</sup> Te Waaari Carkeek *The Northern South Island Inquiry (Wai 785)* (Waitangi Tribunal: Ministry of Justice, Wellington, 2003) at [81].

some hapū refusing to sign te Tiriti in defiance of the Crown's position and support of their female leaders.

35. The Claimants say that, inconsistent with customary political systems of Māori and te Tiriti, the Crown further implemented legislation and policies that denied the voice of wāhine Māori. Examples of this include:
  - (a) the New Zealand Constitution Act 1852, which denied women the right to vote in the parliamentary process;<sup>28</sup> and
  - (b) the Māori Representation Act 1867, which established four Māori seats in parliament but denied Māori women the right to stand for election in Parliament.<sup>29</sup>
36. The exclusion of wāhine Māori from participating in decisions that directly affected them, their whānau, hapū and iwi prevented wāhine Māori from exercising their tino rangatiratanga, in breach of their right guaranteed under te Tiriti.

***Particulars: Wāhine, whakapapa, whenua, hapū, whānau and whai rawa***

37. The Claimants say further that the Crown implemented legislation, policies and practices that deprived them of their rangatiratanga over and role in preserving their whenua and resources, whakapapa, hapū and whānau, and consequently their spiritual, cultural, political, social and economic wellbeing.
38. The Crown's alienation of Māori land and resources and the waging of the land wars led to the destruction of the Māori way of life thereby diminishing the status of wāhine Māori. The Claimants say that this was achieved by Crown laws, policies and practices including, but not limited to, the following:
  - (a) the common law doctrine of matrimonial unity;
  - (b) the Land Claims Ordinance 1841 and the Old Land Claims Commission 1844;

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<sup>28</sup> Wai 1040, #34: "*He Whenua Rangatira*" Northern Tribunal Landscape Overview (Hokianga, Whangaroa, Bay of Islands, Whāngārei, Mahurangi and Gulf Islands) at p 510.

<sup>29</sup> Wai 1040, #34: "*He Whenua Rangatira*" Northern Tribunal Landscape Overview (Hokianga, Whangaroa, Bay of Islands, Whāngārei, Mahurangi and Gulf Islands) at p 510.

- (c) the Native Land Purchase Ordinance 1846 and the Crown's purchasing policies;
  - (d) the Land Claims Settlement Act 1856;
  - (e) the New Zealand Settlements Act 1863 and confiscations;
  - (f) the compensation courts;
  - (g) the Native Land Acts 1862, 1865 and 1873, the Native Lands Rating Act 1882 and the Native Land Court;
  - (h) the Public Works Act 1864 and legislation;
  - (i) the Native Rights Bill 1894;
  - (j) the Māori Lands Administration Act 1900; and
  - (k) the Māori Land Amendment Act 1952.
39. The common law doctrine of matrimonial unity is an example of how colonial laws undermined the rangatiratanga of wāhine Māori and significantly impacted the customary land ownership rights of wāhine Māori. According to tikanga, wāhine Māori retained their land rights throughout their lives, as long as the requirements of ahi kā were met, and subject to their whānau and hapū interests.<sup>30</sup> In contrast, under the doctrine of matrimonial unity, women lost their land and property rights to their husbands upon marriage.<sup>31</sup> The husband could use and dispose of the property as he wished, whereas the wife had to obtain the consent of her husband.
40. Another example is the Native Land Act 1873 which prevented wāhine Māori from executing any deed of sale or purchase without their spouse being a party to the deed.<sup>32</sup> Conversely, the same requirement was not imposed on men when dealing with their interest in land.

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<sup>30</sup> Ani Mikaere *The Balance Destroyed* (Te Tākupu – Te Wānanga o Raukawa, 2017) at 56 and 115. See Law Commission *Justice: The Experiences of Māori Women; Te Tikanga o te Ture: Te Mātauranga o ngā Wāhine Māori e pa ana ki tēnei* (NZLC R53, 1999) at 16.

<sup>31</sup> At Law Commission *Dividing relationship property – time for change? Te mātatoha rawa tokorau – Kua eke te wa?* (NZLC IP41, 2017) at 24.

<sup>32</sup> Native Lands Act 1873, s 86.

41. The Crown's determination to assert its sovereignty over land and turn its back on te Tiriti led to the land wars of the mid-1800s, causing devastating land loss and further undermining the role of wāhine Māori in preserving whakapapa, whenua, hapū, whānau and whai rawa.
42. The Crown's post-World Wars urbanisation and assimilation policies that caused the mass migration of Māori to urban areas resulted in further cultural and land alienation and resource deprivation, thereby diminishing the status of wāhine Māori.
43. Land alienation had profound effects on Māori society, and in particular wāhine Māori, because it destroyed the collective whānau, hapū and iwi units and associated values, thereby eroding the importance of the role of wāhine Māori.<sup>33</sup>
44. The Claimants say that the Crown's failure to recognise and protect the mana, rangatiratanga and role of wāhine Māori since the signing of te Tiriti has had a devastating effect on wāhine Māori and their whānau. This is reflected in the continued underrepresentation of wāhine Māori in governance and decision-making positions, as well as the systemic discrimination, deprivation and inequities faced by wāhine Māori.

**Second cause of action: failing to remedy the effects caused by the Crown's denial of the inherent mana and role of wāhine Māori**

45. The Claimants say that the Crown has breached the principles of te Tiriti by failing to remedy the effects caused by the Crown's denial of the inherent mana and role of wāhine Māori, and, in particular, systemic discrimination, deprivation and inequities concerning:
  - (a) the appointment, representation and participation of wāhine Māori in governance and decision-making across all sectors; and
  - (b) all areas of wellbeing including cultural, spiritual, political, health, justice, social, economic, education and environmental.

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<sup>33</sup> Law Commission *Justice: The Experiences of Māori Women; Te Tikanga o te Ture: Te Mātauranga o ngā Wāhine Māori e pa ana ki tēnei* (NZLC R53, 1999) at 22.

***Particulars – appointment, representation and participation in governance and decision-making***

46. The Claimants say that the Crown has breached the principles of te Tiriti by failing to develop and implement legislation, policies, practices and processes that allow wāhine Māori the opportunity to participate, contribute and be represented in decision-making processes as equal Treaty partners.
47. In particular, the Crown has failed to ensure adequate representation and participation of wāhine Māori in the self-governance of their taonga and people, particularly in Crown-established structures and roles that concern the management of Māori assets and affairs.
48. The Claimants say that the Crown has breached the principles of te Tiriti by failing to consult with wāhine Māori in respect of matters of concern to wāhine Māori, and in particular the appointment of persons to management and decision-making positions that affect wāhine Māori.
49. The Claimants further say that the Crown has failed to implement policies and practices that adequately address the prejudice against wāhine Māori in the appointment and selection process of governance and management positions, in breach of te Tiriti and its principles.
50. In addition, the Claimants say that the Crown has failed to provide adequate resources and funding to organisations and initiatives that support wāhine Māori, thereby significantly restricting their ability to make sustainable and effective movement within the development of wāhine Māori.

***Background***

51. Pertinent to the mana of wāhine is access to all levels of the decision-making process.<sup>34</sup> Access to decision-making processes has also shown to improve the well-being of both Māori whānau and communities.<sup>35</sup>

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<sup>34</sup> Paul, W.T. (2014). *A Mana Wahine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Master thesis, Victoria University of Wellington, Wellington) at 82.

<sup>35</sup> Paul, W.T. (2014). *A Mana Wahine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Master thesis, Victoria University of Wellington, Wellington) at 82.

52. However, Māori represent approximately 15% of New Zealand's population but make up only 3.9% of those in high-level decision-making positions, and wāhine Māori only 1.1%.<sup>36</sup>
53. By way of further example, the Ministry for Women conducts an annual gender stocktake of state sector boards and committees, counting the ministerial appointments to the same. The most recent gender stocktake available on the Ministry for Women website provides data as at 31 December 2017 (**the 2017 stocktake**).<sup>37</sup>
54. The 2017 stocktake showed a participation rate of 45.7% of women on state sector boards and committees; the highest rate to date. However, the annual gender stocktake does not show the number of wāhine Māori represented on those state sector boards and committees<sup>38</sup>, and it further fails to include in its assessment the numbers of wāhine Māori in decision-making roles on Rūnanga and iwi bodies. The representation of Māori women is largely ignored by the Crown and local authorities. Māori women are separated into either the “Māori” umbrella or the “female” umbrella. Their representation as a distinct group, with distinct needs, is ignored.
55. The experience of the Claimants has been that while Māori women may apply to join a board or committee, they are consistently overlooked in favour of non-Māori men and women, or Māori men.
56. Wāhine Māori, as an identifiable group and key stakeholders on issues affecting Māori, remain virtually invisible in the law<sup>39</sup> and by extension, remain invisible in the high level and decision-making bodies, or within representative or advisory boards that have been specifically established by the Crown to provide Māori input to decision-making processes. Where representative national bodies for wāhine Māori do exist (such as the Maori

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<sup>36</sup> Paul, W.T. (2014). *A Mana Wahine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Master thesis, Victoria University of Wellington, Wellington) at 83.

<sup>37</sup> Ministry for Women “2016 Gender stocktake of state sector boards and committees (2017)” < <https://women.govt.nz/documents/2016-gender-stocktake-state-sector-boards-and-committees-2017>>.

<sup>38</sup> Ministry for Women “Women in governance: increasing participation on State Sector Boards and Committees” (2017) at 18.

<sup>39</sup> Mikaere, A (1994). *Māori Women: Caught in the contradictions of a colonised reality*. Waikato Law Review 2. Retrieved from [https://www.waikato.ac.nz/law/research/waikato\\_law\\_review/pubs/volume\\_2\\_1994/7](https://www.waikato.ac.nz/law/research/waikato_law_review/pubs/volume_2_1994/7) .

Women's Welfare League), the Crown fails to engage with them in seeking Māori input. Adequate resources and opportunity for these bodies to participate in decision making are absent.

57. The Claimants say that wāhine Māori have experienced racial discrimination across all social, political, cultural and spiritual spheres but particularly within the high-level decision-making structures and positions considered to hold substantial decision-making power.
58. The Claimants say that adequate representation of wāhine Māori decision-making would assist in addressing the systemic inequities faced by wāhine Māori.
59. The Claimants say that the Crown has failed to implement legislation and policy to facilitate and resource wāhine Māori involvement in key decision-making processes and access to decision-making positions.

#### *Wāhine Māori organisations and initiatives*

60. The Claimants say that the Crown has failed to recognise, support, consult and partner with wāhine Māori organisations and initiatives, thereby failing to protect the rangatiratanga of wāhine Māori.
61. Examples of such organisations and initiatives include but are not limited to:
  - (a) the Maori Women's Welfare League, the leading national body of wāhine Māori formed in 1951 by Māori Affairs, which experienced the withdrawal of administrative support and Crown resourcing in 1960 when its members voted in favour of independence from the Government;
  - (b) the Māori Nurses Association, set up to, among other things, address the inequitable representation of Māori women in the nursing profession and provide them with visibility and a voice in the health sector on all matters relating to the health of Māori<sup>40</sup>; and

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<sup>40</sup> See Anne Else (ed) *Women Together, a history of women's organisations in NZ* (Bridget Williams Publishers, Wellington, 1993).



- (c) the Women's Health League<sup>41</sup>, set up by Ruby Cameron, the Nurse General in the Ministry of Health, primarily to advance the health of Māori in areas of high need (in particular poor water sanitation, infant mortality and tuberculosis). Māori women nurses were assigned to Māori communities in rural districts with very limited resources from the government (as distinct from today's Council of Māori Nurses).
62. The Claimants say that the perceived challenge to male dominance and power influenced the Crown to disregard the role of wāhine Māori organisations and initiatives, thereby perpetuating the underrepresentation of wāhine Māori on statutory and advisory boards established by the Crown to provide Māori input into decision-making policies and processes.

*Entities managing Māori interests and Māori-owned assets*

63. The Crown's failure to implement adequate provisions that reflect the special status and rangatiratanga of wāhine Māori to make decisions for their whānau, hapū and iwi is particularly evident in entities that manage Māori interests and Māori-owned assets for the benefit of Māori, but are dominated by the Crown and tāne Māori.
64. Examples of the lack of Crown protection for wāhine Māori decision-making in such entities include, but are not limited to:
- (a) the fisheries settlement process and Crown-made appointments to the Treaty of Waitangi Fisheries Commission under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992;
  - (b) Crown-made individual appointments to Te Māngai Pāho (previously known as Te Reo Whakapuaki Irirangi), especially considering the instrumental role of wāhine Māori leaders in the promotion of te reo Māori and tikanga Māori; and
  - (c) the disestablishment of Te Putahi Paoho as a body that appoints Māori Television Directors and the transfer of its functions to Te Mātāwai and the resulting changes to the way in which wāhine Māori were represented.

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<sup>41</sup> See Anne Else (ed) *Women Together, a history of women's organisations in NZ* (Bridget Williams Publishers, Wellington, 1993).

65. Because such entities manage Māori interests and Māori-owned assets for the benefit of Māori, there is an obligation on the Crown to be satisfied that those making decisions within such organisations are equitably representative of and have the authority of whānau, hapū and iwi, which necessarily includes wāhine Māori.
66. The Claimants say that the Crown, in breach of te Tiriti and its principles, failed to afford to Māori women equal and equitable opportunity that had otherwise been made available to non-Māori men and women and tāne Māori.

*Treaty of Waitangi settlement negotiations*

67. The Claimants say that it would have been prudent and consistent with te Tiriti for the Crown to implement appropriate provisions that ensure that there are mandatory requirements for representation of wāhine Māori on the negotiation bodies for settlement.
68. The Claimants say however that the Crown has failed to implement such policies, in both the policies governing Te Arawhiti (the Crown agency responsible for negotiating historical grievances) and the provisions governing the selection or appointment of the negotiation representatives for claimants and iwi.
69. The result is that in a number of instances the negotiating bodies for claimants and iwi are highly influenced by Western patriarchal ideologies and dominated by men, therefore perpetuating the imbalance of representation between tāne and wāhine.

*Crown bodies*

70. The Claimants say that Crown legislation and policies fail to ensure that there is representation of wāhine Māori throughout the decision-making bodies across all government sectors.
71. Examples of such failures include, but are not limited to:
- (a) local government – the Local Government Act 2002,<sup>42</sup> whilst encouraging the contribution of Māori to its decision-making

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<sup>42</sup> Section 81.

processes, fails to require local authorities to give particular recognition to the voice of wāhine Māori by consultation or appointment to local government roles.

- (b) Parliament – while Māori electoral seats are a means by which Māori are guaranteed representation in Parliament, there is nothing guaranteeing the representation of wāhine Māori.
  - (c) State sector boards and committees – the lack of recognition of wāhine Māori as a distinct group that require representation in their own right, outside of the “Māori” or “female” umbrellas.
  - (d) the education sector – the Education Act 1989 and the appointment of members to the Tertiary Education Commission Board and the Tertiary Education Institution (TEI) councils.
  - (e) the health sector – the representation of wāhine Māori on health boards or bodies including district health boards and Māori partnership boards.<sup>43</sup>
  - (f) the cultural sector – the Arts Council of New Zealand Toi Aotearoa Act 2014 and the representation of wāhine Māori on the Arts Council.
  - (g) other government-appointed advisory and review bodies across justice, economic and social welfare sectors.
72. The Claimants say that the Crown’s failure to ensure adequate representation of wāhine Māori in decision-making structures diminishes the value and role of wāhine Māori in their whānau, hapū and iwi and perpetuates the disempowerment of wāhine Māori in society which continues to cause prejudice to the social, cultural and economic well-being of wāhine Māori and their whānau.

***Particulars – inequities across all areas of wellbeing***

73. The Claimants say that the Crown has breached the principles of te Tiriti by failing to protect the interests of wāhine Māori across all areas of wellbeing including spiritual, cultural, political, social, education, health, justice,

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<sup>43</sup> Cossar, D. & Alliston, L (2006). *The participation and engagement of Māori in decision making processes and other government initiatives; A literature review prepared for the Electoral Commission* (Research New Zealand) at 100.

economic and environmental, thereby resulting in the systemic deprivation of and inequitable outcomes for wāhine Māori.

74. The Claimants say that the Crown has breached the principles of te Tiriti by institutionalising ethnicity and gender based discrimination against wāhine Māori within Crown policies, practices, processes, structures and systems.
75. The Claimants say that the Crown has breached the principles of te Tiriti by failing to afford wāhine Māori equal access, opportunities, resources and outcomes as non-Māori.
76. The Claimants say that the Crown has breached and continues to breach the principles of te Tiriti by failing to remedy systemic inequities experienced by wāhine Māori.

*Mātauranga Māori, te reo Māori and education*

77. The Claimants say that the Crown implemented legislation, policies and practices that sought to destroy, limit or assimilate Māori knowledge with British values and knowledge, resulting in negative effects on wāhine Māori in particular.<sup>44</sup>
78. Examples of such laws, policies and practices include, but are not limited to:
  - (a) the Native Schools Act 1867 which decreed that English should be the only language used in the education of Māori children;
  - (b) the Crown's urbanisation, assimilation and "pepper-potting" policies of the mid 1900s which prevented the establishment of Māori communities in urban areas thereby limiting the use of te reo Māori;
  - (c) Christian schools which aimed to educate Māori girls in the art of domesticity, encouraging them to be good wives in the context of the nuclear family and discouraging them from becoming too academically orientated;<sup>45</sup> and

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<sup>44</sup> Paul, W.T. (2014). *A Mana Wahine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Master thesis, Victoria University of Wellington, Wellington) at 66.

<sup>45</sup> Ani Mikaere *The Balance Destroyed* (Te Tākupu – Te Wānanga o Raukawa, 2017) at 103.

(d) the lack of provision within the education curriculum of te reo Māori and Māori customs and practices, and New Zealand history.

79. The Claimants assert that Western education policies and practices considered women as subservient which adversely impacted upon the social, cultural, economic and political status of wāhine Māori in society and their ability to exercise their right to mana wāhine and tino rangatiratanga.
80. The Claimants say that the Crown has used the education system as a powerful means for under-educating and devaluing wāhine Māori by denying them access to academic knowledge, te reo Māori and Māori customs and stories which uphold the mana of wāhine Māori. Accordingly, the education system failed to protect wāhine Māori and failed to deliver wāhine Māori equal opportunity and outcomes.
81. The Claimants say that the educational underperformance and low self-worth of wāhine Māori persists and the Crown has failed to remedy inequitable education outcomes for wāhine Māori.

*Broadcasting, Media and the Arts*

82. The Claimants say that the Crown implemented legislation and policies which failed to protect the status of wāhine Māori in the way that they have been represented and portrayed in broadcasting, media and the arts.
83. Examples of such laws, policies and practices include, but are not limited to:
- (a) a lack of funding and support for wāhine Māori in broadcasting, media and the arts;
  - (b) lack of representation, visibility and a wāhine Māori voice in all aspects of broadcasting, media and the arts; and
  - (c) a lack of equal representation of wāhine Māori and tāne Māori on boards specific to broadcasting, media and the arts.
84. The Claimants say that wāhine Māori continue to face inequity, inequality and discrimination in broadcasting and the media.

*Hauora and health*

85. The Claimants say that the Crown implemented legislation and policies which failed to protect the rights of wāhine Māori in respect of health in all its forms, including prohibiting Māori health practices and obstructing wāhine Māori participation in the health system, and failing to provide equitable quality of and access to care.
86. Examples of such laws, policies and practices include, but are not limited to:
- (a) the Tohunga Suppression Act 1907 which sought to diminish the spiritual aspect of the Māori way of life and outlawed Māori tohunga or experts, including health practices;
  - (b) the westernisation of the process of childbirth, directly attacking the role of wāhine Māori as the whare tangata who maintain and preserve whakapapa, whenua, hapū, whānau and whai rawa;<sup>46</sup>
  - (c) the westernisation of the idea of wellbeing which focuses on physical health and disregards the holistic Māori view of wellbeing; and
  - (d) the underfunding of Māori organisations participating and engaged in the health sector, particularly those providing kaupapa Māori services.
87. The Claimants say that wāhine Māori continue to be over-represented in negative health statistics and therefore the Crown has failed to remedy inequitable health outcomes for wāhine Māori.

*Whai Rawa: Economic and business development*

88. The Claimants say that the Crown has implemented legislation and policies that have failed to address the economic and business under-development of wāhine Māori resulting in disproportionate poverty and unemployment rates and pay inequities.
89. Examples of such laws, policies and practices include, but are not limited to:
- (a) the lack of funding and support for the economic and business development of wāhine Māori prior to the establishment of the Māori Women's Development Fund in 1987 (now the Māori Women's Development Incorporated which was registered in 1997);

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<sup>46</sup> Ani Mikaere *The Balance Destroyed* (Te Tākupu – Te Wānanga o Raukawa, 2017) at 92.

- (b) the neoliberal restructuring of the 1980s and 1990s and the rise of mass unemployment in sectors in which Māori work;
  - (c) barriers regarding the use of Māori land including access to finance and prohibitive planning rules;
  - (d) pay equity and the undervaluing of sectors where wāhine Māori are more likely to work.
90. The Claimants say that wāhine Māori faced and continue to face inequity, inequality and discrimination in business and economic development.

*Justice*

91. The Claimants say that the Crown has implemented legislation and policies that have resulted in prejudicial scrutiny and action by the Police and criminal justice system against wāhine Māori, resulting in wāhine Māori being the most incarcerated group percentage wise in Aotearoa.
92. Examples of such laws, policies and practices include but are not limited to:
- (a) sexual and domestic violence laws;
  - (b) the provision and accessibility of rehabilitative sentences to address mental health and substance abuse issues;
  - (c) racism and biases in law enforcement;
  - (d) ignoring existing research, reports and evidence that demand transformative change;
  - (e) the Bail Act 2000 and the increased remand numbers;
  - (f) the failure to review and address the basis of custodial sentences and the application of alternatives to prison; and
  - (g) a lack of opportunities for wāhine Māori to be educated.
93. The continued disproportionate incarceration of wāhine Māori is clear evidence that the Crown has failed to remedy the systemic discrimination of wāhine Māori in the justice sector.

### *Social Welfare*

94. The Claimants say that the Crown has failed to implement legislation, policies and practices that ensure the adequate provision of social services to wāhine Māori and their whānau, thereby diminishing the role and status of wāhine Māori as the preservers of whānau.
95. Examples of such laws, policies and practices include but are not limited to:
- (a) the housing crisis and the provision of affordable and social housing; and
  - (b) the restrictions and discrimination around obtaining benefits.

### *Ngā tamariki mokopuna*

96. The Claimants say that the Crown has implemented legislation and policies that seek to remove tamariki Māori from their whānau in order to civilise and assimilate Māori into the pākehā way of life, thereby failing to protect the role of wāhine Māori as the preservers of whakapapa, whenua, hapū, whānau and whai rawa.
97. Examples of such laws, policies and practices include but are not limited to:
- (a) the Adoption Act 1955 which imposed on Māori the model of closed stranger adoption based on the Western views of the nucleus family;
  - (b) the funnelling of tamariki Māori into state care institutions and the abuse they suffered while in state care; and
  - (c) the policies and practices of Oranga Tamariki and its predecessors concerning the removal of tamariki Māori from their mothers and whānau.
98. The continuing overrepresentation of tamariki Māori in state care is evidence that the Crown has failed to remedy the diminishing of mana wāhine as preservers of whakapapa, whenua, hapū, whānau and whai rawa.

### *Resources and Climate Change*

99. The Claimants say that the Crown has implemented legislation and policies that alienated wāhine Māori from their land and resources. This resulted in a



loss of wāhine Māori control of resources particularly in relation to Māori land decision-making and climate change impact.

100. Decision makers and development partners at all levels need to bring women into the planning, financing and implementation of climate responses, including adaptation and mitigation, food security and agriculture, health, water, forestry, disaster risk reduction, energy and technologies and infrastructure.
101. As the world moves toward the post-Kyoto climate regime, it is essential that climate initiatives at all levels pay particular attention to the interlinkages between gender and climate change and that women are engaged at all levels of the decision-making process.
102. There is also a direct relationship between gender equality, women's empowerment and climate change. On the one hand, Māori women are disproportionately vulnerable to the effects of climate change, which could, in turn, exacerbate existing gender disparities. On the other hand, Māori women have unique knowledge and skills that can help make the response to climate change more effective and sustainable.
103. The Government's present climate change policies fail to take account of gender-based vulnerability and the unique contribution that women can make to advance gender equality and women's empowerment while fighting climate change.
104. The Claimants say that the continuing lack of wāhine Māori voice and control of resources has diminished mana wāhine as kaitiaki and preservers of whakapapa, whenua, hapū, whānau and whai rawa.

#### *International obligations*

105. The Claimants say that the Crown has breached the principles of te Tiriti by failing to uphold its international obligations to wāhine Māori, and especially those under the Convention on the Elimination of all Forms of Discrimination Against Women (**CEDAW**) and the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**).

## **PREJUDICE**

106. The Claimants say that as a result of the Crown's policies, practices, actions and omissions detailed above, they have suffered significant prejudice in the following ways:

- (a) wāhine Māori being confined to British constructs and ideologies of "women" and by virtue, disregarding tikanga Māori with respect to the role and status of women in society and in the development of Māori interests;
- (b) the perpetuation of a system and implementation of policies, practices and legislation that have failed to actively recognise and promote the value, status and position of wāhine Māori;
- (c) wāhine Māori being restricted and prevented from exercising their tino rangatiratanga within bodies of authority;
- (d) wāhine Māori being relegated to inferior positions in entities and organisations that are designed to promote the interests of Māori;
- (e) wāhine Māori suffering the effects of loss of status, mana and history resulting in negative self-perceptions and consequent systemic deprivation across all spheres of wellbeing (including cumulative and intergenerational negative effects on health);
- (f) legislation and policies which fail to address and therefore prevent the continuation of the underrepresentation and systemic deprivation of wāhine Māori.

## **RELIEF SOUGHT**

107. The Claimants seek the following relief in order to remedy the prejudice suffered by the Claimants:

- (a) that the Tribunal finds that:
  - (i) the claims are well founded; and

- (ii) the Crown's policies, practices, actions and omissions as outlined in this statement of claim are inconsistent with and breached te Tiriti o Waitangi; and
- (b) that the Tribunal recommends that the Crown:
- (i) apologises to the Claimants and wāhine Māori generally;
  - (ii) establishes a mechanism and fund that addresses intergenerational trauma and damage suffered by wāhine Māori by providing for reconciliation, collective and individual healing and the restoration of the mana of wāhine Māori in the cultural, spiritual, political, health, education, employment, economic, social and environmental fields. Any mechanism should be comprised of at least three Māori women members, who shall be the majority, and no more than two non-Māori;
  - (iii) establishes an independent and enduring statutory body that monitors, reports and recommends to the Crown on what it has achieved and how it may improve its laws and policies, government agency performance and appointment processes to ensure the authority, autonomy, participation and status of Māori women in New Zealand society, including planning for the next budget appropriations. The body should be comprised of representatives from wāhine Māori organisations and individual wāhine Māori;
  - (iv) implements legislation, policies and practices that adequately recognise the mana, role and interests of wāhine Māori in all social, political, cultural and spiritual contexts;
  - (v) transforms organisations through system change approaches including strengthening core cultural and political competencies;
  - (vi) implements legislation, policies and practices that provide for and promote the devolution of current Crown roles and decision-making powers to Māori organisations representative of wāhine Māori where those decisions are identified by wāhine Māori as directly impacting them;

(vii) improves funding of organisations and initiatives that support wāhine Māori to allow for effective input into the development of wāhine Māori; and

(c) such other relief as the Tribunal considers just.

108. The Claimants reserve the right to further particularise and amend this Amended Statement of Claim.

**DATED** this 24<sup>th</sup> day of January 2020



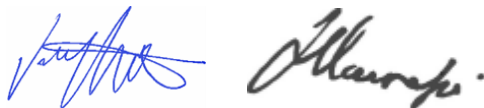
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