

IN THE WAITANGI TRIBUNAL

**WAI 2700
WAI 1488**

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 by Kathryn Nicol and Sonia
Matheson on behalf of themselves, the late
Kathleen Ngahuia Mardon, and the late
Emma Gibbs-Smith, and their whānau**

AMENDED STATEMENT OF CLAIM FOR WAI 1488

Dated the 8th day of November 2019

TamakiLegal

Barristers & Solicitors

Cuilam Building, Level 2, 15 Osterley Way, Manukau, Auckland 2140

PO Box 75517, Manurewa, Auckland 2243

P. 09 263 5240

E. darrell@tamakilegal.com

Counsel Acting: Darrell Naden / Stephanie Roughton / Siasoi Loa

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Waitangi Tribunal

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WELLINGTON

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MAY IT PLEASE THE TRIBUNAL

THE CLAIM

1. This Amended Statement of Claim is filed on behalf of **KATHRYN NICOL** and **SONIA MATHESON** on behalf of themselves, the late Kathleen Ngahuia Mardon, and the late Emma Gibbs-Smith and their whānau (the “Claimants”).
2. This Amended Statement of Claim, amends the earlier Statement of Claim and broadens the scope of the claim beyond the matters raised in the original Statement of Claim¹ to matters relating to mana wahine.
3. The Claimants say that their claim falls within one or more of the matters referred to in section 6(1) of the Treaty of Waitangi Act 1975 namely:
 - a. that they are Maori; and
 - b. they have been and continue to be likely to be or are likely to be prejudicially affected by the various Acts and Crown policies, practices, acts and omissions adopted by, or on behalf of the Crown or its agents.
4. The Claimants reserve the right to amend this Amended Statement of Claim.

TE TIRITI O WAITANGI PRINCIPLES

Partnership

5. The constitutional status of Māori as first peoples² gives rise to a presumption of equal status between the Crown and Māori. The rights (of governance and autonomy) each partner accords to the other are not absolute but subject to

¹ Charl Hirschfeld, Statement of Claim of Kathleen Ngahuia Mardon (Wai 1040) dated 5 July 2008, Wai 1488, #1.1.1.

² Waitangi Tribunal, *Report of the Waitangi Tribunal on the Motunui-Waitara Claim* (Wai 6, 1983), at 52; Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim* (Wai 9, 1987), at 183; Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wai 143, 1996), at 18-21; Waitangi Tribunal, *Muriwhenua Land Report* (Wai 45, 1997), at 114; Waitangi Tribunal, *The Wananga Capital Establishment Report* (Wai 718, 1999), at 44.

each partner's needs.³ One party should not benefit by constraining the other party from benefiting.⁴

6. The principle imposes a duty on the Crown to act reasonably, honourably and in good faith when dealing with Māori,⁵ and the exchanges between Crown and Māori should involve benefits that are mutual, with advantages flowing in both directions.⁶ Moreover, the Crown has a duty to consult with whānau, hapū and iwi with respect to local issues⁷ and a failure to consult is likely to result in an affront to Māori.⁸
7. The Crown has a duty to recognise and give meaningful effect to the tino rangatiratanga of Māori wāhine, and provide for the management of resources and other taonga according to Māori cultural preferences.⁹

Active Protection

8. Through Te Tiriti o Waitangi ("Te Tiriti"), the Crown assured Māori that their existing rights would be actively protected with the utmost good faith¹⁰ and to the fullest practicable extent.¹¹
9. The Crown has a duty to actively protect Māori from the adverse transitional effects of settlement.¹² This obligation arises over and above considerations of equity and calls for additional resources and effort to be deployed in favour of Māori whenever general programmes afford them insufficient protection.¹³

³ Waitangi Tribunal, *Te Whānau o Waipareira Report* (Wai 414, 1998), at 8.

⁴ Waitangi Tribunal, *The Ngai Tahu Sea Fisheries Report* (Wai 27, 1992), at 273-274.

⁵ *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513 ("Broadcasting Assets"); *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 ("Lands").

⁶ Waitangi Tribunal, *He Whiritaunoka: The Whanganui Land Report* (Wai 903, 2015), at 156.

⁷ Waitangi Tribunal, *Mangonui Sewerage Report* (Wai 17, 1988), at 187.

⁸ Waitangi Tribunal, *Manukau Report, Vol 2* (Wai 8, 1989), at 87.

⁹ Waitangi Tribunal, *The Radio Spectrum Management and Development Final Report* (Wai 776, 1999), at 51;

Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim* (Wai 22, 1988), at 183.

¹⁰ *New Zealand Maori Council v Attorney General* [1987] 1 NZLR at 715.

¹¹ Waitangi Tribunal, *Turanga Tangata Turanga Whenua, Vol 1* (Wai 814, 2004), at 120.

¹² Waitangi Tribunal, *Napier Hospital and Health Services Report* (Wai 692, 2001), at xxv.

¹³ Waitangi Tribunal, *Napier Hospital and Health Services Report* (Wai 692, 2001), at [53].

10. The duty is heightened where a taonga is in a vulnerable state and includes all valued resources and intangible cultural assets which are highly treasured by Māori,¹⁴ including social welfare,¹⁵ Māori health outcomes¹⁶ and te reo Māori.¹⁷
11. The Crown may not offer exclusively monocultural services but must respect tikanga Māori in social service provisions.¹⁸

Equity

12. Under ko te tuatoru ō Te Tiriti, Māori have the same rights and privileges as British subjects. In this respect, the interests of non-Māori cannot be prioritised to the disadvantage of Māori, the Crown has a duty to provide equality of services, treatment and outcomes to both Māori and non-Māori.
13. Where Māori have been disadvantaged, active measures must be taken to restore the balance.¹⁹ The duty requires positive intervention to address disparities, so that there is equity of outcomes, rather than equity of access to services, treatment or care.²⁰
14. The removal of adverse health disparities by appropriate means including affirmative action for Māori as a population group.²¹ Additionally, where adverse disparities in health status between Māori and non-Māori are marked and persistent, the Crown is obliged to take appropriate measures based on need, to minimise them over the long run.²²

¹⁴ Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim, Vol 3* (Wai 9, 1996), at 147.

¹⁵ Waitangi Tribunal, *Te Whānau o Waipareira Report* (Wai 414, 1998).

¹⁶ Waitangi Tribunal, *Napier Hospital and Health Services Report* (Wai 692, 2001), at 62.

¹⁷ Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Māori Claim* (Wai 11, 1986), at 20.

¹⁸ Waitangi Tribunal, *Napier Hospital and Health Services Report* (Wai 692, 2001), at 48 and 65.

¹⁹ Waitangi Tribunal, *The Waitangi Tribunal and Treaty Principles*, accessed at <www.waitangitribunal.govt.nz/treaty-of-waitangi/principles-of-the-treaty/>.

²⁰ Waitangi Tribunal, *Napier Hospital and Health Services Report*

²¹ Waitangi Tribunal, *Napier Hospital and Health Services Report* (Wai 692, 2001), at xxv.

²² Waitangi Tribunal, *Napier Hospital and Health Services Report* (Wai 692, 2001), at xxvii.

Self Determination

15. Māori autonomy is the ability of tribal communities to govern themselves, to determine their own internal political, economic, and social rights and objectives, and to act collectively in accordance with those determinants.²³ The self-determination principle assures Māori the right to choose their social and cultural path.²⁴
16. The Crown has a duty to protect and give effect to the Claimant's tino rangatiratanga and their ability to exercise their full customary rights and interests as Māori wāhine.

Right to Development

17. Māori have the right to develop as a people, culturally, socially, economically and politically.²⁵ The Crown has the responsibility to guarantee that Māori have the right to develop, since such development is essential to Māori well-being.²⁶
18. A Māori iwi or hapū may have a right to participate in any development occurring within their rohe, in any development related to taonga or in any development that would assist their cultural, social, or economic development by contributing to the redress of past breaches of Te Tiriti.²⁷

²³ Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, Vol 1 (Wai 814, 2004), at 113.

²⁴ Waitangi Tribunal, *Report on the Crown's Foreshore and Seabed Policy* (Wai 1071, 2004), at 133-134.

²⁵ Waitangi Tribunal, *He Maunga Rongo: Report on the Central North Island Claims, Stage 1, Vol 3 (Part 4)* (Wai 1200, 2008), at 914.

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

²⁷ Waitangi Tribunal, *He Maunga Rongo: Report on the Central North Island Claims, Stage 1, Vol 3 (Part 4)* (Wai 1200, 2008), at 913-914.

Redress

19. The Crown has a duty to remedy past breaches of Te Tiriti. Tribunal jurisprudence has emphasised an active restorative approach.²⁸

FIRST CAUSE OF ACTION—FAILURE TO ACTIVELY PROTECT WAHINE MAORI

Allegation

20. At 1840 Māori women exercised rangatiratanga and authority over their lands, property and resources: this included persons residing within their rohe according to their tikanga.
21. The Crown, through legislation and colonial and modern-day policy failed to actively protect the treaty rights of Māori women and provide for their political, social, health, economic and cultural rights.
22. The Crown, through legislation and policies diminished the autonomy of Māori to govern themselves and to determine their own internal political, economic and social rights and objectives and to act collectively in accordance with those objectives.
23. The Crown through legislation and policies took away from Māori the option to maintain their traditional culture or to assimilate into the colonising culture.
24. Māori women's mana and status were diminished by the imposition of the lesser status of women in European culture and politics.

²⁸ Waitangi Tribunal, *He Maunga Rongo: Report on the Central North Island Claims, Stage 1, Vol 4 (Part 5)* (Wai 1200, 2008), at 1248.

Particulars

The Erosion of the Status of Māori Wāhine

25. In the period of early contact between Māori and Europeans a culturally different attitude towards the role of women existed.
26. Māori society embraced a worldview determined by whakapapa and people would reckon their kinship to each other by descent from a common ancestor.²⁹
27. Descent from bilateral senior lines conferred senior status upon a person was ‘not confined to males’³⁰
28. There were women of pre-eminent rank that ‘personified mana over land and people in their communities and descent groups’.³¹
29. Such women were tapu and would make decisions that bound all their peoples, both male and female. They held chiefly rank and power and possessed mana.³²
30. At least five women of rank signed the Treaty of Waitangi in 1840.³³ Further, at least thirteen women³⁴ have been identified as having signed Te Tiriti and ‘Taitokerau women feature strongly among them.’³⁵

²⁹ Ballara, A, *Wahine Rangatira: Maori Women of Rank and Their Role in the Women’s Kotahitanga Movement of the 1890s*, NZJH, 27, 2 (1993), at 130.

³⁰ Ballara, A, *Wahine Rangatira: Maori Women of Rank and Their Role in the Women’s Kotahitanga Movement of the 1890s*, NZJH, 27, 2 (1993), at 130.

³¹ Ballara, A, *Wahine Rangatira: Maori Women of Rank and Their Role in the Women’s Kotahitanga Movement of the 1890s*, NZJH, 27, 2 (1993), at 130 – 131.

³² Ballara, A, *Wahine Rangatira: Maori Women of Rank and Their Role in the Women’s Kotahitanga Movement of the 1890s*, NZJH, 27, 2 (1993), at 131

³³ Ballara, A, *Wahine Rangatira: Maori Women of Rank and Their Role in the Women’s Kotahitanga Movement of the 1890s*, NZJH, 27, 2 (1993), at 130.

³⁴ Takurua, Te Marama, Ana Hamu, Marama, Ereonora, Te Rangitopeora, Kahe Te Rau-o-te-Rangi, Pari, Te Kehu, Ngāraurekau, Rere-ō-Maki, Hoana Riutoto and Te Wairākau.

³⁵ Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37, at 453.

31. Many, if not all of these wāhine signatories 'were rangatira in their own right and exercised mana whenua within Te Taitokerau'.³⁶
32. The concept of women as leaders and spokespersons was beyond the comprehension of the Crown. It, and its agents could only conceive of dealing with men: 'Maori men were the ones with whom the colonisers negotiated, traded and treated'.³⁷
33. The fact that Māori women have continuously asserted political influence from the earliest stages of European contact suggests that this was commonplace and was embedded in the culture and tikanga of the region.³⁸
34. Evidence shows that Māori women of mana had a 'large share of power, status, control and obligations'³⁹ whereas in the Pākehā world, power, status control and obligations were 'reserved exclusively for males'.⁴⁰
35. The mana of female rangatira was evident in the early years of contact with Europeans.⁴¹
36. This mana was often passed down from female ancestors to male or female descendants.⁴²
37. The wāhine of Māori played key roles within hapū and iwi.
38. Dispute resolution was one key function of women. Their important peace-making role is encapsulated by the phrase 'rongo ā whare'.⁴³
39. The vitally important tohunga role could be filled by both men and women.

³⁶ Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37, at 454.

³⁷ A. Mikaere, *Māori Women: Caught in the contradictions of a Colonised Reality*, 2 Waikato L. Rev. 125 (1994), at 132.

³⁸ Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37, at 527.

³⁹ Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37.

⁴⁰ Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37.

⁴¹ Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37, at 242.

⁴² Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37, at 244.

⁴³ Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37, at 258.

40. There were many important female spiritual leaders who arose throughout the region in the nineteenth century.⁴⁴
41. Female healers were respected and recognised in Māori society when European doctors at the time were almost exclusively male.⁴⁵
42. Rangatira women, like their male counterparts, also took a share of the labour required in a communal economy.⁴⁶
43. Wāhine Māori were 'renowned for their abilities in many areas that were generally denied to women in Western society'.⁴⁷
44. There is 'unmistakable evidence that [Māori] women's lives were richer and more varied'⁴⁸ than Colonial and Pākehā scholarship indicates.
45. The significant changes that occurred during the post 1840 colonial period saw many officials 'keen to render silent' the voices of Māori women.⁴⁹
46. There existed palpable frustration amongst Māori women 'by the restrictions placed on them by the male dominated British society'.⁵⁰
47. As Colonial influence expanded, the potential for Māori men to begin 'adopting the values' of European males, with newly displayed attitudes of control over women grew.

Suppression of Tohunga

48. The Tohunga Suppression Act 1907 destroyed Māori women's role as spiritual guides.

⁴⁴ Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37, at 261.

⁴⁵ Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37, at 264.

⁴⁶ Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37.

⁴⁷ Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37, at 265.

⁴⁸ Binney, J, *Some Observations on the Status of Maori Women*, NZJH, 38, 2 (October 2004), at 234.

⁴⁹ Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37, at 510.

⁵⁰ Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37.

49. The practice of tohunga was outlawed and practitioners were rendered liable to 'a fine not exceeding twenty-five pounds or to imprisonment for a period not exceeding six months.'⁵¹
50. The Crown in the guise of the new colonial regime left little space for Māori wāhine to continue asserting their political, spiritual and social influence.
51. Exposure to the effects of colonization, alien political norms and new economic arrangements eroded the status of Māori women and foreshadowed the ills they would suffer as law and policy continued to develop in line with an ideology unsympathetic to their values.

Negative Statistics in Māori Woman's Health and Education

52. In today's world most, if not all, Māori women 'participate in the modern Pakeha structured society.'⁵²
53. However, many Māori women 'betray a colonization of the mind'⁵³ and an acceptance of 'the proletarianization of their men...themselves and their close relatives.'⁵⁴
54. Māori women remain an at-risk group in New Zealand society as the post-colonial hangover for wāhine endures.
55. The statistics bear this out.⁵⁵
56. Māori women have the lowest rate of 18-year olds with NCEA level 2 or above at 69.6 percent.

⁵¹ Tohunga Suppression Act 1907, s 2(1).

⁵² Binney, J, *Some Observations on the Status of Maori Women*, NZJH, 38, 2 (October 2004), at 233.

⁵³ Binney, J, *Some Observations on the Status of Maori Women*, NZJH, 38, 2 (October 2004).

⁵⁴ Binney, J, *Some Observations on the Status of Maori Women*, NZJH, 38, 2 (October 2004).

⁵⁵ The following statistical statements based on statistics viewed at www.stats.govt.nz.

57. Only 32 percent of Māori have an NZQF qualification above level four. This is the second lowest amongst ethnic groups in New Zealand.
58. Early Crown policy around education laid the foundations for the poor educational results seen in the modern day.
59. Crown failures to provide for Māori culture and language, suppression of Te Reo Māori, a lack of equal education opportunities and an early emphasis on manual instruction are all contributing factors.
60. A common view in the 19th century was that 'certain people or groups, including non-European races and women were not suited to too much mental exertion...and were more suited to practical activities.'⁵⁶
61. This view survived throughout much of the twentieth century in certain influential sectors of New Zealand society.
62. The health statistics for Māori women in today's New Zealand are even more alarming.
63. An astronomical 41.8 percent of Māori women smoke. This is the highest rate among all ethnic and gender groups in New Zealand.
64. Moreover, 27 percent of Māori women drink alcohol at a potentially hazardous level. This is the highest rate among women of all ethnic groups in New Zealand.
65. The life expectancy for Māori women is 77.1 years. For non-Māori women life expectancy is 83.9 years.
66. Approximately 11.7 percent of Māori women experience a high level of psychological distress. This too is the highest rate among women in New

⁵⁶ Barrington, JM, *Northern Language, Culture and Education*, 2005, Wai 1040, #A2, at 200.

Zealand being 1.5 percent higher than Pacific women and a staggering 4.7 percent higher than European women.

67. Māori women also have over double the rate of suicides per 100,000 people as compared to non-Māori women.
68. The Crown has much to do to address these negative statistics and so far, has failed to do so adequately.

The Claimants Experience

Diminution of the mana of wahine

69. Prior to te Tiriti o Waitangi, the Claimants tipuna wahine held mana and authority.
70. As a result of colonisation, a belief that Maori men should “control their women” caused Maori men to exert dominance over wahine.
71. This led to a diminution of worth and hauora for wahine Maori which in turn led to wahine being viewed as second-class citizens.
72. The opinions of Maori wahine were not listened to or taken seriously. This had a severe impact on Kathleen and on her whānau.
73. Ngahuia was a significant name in the whānau, the late Kathleen Ngahuia Mardon (“Kathleen”) believed she was targeted and subjected to abuse and torment because she had been named after Rangī Ngahuia Pakuu.
74. Kathleen was not able to speak out against her oppressors; to do so would risk further beatings.

Suppression of Tohunga

75. There is a long history and tradition of tohunga in the Claimant's whānau. Many wahine in the Claimants whānau were able to heal, practice rongoā, and see kēhua. Kathleen's mother Ihipera Joyce and her grandmother, Kiri Ututaonga, were healers or tohunga.
76. The Tohunga Suppression Act and other Crown policies have suppressed the Claimants wairua and restricted the Claimants ability to express their true selves and to practice rongoā.
77. Many wahine were fearful of being called a tohunga because of the prohibition.
78. The ability to practice tohunga and rongoā has been lost and the severely impacted on the wairua of the Claimants wahine.
79. Many of the Claimants aunties and uncles died prematurely as a result of this loss and related stress.

Prejudice

80. As a result, the Claimants and many of their forebears have suffered as a result in the following ways:
 - a. They were restricted in exercising their abilities as tohunga;
 - b. Kathleen was unable to speak out against abuse and torment; and
 - c. Suffered diminution of mana and wairua which led to the premature passing away of many of the Claimants aunties and uncles; and
 - d. Kathleen suffered severe physical, mental and emotional abuse.

SECOND CAUSE OF ACTION—FAILURE TO PROTECT WAHINE MAORI FROM DOMESTIC VIOLENCE

Allegation

81. The Crown has failed to protect wāhine Māori from the adverse effects of colonial settlement, namely the destruction of traditional whānau structures and the diminished mana of wāhine Māori. The imposition of settler norms and values resulted in the relegation of wāhine Māori to the status of mere chattel or property, subjecting them to ‘socially accepted’ mental and physical abuse in breach of the Treaty principles of active protection and equality.
82. The Crown has failed to adequately address and protect wāhine Māori from over-representation in domestic violence and intimate partner violence statistics in breach of the Treaty principles of active protection.

Particulars

Traditional Whānau Structures Undermined

83. In pre-colonial Māori society, a woman’s whānau was her primary source of support. After marriage she remained a part of her whānau, and was not required to change her name or transfer property to her spouse.⁵⁷
84. Māori women were not regarded as men’s chattels or possessions, as they were in Western colonial society. Their children were free to identify with the kinship group of either or both parents.⁵⁸
85. The introduction of British law in New Zealand destroyed Māori collectivism, and forced wāhine Māori to adapt to the Pākehā model of a nuclear family. This left

⁵⁷ A Mikaere, *Maori Women: Caught in the Contradictions of a Colonised Reality* (Waikato Law Review, Vol 2, 1994), at 127.

⁵⁸ A Mikaere, *Maori Women: Caught in the Contradictions of a Colonised Reality* (Waikato Law Review, Vol 2, 1994), at 127.

wāhine Māori vulnerable,⁵⁹ as they lost virtually all their legal rights upon marriage.

86. Under British law, wāhine Māori ceased to exist as legal and economic beings once they were married.⁶⁰
87. Until 1860, legislation offered poorer New Zealand women few ways to own and control their own wages, revenues or property other than land.⁶¹ This left wāhine Māori significantly vulnerable to the whims of their husbands.
88. George Waterhouse observed in 1881 that:⁶²

Every Maori woman ... held property in her own right, without being in any way subject to her husband ... once a Maori passed land through the Land Court and received a Crown grant for it, subsequent dealings were subject to European law, including that which gave the husband the right to control it during marriage.

89. In pre-colonial Māori society, violence towards whānau members was not commonplace and was abhorrent to traditional values.⁶³
90. Attitudes that settlers brought from Britain in the 19th century encouraged domestic violence. Most settlers believed that husbands were the head of the household and some thought this gave them the right, which was once a part of English common law, to 'correct' their wives through physical punishment.⁶⁴
91. Under a British legal and social system, wāhine Māori often found it difficult to leave abusive relationships as divorce was relatively expensive and frowned

⁵⁹ A Mikaere, *Maori Women: Caught in the Contradictions of a Colonised Reality* (Waikato Law Review, Vol 2, 1994), at 135.

⁶⁰ B Bradbury, *From Civil Death to Separate Property* (The New Zealand Journal of History, Vol 29, Issue 1, 1995), at 42.

⁶¹ B Bradbury, *From Civil Death to Separate Property* (The New Zealand Journal of History, Vol 29, Issue 1, 1995), at 50.

⁶² B Bradbury, *From Civil Death to Separate Property* (The New Zealand Journal of History, Vol 29, Issue 1, 1995), at 44.

⁶³ Te Puni Kokiri, *Arotake Tūkino Whānau: Literature Review on Family Violence* (Te Puni Kokiri, 2010), at 10.

⁶⁴ N Swarbrick, *Domestic violence – Domestic violence in the 19th century* (Te Ara – the Encyclopaedia of New Zealand), accessed at <<http://www.TeAra.govt.nz/en/domestic-violence/page-2>>.

upon, and it was difficult for women to support themselves in the settler economy.⁶⁵

Traditional Māori Spousal Relationships

92. There is no historical evidence to illustrate that violence towards children and women was accepted within Māori society.⁶⁶ Any form of violence was viewed as an affront to the whole whānau, and was punished and compensated accordingly.⁶⁷
93. A collective response to family violence focused on a journey where mana was restored by promoting healthy relationships and providing collective support to the person who had been violated.⁶⁸
94. Māori are now disproportionately represented in statistics for family violence:⁶⁹
 - a. Half of all children killed by caregivers are Māori;
 - b. In comparison to Pākehā women and children, wāhine Māori are seven times, and kōtiro Māori four times, more likely to be hospitalised from assault;
 - c. Partner abuse is experienced by 49 percent of wāhine Māori in their lifetime, compared to 24 percent of Pākehā and 23 percent of Pasifika women.
95. Māori are over-represented as both victims and perpetrators of Intimate Partner Violence (“IPV”).⁷⁰

⁶⁵ B Bradbury, *From Civil Death to Separate Property* (The New Zealand Journal of History, Vol 29, Issue 1, 1995), at 41.

⁶⁶ Te Puni Kōkiri, *Arotake Tūkinu Whānau: Literature Review on Family Violence* (Te Puni Kokiri, 2010), at 10.

⁶⁷ S Milroy, *Maori Women and Domestic Violence: The Methodology of Research and the Maori Perspective* (University of Waikato, 1996), at 71.

⁶⁸ Te Puni Kōkiri, *Arotake Tūkinu Whānau: Literature Review on Family Violence* (Te Puni Kokiri, 2010), at 10-11.

⁶⁹ Te Puni Kōkiri, *Arotake Tūkinu Whānau: Literature Review on Family Violence* (Te Puni Kokiri, 2010), at 7.

⁷⁰ Ministry of Social Development, *Ethnic Identity and Intimate Partner Violence in a New Zealand Birth Cohort* (Social Policy Journal of New Zealand, Issue 33, 2008), at 127.

96. The higher rate of IPV within the Māori population is a result of:⁷¹
- a. Economic adversity and hardship;
 - b. Exposure to violence in childhood that can lead to higher IPV involvement later in life; and
 - c. The disengagement with traditional cultural concepts and a weakened cultural identity.
97. IPV and its impacts are carried from one generation to the next and symbolise the interconnectedness of past, present and future generations.⁷²

Crown Failure to Adequately Address Domestic and Intimate Partner Violence

98. The Crown's failure to provide sufficient protection for wāhine Māori victims of family violence and IPV is evident in the lack of legislation and initiatives provided to combat this.
99. The introduction of the Domestic Violence Act 1995 sought to provide protection for those vulnerable to domestic violence, however this legislation has limited reach and impact. It has been identified that:
- a. Enforcement of protection orders by police and persons protected under the order can vary;⁷³
 - b. There is a need for increased community education about domestic violence and the availability of protection;⁷⁴

⁷¹ Ministry of Social Development, *Ethnic Identity and Intimate Partner Violence in a New Zealand Birth Cohort* (Social Policy Journal of New Zealand, Issue 33, 2008), at 128-129.

⁷² Ministry for Women, *Wāhine Māori, Wāhine Ora, Wāhine Kaha: preventing violence against Māori women* (Ministry of Women's Affairs, Wellington, 2015), at 9.

⁷³ H Barwick, A Gray and R Mackay, *Domestic Violence Act 1995 Process Evaluation* (Ministry of Justice, 2000), at 105.

⁷⁴ H Barwick, A Gray and R Mackay, *Domestic Violence Act 1995 Process Evaluation* (Ministry of Justice, 2000), at 105.

- c. Because women no longer need to go to court, there is no affirmation that what the perpetrator has done is wrong which can isolate the woman more;⁷⁵ and
 - d. Police need better training in how to enforce and deal with complaints relating to breaches of a protection order.⁷⁶
100. The Domestic Violence – Victims’ Protection Bill received royal assent in July 2018 and affords an employee leave from work in situations where abuse is occurring or has previously occurred. However, the ability of the employer to ask for proof under section 72G may deter wāhine Māori from coming forward about abuse that may be difficult to prove.
101. The Crown has failed to provide a culturally safe environment for wāhine Māori to address domestic violence and IPV issues. Services such as those provided by Women’s Refuge are often difficult to access through Government agencies.
102. Culturally insensitive approaches by Crown agencies have frustrated effective engagement with wāhine Māori. Many of these abuses go unreported and unresolved, due to a lack of trust in Crown agencies.
103. The slow development of legislation in the last 25 years indicates Crown complacency in adequately addressing this issue, contributing to a perception that abuse of wāhine Māori is acceptable.⁷⁷

Claimant Particulars

104. The late Albert Korena Joyce (“Albert”) was the Claimants grandfather, and the father of Kathleen.

⁷⁵ H Barwick, A Gray and R Mackay, *Domestic Violence Act 1995 Process Evaluation* (Ministry of Justice, 2000), at 106.

⁷⁶ H Barwick, A Gray and R Mackay, *Domestic Violence Act 1995 Process Evaluation* (Ministry of Justice, 2000), at 107.

⁷⁷ United Nations Entity for Gender Equality and the Empowerment of Women, *2011-2012 Progress of the World’s Women: In Pursuit of Justice* (UN Women, 2011), at 32.

105. Albert faced severe financial pressures as a result of many members of the extended whānau regularly requesting help.
106. Albert sold parts of their land to provide for the extended whānau. In addition, he had sixteen children to provide for.
107. His father, Thomas Samuel Joyce was renowned in the region as a builder, businessman, boatman and rangatira. Albert felt pressure to manage his affairs in a way that honoured his father.
108. The Claimants believe that Albert suffered a serious form of mental illness which resulted in his subjecting many of his children to abuse. In particular, he focused much of this abuse towards Kathleen, and she was severely injured on at least one occasion as a child.
109. When Kathleen was about ten years old, she was hospitalised with a broken hip as a result of the abuse she sustained by her father.
110. Despite having a severe injury, no concerns were raised, or investigation undertaken.
111. Kathleen was returned to the whānau home.
112. Kathleen struggled with stress, anxiety, depression and post-traumatic stress disorder (“PTSD”).
113. She never felt safe in her home but called it the “house of horrors”.
114. She became numb and selective of who she built ties with.
115. She would run away to the Waimangaro valley to be safe and to connect with whānau there.
116. Ihipera Joyce (nee Ututaonga), Kathleen’s mother sent her to Wairarapa to protect her from the violence.

117. Kathleen vowed to never marry a Maori man and in order to break the cycle, she married a Pākehā man.
118. Kathleen never received any support, help or counselling for all the trauma she had endured.
119. When her husband, the Claimants father, got angry in relation to financial issues in the marriage, she ran away and went to Christchurch leaving her children behind.
120. The lack of support provided to Kathleen by the Crown ultimately resulted in the breakdown of her own whanau because she had not been able to process the abuse she had suffered.

Prejudice

121. As a result of the Crowns actions and omissions, the Claimants as wāhine Māori have suffered the following prejudice:
 - a. The Claimants have been victims of abuse;
 - b. Kathleen was not provided any support by the Crown in relation to processing the psychological effects of the abuse;
 - c. Kathleen was not protected, and her serious injuries were not inquired into at an early age; and
 - d. Kathleen was not protected from abuse but sent back to her abuser; and
 - e. Due to the lack of support services, Kathleen was unable to work through the psychological effects of abuse which ultimately led to her own marital breakdown; and

- f. Kathleen experienced anxiety, depression and post-traumatic stress disorder throughout her life as a result; and
- g. Kathleen was not able to advance vocationally because of her lack of self-confidence.

THIRD CAUSE OF ACTION—FAILURE TO ACTIVELY PROTECT WAHINE MAORI FROM SEXUAL VIOLENCE

Allegation

- 122. The Crown, through colonisation, legislation, policies and practices diminished the mana of Māori wāhine, which has eroded the status of Māori women and left them vulnerable to sexual exploitation, abuse and violence.
- 123. The Crown, through legislation and colonial and modern day policy failed to actively protect Māori women from sexual violence.
- 124. Te Tiriti placed an enduring obligation on the Crown to protect Māori from the adverse transitional effects of settlement. The Crown failed to mitigate the effects of its actions which left Māori wāhine vulnerable to sexual abuse and violence by providing inadequate support for the reporting of sexual violence and for its traumatic effects.

Particulars

Traditional Māori Society

- 125. In traditional Māori society, Māori women were highly valued and treasured by members of the whānau and hapū. Sexual assault on wāhine Māori was

regarded as extremely serious and could result in death or, almost as bad, in being declared "dead" by the community and ignored from then on.⁷⁸

126. Instances of abuse against women and children were regarded as whānau concerns and action would inevitably be taken against the perpetrator. The community intervened to prevent and punish violence against one's partner in a very straightforward way.⁷⁹
127. If there was misconduct, divorce would be the result, which contained no stigma and the wronged wāhine would return to her whānau.
128. The absence of distinction between private and public domains in the context of family arrangements protected and affirmed Māori wāhine.⁸⁰

Impact of Colonisation

129. During colonisation, it was accepted that sexual violence and sexual harassment were common but were seldom discussed or reported.⁸¹
130. Before 1896 the age of consent was 12, allowing men to take advantage of girls. Prosecution and conviction for rape were rare, and incest was not a crime.⁸²
131. The age of consent was raised to 16 in 1896, and incest was criminalised in 1900.⁸³ However, the gap between the law and life remained wide. As any prosecution for sex with an under-age girl had to be brought within one month

⁷⁸ S. Cox (Ed), "*To us the dreamers are important*" in *Public and Private Worlds* (1987) at 57.

⁷⁹ S. Milroy, *Domestic Violence: Legal Representation of Māori Women* dated 1994, unpublished paper, at 12.

⁸⁰ A. Mikaere, *Māori Women: Caught in the contradictions of a Colonised Reality*, 2 *Waikato L. Rev.* 125 (1994), at 127.

⁸¹ J. Fanslow and E. Robinson. 'Sticks, stones, or words? Counting the prevalence of different types of intimate partner violence reported by New Zealand women.' *Journal of Aggression, Maltreatment & Trauma* 20, no. 7 (2011), at 741-759.

⁸² J. Fanslow and E. Robinson. 'Sticks, stones, or words? Counting the prevalence of different types of intimate partner violence reported by New Zealand women.' *Journal of Aggression, Maltreatment & Trauma* 20, no. 7 (2011), at 741-759.

⁸³ J. Fanslow and E. Robinson. 'Sticks, stones, or words? Counting the prevalence of different types of intimate partner violence reported by New Zealand women.' *Journal of Aggression, Maltreatment & Trauma* 20, no. 7 (2011), at 741-759.

of the offence, the law was little more than an ineffective threat. Incest, like other forms of sexual violation, continued to have a low reporting rate.⁸⁴

132. The frequent inequities in division of matrimonial property,⁸⁵ as well as the continued trivialisation by the law and law enforcement agencies of domestic violence,⁸⁶ has a devastating impact on the perception of the role, ability and mana of Māori women. The result has been to create a pervasive attitude that Māori wāhine are second class citizens.

Modern Incidence of Sexual Violence

133. Today, sexual violence affects one in three women in New Zealand and is most likely to be experienced as a child.⁸⁷
134. Kōtiro and wāhine Māori are at a greater risk of sexual violence and experience this form of abuse at a rate twice as high as the general population.⁸⁸
135. Sexual violence is one of the leading causes of trauma for wāhine Māori, as it has the impact of anxiety, fearfulness, depression, decreased self-esteem and can be correlated with substance abuse and mental health problems.⁸⁹
136. The effects of colonisation such as a high prevalence of deprivation, poverty and poor health outcomes function to exacerbate the impacts of sexual abuse.⁹⁰

⁸⁴ J. Fanslow and E. Robinson. 'Sticks, stones, or words? Counting the prevalence of different types of intimate partner violence reported by New Zealand women.' *Journal of Aggression, Maltreatment & Trauma* 20, no. 7 (2011), at 741-759.

⁸⁵ *Walsh v Walsh* (1984) 3 NZFLR 23 and *Haslam v Haslam* (1985) 3 NZFLR 545 are two Court of Appeal decisions which highlight the judicial undervaluing of a wife's contribution to the marriage partnership.

⁸⁶ See R. Busch, N. Robertson, and H. Lapsley, *Protection From Family Violence: A Study of Protection Orders Under the Domestic Protection Act (1992)* and R. Busch, and N. Robertson "I Didn't Know Just How Far You Could Fight: Contextualising the Bristol Inquiry" (1994) 2 *Waikato Law Review* 41.

⁸⁷ N. Wood and S. Dickson, *Reporting Sexual Violence in Aotearoa New Zealand* (Taiwi Prevention Project, Taiwi Caucus of TOAH-NNEST), at 8.

⁸⁸ P Mayhew and J. Reilly, *The New Zealand Crime and Safety Survey 2006* (Ministry of Justice, 2009), referred to in Rape Prevention Education, Statistics, at < <http://rpe.co.nz/information/statistics/>>.

⁸⁹ New Zealand Family Violence Clearinghouse, *Briefing Paper: The Community Sexual Violence Sector Auckland Region 2011*, (2011), at 5.

⁹⁰ New Zealand Family Violence Clearinghouse, *Briefing Paper: The Community Sexual Violence Sector Auckland Region 2011*, (2011), at 5.

137. Survivors of sexual violence generally do not report sexual violence due to fear, shame and the belief that they will be to blame.⁹¹
138. Reported sexual violence has a low conviction rate as many women decide not to pursue the complaint due to the traumatic nature of court process.⁹²

Reporting Sexual Crime

139. Between 1950 and 1954 an average of 18 rapes were reported to the police each year. By the 1970s the average number of reported rapes was 253, and in 1985, there were 330 reported rapes.⁹³
140. The annual average of reported rapes between 1994 and 2004 was 475. Between 2004 and 2014, that average has increased to 620 rapes per year.⁹⁴
141. In 2004, it was reported that up to one in five women will experience sexual assault as an adult.⁹⁵
142. In 2007, it was reported that '[o]ne in three girls will be subject to an unwanted sexual experience by the age of 16 years old'.⁹⁶
143. For Maori wahine, 'the likelihood of sexual violence is nearly twice as high as the general population'.⁹⁷

⁹¹ N. Wood and S. Dickson, *Reporting Sexual Violence in Aotearoa New Zealand* (Tauwi Prevention Project, Tauwi Caucus of TOAH-NNEST), at 8.

⁹² N. Wood and S. Dickson, *Reporting Sexual Violence in Aotearoa New Zealand* (Tauwi Prevention Project, Tauwi Caucus of TOAH-NNEST), at 12.

⁹³ Greg Newbold, 'Violent crime - Sexual assault', Te Ara - the Encyclopedia of New Zealand, <http://www.TeAra.govt.nz/en/violent-crime/page-9> (accessed 25 July 2018).

⁹⁴ Greg Newbold, 'Violent crime - Sexual assault', Te Ara - the Encyclopedia of New Zealand, <http://www.TeAra.govt.nz/en/violent-crime/page-9> (accessed 25 July 2018).

⁹⁵ Fanslow, J.L. and Robinson, E.M. (2004). Violence against Women in New Zealand: Prevalence and health consequences. *New Zealand Medical Journal*, 117, at 1206.

⁹⁶ Fanslow, J.L., Robinson, E.M., Crengle, S., Perese, L. *Prevalence of child sexual abuse reported by a cross-sectional sample of New Zealand women*, 2007.

⁹⁷ Mayhew, P. and Reilly, J., Ministry of Justice, *The New Zealand Crime and Safety Survey 2006*, 2009.

144. In New Zealand, most victims of sexual violence never tell the authorities, ‘with an estimated 9 percent of incidents being reported to police’.⁹⁸

Sexual Assault

145. In 1978, there were 908 reported sexual assaults. In 1993, the number had increased “steeply to a peak of 3,222”.⁹⁹
146. Changes to the law in the 1980s made it easier to report sexual assault because the Crown had criminalised sexual violence.
147. The fact that there were significant increases to rates of reported offences in the late 1980s and early 1990s¹⁰⁰ is directly attributable to the amendment to the Crimes Act 1961. Notwithstanding, from 1840 until 1985, the Crown did nothing to protect Māori wahine from sexual attack including rape, sexual assault and incest.
148. Between 1997 and 2009, the number of recorded sexual attacks averaged at over 2,500 a year.¹⁰¹
149. In 2014, 4,056 sexual assaults were reported, yet only half were resolved.¹⁰²
150. In 2013, 19 percent of Māori experienced more than one violent interpersonal offence.¹⁰³

⁹⁸ Ministry of Women’s Affairs (2009). Restoring Soul: Effective Interventions for adult victims/survivors of sexual violence. MWA: Wellington.

⁹⁹ Greg Newbold, 'Violent crime - Sexual assault', Te Ara - the Encyclopaedia of New Zealand, <http://www.TeAra.govt.nz/en/violent-crime/page-9> (accessed 25 July 2018).

¹⁰⁰ Greg Newbold, 'Violent crime - Sexual assault', Te Ara - the Encyclopaedia of New Zealand, <http://www.TeAra.govt.nz/en/violent-crime/page-9> (accessed 25 July 2018).

¹⁰¹ G. Newbold, 'Violent crime - Sexual assault', Te Ara - the Encyclopaedia of New Zealand, <http://www.TeAra.govt.nz/en/violent-crime/page-9> (accessed 25 July 2018).

¹⁰² G. Newbold, 'Violent crime - Sexual assault', Te Ara - the Encyclopaedia of New Zealand, <http://www.TeAra.govt.nz/en/violent-crime/page-9> (accessed 25 July 2018).

¹⁰³ Ministry of Justice: NZCAA Survey Results – Māori Victimisation (<https://www.justice.govt.nz/justice-sector-policy/research-data/nzcass/survey-results/results-by-subject/maori-victimisation/>), Sourced 25 July 2018.

151. Despite the drastic rise in recorded sexual assaults, it is estimated that only 10 percent of all sexual assaults are reported.¹⁰⁴
152. Within the last ten years, the Crown deemed that Māori wahine were more likely than the Māori average to be repeatedly victimised¹⁰⁵ yet little action to mitigate this risk of harm has been implemented by the Crown.

Incest

153. Incest¹⁰⁶ is “particularly harmful because of the close relationship the offender has with the victim. Incest often shatters a trusting relationship and usually involves the abuse of power where one person uses their power to manipulate another person”.¹⁰⁷
154. Thirty two per cent of adult women (up to 65 years old) stated they had unwanted sexual experiences before they turned 16.¹⁰⁸
155. Twenty percent reported unwanted touching of their genitals, or attempted or completed sexual intercourse.¹⁰⁹
156. Despite the fact that incest leaves a lasting, significant harm in its victim, the Crown did not criminalise it until 1985.

¹⁰⁴ Greg Newbold, 'Violent crime - Sexual assault', Te Ara - the Encyclopaedia of New Zealand, <http://www.TeAra.govt.nz/en/violent-crime/page-9> (accessed 25 July 2018).

¹⁰⁵ Ministry of justice: NZCAA Survey Results – Māori Victimisation (<https://www.justice.govt.nz/justice-sector-policy/research-data/nzcass/survey-results/results-by-subject/maori-victimisation/>), Sourced 25 July 2018.

¹⁰⁶ Incest is sexual abuse or sexual conduct between relatives in one's immediate family or extended family.

¹⁰⁷ Rape Prevention Education Whakatu Mauri, *Types of Sexual Violence – Incest* (<http://rpe.co.nz/information/types-of-sexual-violence/incest/>), Sourced 25 July 2018.

¹⁰⁸ Anderson, "Prevalence of childhood sexual abuse experiences in a community sample of women", [1993] *Journal of American Academy of Child and Adolescent Psychiatry*, at 911.

¹⁰⁹ E. Davies, and J. Masson, "*Emma Davies and Jeffrey Masson question the psychological research*" in *A City Possessed*, NZLJ, September 2003.

Support Services

157. The Crown did not provide any post-trauma support for victims of sexual violence until 1988, when the Accident Compensation Corporation (“ACC”) created a special condition of those who had experienced sexual violence.¹¹⁰
158. Survivors of sexual abuse and violence can obtain treatment from an ACC accredited therapist that is fully funded by the Crown. Notwithstanding, the ACC process requires an assessment by a psychiatrist or senior psychologist to assess and diagnose the patient. That assessment is done by someone not known to them, and requires them to recount the trauma and how it affects them in their life. This process can be highly traumatic for some patients.
159. ACC allows for patients to change therapists at any time; notwithstanding, there seems to be a variance in the quality of treatment that is provided. In this way, a survivor may go through a number of therapists before finding a therapist that is suitable to them.
160. Every time they see a new therapist, they must recount their trauma.

Protecting those at risk

161. Throughout colonisation, Crown action to protect Māori wahine at risk of incest has been minimal. The Crown failed in its obligation to mitigate the effects of its actions, leaving wāhine Māori vulnerable to sexual abuse and violence by providing inadequate support for the reporting of sexual violence and for its traumatic effects.
162. In 1973, the first women’s refuge was established by a group of Christchurch based women who recognised the need to respond to gender based violence.¹¹¹

¹¹⁰ Accident Compensation Corporation (<https://www.acc.co.nz/about-us/who-we-are/our-history/#1972--the-accident-compensation-act>), Sourced 29 August 2018.

¹¹¹ New Zealand Women’s Refuge, *Our story: Working for women past present and future*, at 1.

163. In 1981, the National Collective of Independent Women's Refuges was established to support the movement, assist and administer funding, and to advocate at a national level. Since 1981, the JR McKenzie Trust has significantly funded the women's refuges.¹¹²
164. It was not until 1987 that the Māori Women's Refuge was established, the first of which was in Hamilton named Te Whakaruruhau, with the second, Te Whare Rokiroki in Wellington. Today there are 14 Māori women's refuges operating nationally.¹¹³
165. In 2016, the Crown provided funding to the Women's Refuge to the sum of \$200,000 per year 'to fund more than 800 existing places around the country each year'.¹¹⁴ This equated to an additional \$250 for each refuge home.
166. The Crown also promised to assist was in providing emergency housing for those who needed emergency accommodation. Emergency accommodation is generally in a motel or similar establishment, which has no additional security, privacy or specialist support services.
167. The Crown's response to the issue of providing a safe haven for the survivors of sexual violence and assault is insufficient and obtuse.

Claimants Particulars

168. Around 1960, when Kathleen was a teenager, she became a victim of sexual violence.
169. No support was provided to her by the Crown.
170. The lack of support combined with the sexual violence she experienced decimated her confidence which affected her throughout her lifetime. In the work

¹¹² New Zealand Women's Refuge, *Our story: Working for women past present and future*, at 1.

¹¹³ New Zealand Women's Refuge, *Our story: Working for women past present and future*, at 2.

¹¹⁴ Beehive, *On-going funding for Women's Refuge* dated 30 September 2016 (<https://www.beehive.govt.nz/release/going-funding-women%E2%80%99s-refuge>), Sourced 30 August 2018.

context, although she was offered opportunities, she would turn them down and put forward others because she didn't believe she was good enough.

Prejudice

171. As a result of the Crown's actions and omissions the Claimants have endured the following prejudice:
- a. Kathleen suffered greatly as a result of surviving sexual violence; and
 - b. The Claimants have not been actively protected, and not had proper support or relief; and
 - c. Kathleen experienced anxiety, depression and post-traumatic stress disorder throughout her life as a result; and
 - d. Kathleen was not able to advance vocationally because of her lack of self-confidence.

FOURTH CAUSE OF ACTION—FAILURE TO PROVIDE ADEQUATE EDUCATION TO WĀHINE MĀORI

Allegation

172. The Crown has failed to provide adequate educational opportunities for wāhine Māori, resulting in reduced employment and income opportunities, in breach of the Treaty principles of self-determination, active protection and equality.

Particulars

173. Within te ao Māori, mana wāhine perspectives are fundamental to the maintenance and development of mātauranga Māori.¹¹⁵
174. Wāhine Māori were traditionally transmitters of knowledge through waiata, whakataukī and haka. As primary care givers, they also have a role to deliver this knowledge to the next generation.¹¹⁶

The Impacts of Colonisation

175. Policies of colonisation and assimilation have devalued traditional Māori education and practices and have undermined ‘and corrupt[ed] indigenous knowledge by selective education and relentless cultural imperialism’.¹¹⁷
176. The Crown’s imposition of a school system founded on Western ideology has impeded the education of wāhine Māori as early education systems restricted female vocation to the domestic sphere.¹¹⁸
177. The Crown-imposed school curriculum in the 1870s was aimed at training Māori girls to be proficient in cooking, cleaning and needlework, to align with Western conceptions of gender roles.¹¹⁹
178. Māori girls were destined for motherhood and the ‘rescue’ of their ‘race’. To this end, the curriculum forced them to focus on domestic skills, health and hygiene.¹²⁰

¹¹⁵ T Paul, *A Mana Wāhine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Victoria University of Wellington, 2014), at 67-68.

¹¹⁶ P Ruwhiu, *Ka haere tonu te mana o ngā wahine Māori: Māori women as protectors of te ao Māori knowledge* (Massey University, 2009), at 20.

¹¹⁷ T Paul, *A Mana Wāhine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Victoria University of Wellington, 2014), at 76-77.

¹¹⁸ M Dickson, *Māori Women and Education. Whakataukāki: “He mana te Matauranga – Knowledge is Power”* (Yearbook of New Zealand Jurisprudence, Vol 104, 2005), at 114.

¹¹⁹ M. Gemmell, *A History of Marginalisation: Māori Women* (Victoria University, 2013), at 49.

¹²⁰ A Else, *Gender inequalities: Education* (Te Ara: the Encyclopaedia of New Zealand), accessed at <http://www.TeAra.govt.nz/en/gender-inequalities/page-5>.

179. The Crown, through its missionaries, targeted wāhine Māori with these education policies in order to further its colonisation agenda:¹²¹

...it was Maori girls, rather than Maori boys, who were charged with bringing about the transformation of Maori society. Maori girls would take new ideas and ways of doing things back to the kainga and teach by example. In this way, the colonial curriculum for Maori became a means of establishing and perpetuating political inequalities...

...for Maori girls, 'valued knowledge' was defined as 'useful' domestic knowledge, the kind needed to run Pakeha-style homes while their Maori men, defined as bread winners, would be employed in full-time paid work of the kind which would similarly reflect their lower position in the class structure.

180. The Crown ensured through various education policies that Māori girls were channelled into what it deemed to be 'suitable' occupations for women.
181. The provision of continuation scholarships to enable Māori girls to receive nursing training, which emerged from the Conference of Old Boys at Te Aute College in February 1897, is an example of such prejudicial education policies.
182. Māori girls from Hukarere College were able to attend a 12-month nursing course at Napier Hospital to specialise in nursing theory and practice, bandaging and changing dressings, as well as classes in cooking for invalids. Eventually they were allowed to train as registered nurses as this was seen as an appropriate profession for women to enter into, however this came with strings attached. Newly trained graduates were required to return to work in their communities, which meant that they were locked into a predetermined vocational and locational path.¹²²

¹²¹ K Jenkins and KM Matthews, *Knowing their place: the political socialisation of Maori women in New Zealand through schooling policy and practice, 1867-1969* (Women's History Review, Vol 7, 1998), at 89 and 90.

¹²² K Jenkins and KM Matthews, *Knowing their place: the political socialisation of Maori women in New Zealand through schooling policy and practice, 1867-1969* (Women's History Review, Vol 7, 1998), at 96.

183. As a result of these policies, wāhine Māori are less able than non-Māori women to enter roles of paid employment.¹²³
184. Wāhine Māori therefore spend more time than women of other ethnicities caring for their household in addition to engaging in voluntary, unpaid community work.

Disparity of Māori Education Achievement

185. Many kōtiro Māori struggle to achieve academic success at secondary school, and do not stay in school as long as their non-Māori peers.¹²⁴
186. Kōtiro Māori are often perceived by teachers as less intelligent, resulting in being streamed into lower academic classes that concentrate on placing students in work experience rather than teaching standard curricular.¹²⁵
187. This form of discrimination leads to limited employment opportunities which relates to low levels of income and unemployment:¹²⁶
- a. In 2006, 36 percent of wāhine Māori had no formal qualification;¹²⁷
 - b. Additionally, 29 percent of wāhine Māori stated that a post-school qualification (up to NZQF Level 10) was their highest qualification;¹²⁸
 - c. In 2010, 34 percent of all female students who left school in Year 10 were Māori.¹²⁹

¹²³ Ministry of Women, *New Zealand Women: Māori Women* (2016), accessed at <<http://women.govt.nz/about/new-zealand-women/m%C4%81ori-women>>.

¹²⁴ R McLaren, *Agents of retention and achievement of Māori girls at secondary school* (Massey University, 2010), at 3.

¹²⁵ T Pouwhare, *Māori Women and Work: The Effects of Family Violence on Māori Women's employment Opportunities* (National Collective of Independent Women's Refuges Inc, Wellington, 1999), at ix.

¹²⁶ T Pouwhare, *Māori Women and Work: The Effects of Family Violence on Māori Women's employment Opportunities* (National Collective of Independent Women's Refuges Inc, Wellington, 1999), at ix.

¹²⁷ Statistics New Zealand, *QuickStats About Māori* (Statistics New Zealand, 2006), at 6.

¹²⁸ Statistics New Zealand, *QuickStats About Māori* (Statistics New Zealand, 2006), at 6.

¹²⁹ Controller and Auditor-General, *Education for Māori: Context for our proposed audit work until 2017* (Office of the Auditor-General, 2012), at 21.

Limited Educational Achievement

188. As a result of colonisation and the Crown's education policy, there is now a socio-economic crisis where wāhine Māori are viewed by others and themselves as being 'at the bottom of the heap',¹³⁰ reducing the number of rangatahi wāhine who pursue tertiary education and a career.¹³¹
189. Barriers such as poor finances, poor health and lack of access to resources negatively impact educational outcomes for wāhine Māori.¹³²
190. The educational achievement gap between Māori and non-Māori severely impacts future employment opportunities for wāhine Māori.¹³³
191. The Education Act 1989 ("the Act") avoids establishing Treaty-based rights in education, despite its recognition of Māori having special needs and aspirations in the education sector.¹³⁴
192. The Act stipulates that 'it is the duty of the council of an institution' to acknowledge Treaty principles, removing the onus from external and internal bodies, or an individual engaged with a tertiary institute, to consider the Treaty in its or their actions.¹³⁵
193. The Crown has failed to provide effective initiatives or programmes where wāhine Māori are encouraged or feel comfortable to seek opportunities of further study or employment.

¹³⁰ T. Paul, *A Mana Wāhine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Victoria University of Wellington, 2014), at 72.

¹³¹ T. Pouwhare, *Māori Women and Work: The Effects of Family Violence on Māori Women's employment Opportunities* (National Collective of Independent Women's Refuges Inc, Wellington, 1999), at ix.

¹³² T. Paul, *A Mana Wāhine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Victoria University of Wellington, 2014), at 74.

¹³³ Education Counts, *Tertiary Education* (2018), accessed at

<https://www.educationcounts.govt.nz/topics/31351/nga-haeata-matauranga-annual-report-on-maori-education/focus-area-4>.

¹³⁴ T. Paul, *A Mana Wāhine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Victoria University of Wellington, 2014), at 81.

¹³⁵ T. Paul, *A Mana Wāhine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Victoria University of Wellington, 2014), at 81.

194. Additionally, wāhine Māori struggle to achieve positions where they can influence decision-making, preventing them from spreading knowledge within their whānau and communities.

Education and Leadership Roles

195. Pre-colonisation, Māori women could be tohunga and often held chiefly roles. They participated in conversations regarding tribal warfare and were instigators and peacemakers during war.
196. Wāhine Māori were also traditionally seen as political leaders.¹³⁶
197. The Crown's imposition of settler values on Māori communities, and the failure of the Crown to preserve the prevalence of wāhine Māori in leadership roles, has led to circumstances and policies which marginalise wāhine Māori. This places obstacles between wāhine Māori and positions of leadership.
198. The failure of the Crown to provide for the study of rangatira wāhine in school curriculums fails to inspire these wāhine to pursue higher education. Limited education prevents wāhine Māori from fully participating in education decision-making processes and academic curriculum.¹³⁷
199. The United Nations entity for Gender Equality and the Empowerment of Women has stated that education is fundamental to the capability of women to participate in decision-making processes.¹³⁸
200. Only seven percent of roles on state sector boards and committees are held by wāhine Māori.¹³⁹

¹³⁶ M Gemmill, *A History of Marginalisation: Māori Women* (Victoria University of Wellington, 2013), at 26, accessed at <<https://researcharchive.vuw.ac.nz/xmlui/bitstream/handle/10063/3065/thesis.pdf?sequence=2>>.

¹³⁷ T. Paul, *A Mana Wāhine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Victoria University of Wellington, 2014), at 69-70.

¹³⁸ T. Paul, *A Mana Wāhine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Victoria University of Wellington, 2014), at 83.

¹³⁹ Ministry of Women's Affairs, *Māori Women on Boards* (Ministry of Women's Affairs, 2009), at 1.

201. The Crown has failed to recognise that wāhine Māori participation at all levels of decision-making is important to empower an increasingly young Māori population, as wāhine have the ability to validate Māori customs and ideologies within a community setting.¹⁴⁰
202. Māori achievement is improved by culturally responsive educational programmes which support the development of te reo Māori, tikanga, and promotes whakawhanaungatanga.¹⁴¹ The Crown is aware of this yet neglects to make effective change.

The Claimants Experience

203. Kathleen often ran away from home to the Waimangaro Valley because of the abuse she suffered. She missed so much schooling that she fell behind.
204. Kathleen was stereotyped within the education system and was left with a desire for more education than what she received.
205. Kathleen suffered from PTSD, anxiety and depression which affected her memory and her ability to concentrate.
206. The abuse she suffered also affected her confidence.
207. As a result, she only received a limited education and did not attend university.

Prejudice

208. As a result of the Crown's actions and omissions, the Claimants as wāhine Māori have suffered the following prejudice:
 - a. Being stereotyped and only offered a limited education;

¹⁴⁰ T. Paul, *A Mana Wāhine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Victoria University of Wellington, 2014), at 83.

¹⁴¹ Ministry of Education, *Tertiary Education Strategy 2014-2019* (Ministry of Education and the Ministry of Business, Innovation and Employment, 2014), at 13.

- b. Barriers to educational achievement;
- c. High rates of unemployment;
- d. Vocations limited to the domestic sphere;
- e. Limited opportunities for leadership positions and pursuing professional career pathways; and
- f. Limited opportunities to achieving career and life aspirations.

FIFTH CAUSE OF ACTION—FAILURE TO ACTIVELY PROTECT WĀHINE MĀORI IN RELATION TO THEIR ENGAGEMENT WITH CROWN AGENCIES

Allegation

209. In breach of the Treaty duties of good faith, active protection, autonomy, reciprocity, equity and options, the Crown and its agencies have created an environment where wāhine Māori have been subjected to physical, mental and sexual violence, loss of rangatira status, loss of mana and loss of dignity.
210. In breach of the duties of good faith and partnership, the Crown has failed to consult and engage with wāhine Māori in the design and implementation of social policy and legislation.

Particulars

211. Traditionally, issues relating to the custody and support of children were sorted out within the whānau context.¹⁴²

¹⁴² A Mikaere, *Māori Women: Caught in the contradictions of a Colonised Reality*, 2 Waikato L. Rev. 125 (1994), at 127.

212. In colonial New Zealand, the father was given legal authority over the children.¹⁴³
213. According to English common law, the head of the family (the husband/father) was in control of the household, and 'women and children were chattels to be used and abused by the paterfamilias as he chose'.¹⁴⁴
214. Male ownership of the children meant that a mother had no rights whatsoever to her children.¹⁴⁵
215. In 1885, the Hon George Waterhouse introduced the Adoption of Children Act 1895 (the "1895 Adoption Act") in order that "the benevolent might find wider scope for generous action; and that the results of their generosity might obtain some security by law".¹⁴⁶
216. Statutory adoption in New Zealand was initially viewed as a means of lightening the burden on the State of maintaining destitute persons.¹⁴⁷
217. Prior to the Second World War, it was unusual for single women to give up their babies.¹⁴⁸ At that time it was believed that keeping an illegitimate child was a fitting punishment for the mother's sin. Her parental obligations were part of her stigma and rejection.¹⁴⁹

¹⁴³ J Fanslow and E Robinson. 'Sticks, stones, or words? Counting the prevalence of different types of intimate partner violence reported by New Zealand women.' (Journal of Aggression, Maltreatment & Trauma, Vol 20, No. 7, 2011), at 741-759.

¹⁴⁴ A Mikaere, *Māori Women: Caught in the contradictions of a Colonised Reality*, 2 Waikato L. Rev. 125 (1994), at 129, Quoted in Scutt, J, *Even in the Best of Homes* dated 1983, at 9.

¹⁴⁵ A Mikaere, *Māori Women: Caught in the contradictions of a Colonised Reality*, 2 Waikato L. Rev. 125 (1994), at 130, quoted in Scutt, J *Even in the Best of Homes* (1983) at 15 – 18.

¹⁴⁶ Parliamentary Debates on the Adoption of Children Bill (4 August 1881) 39 NZPD 281.

¹⁴⁷ M Tennant "Maternity and Morality: Homes for Single Mothers 1890-1930" (1985) 2 Women's Studies Journal 28, at 39.

¹⁴⁸ A Else *A Question of Adoption* (Bridget Williams Books, Wellington, 1991) at 23.

¹⁴⁹ C Smart "Law and the Problem of Paternity" in Stanworth (ed) *Reproductive Technologies: Gender, Motherhood and Medicine* (Polity Press, Cambridge, 1987) at 109.

218. By the late 1940s, institutions involved with the care of unmarried mothers began to promote adoption as the most appropriate option for unmarried pregnant women.¹⁵⁰
219. In the 1950s single mothers were encouraged to adopt their children; the prevailing view was that children were best raised in a two-parent adoptive family rather than by a single mother.¹⁵¹
220. However, in the 1950s due to fewer babies being available for adoption than couples waiting to adopt, little effort was made to explore how a single mother might be assisted in keeping her child. As the Deputy Superintendent of Social Welfare explained in the 1950s:¹⁵²
- I am assuming that all who read this . . . think as I do that, in principle, adoptions are a good thing, and that I do not need to write about the emotional satisfaction for adoptive parents and child that can ensue from a good adoption. We will agree that adoptions should be encouraged rather than discouraged.
221. Nearly two decades later, with the passing of the Domestic Proceedings Act 1968 women could seek maintenance against the father of their children, notwithstanding the difficulties in achieving such an order. The introduction of the Domestic Purposes Benefit was blamed for creating a “shortage of babies”¹⁵³ as it provided the means for mothers to keep their children.
222. Traditionally, Maori had a system of caring for children that has been equated with guardianship; where customarily adopted children were referred to as *whāngai* or *atawhai*.¹⁵⁴

¹⁵⁰ A Else *A Question of Adoption* (Bridget Williams Books, Wellington, 1991) at 23-24.

¹⁵¹ N Collins "Adoption" (1966) 2(2) *NZ Social Worker*, at 71.

¹⁵² A Else *A Question of Adoption* (Bridget Williams Books, Wellington, 1991) at 44.

¹⁵³ C Hadfield "Adoptions 1963 to 73" (DSW Conference, Department of Social Welfare, Wellington, 1973) 23, 30.

¹⁵⁴ J Metge, *New Growth from Old* (Victoria University Press, Wellington 1995) 210-257; New South Wales Law Reform Commission *The Aboriginal Child Placement Principle* (NSWLRC R 7, Sydney, 1997).

223. Whāngai placement could be temporary, was known about and the child was usually aware of their birth parents and other family members, and maintained contact with them.¹⁵⁵
224. The 1895 Adoption Act gave legal status to adoption but did not prevent legal recognition of the Māori practice of whāngai. However, the Adoption Act 1955 (the “Adoption Act”) does not recognise customary Maori adoption as a legal adoption.¹⁵⁶

Consent to Adoption

225. The Adoption Act does not require an applicant to formally consent to the adoption.¹⁵⁷ Instead, a wahine can be deemed to consent to the adoption by simply signing an application form.
226. If a rangatahi wahine became pregnant, she could be induced to consent to adoption by someone with paternal authority over her.
227. Despite the high rates of incest and rape, and the increase of unwanted pregnancies, it was not until 2011 that the Adoption Act was amended to include section 27A which states that:
- (1) Every person commits an offence who induces another person, by fraud, duress, undue influence (by payment or otherwise), or other improper means, to consent to an adoption.
228. Contravention of section 27A of the Adoption Act can result in a term of imprisonment for not more than seven years.

¹⁵⁵ J Metge, *New Growth from Old* (Victoria University Press, Wellington 1995) 210-257; New South Wales Law Reform Commission *The Aboriginal Child Placement Principle* (NSWLRC R 7, Sydney, 1997).

¹⁵⁶ Adoption Act 1955, s 19(1).

¹⁵⁷ Adoption Act 1955, s 7(10).

229. Unlike the Oranga Tamariki Act 1989 (“the Act”), the Adoption Act does not require consideration of whether family members might be able to meet the needs of the child, before adoption outside of the family is considered.
230. There is little protection to ensure that rangatahi wahine are not being forced into adopting their children out, especially in the context of incest or rape.

The Claimants Experience

231. Kathleen became pregnant when she was just sixteen years old.
232. A member of the whanau wanted an adoption to take place.
233. No support was provided by any Crown entity, department or Crown funded organisation to ensure that Kathleen consented to her son’s adoption.
234. Kathleen adopted out her son to an uncle and aunty on her maternal side, by a western adoption.

Ministry of Health

235. The imposition and application of colonising principles has undermined the mana, tikanga and matauranga of wāhine Māori in relation to menstruation, birthing and menopause.
236. Wāhine Māori were categorised as dirty or unclean during phases of menstruation, birthing and menopause. This, however, was not their traditional status in the pre-colonial era during these sacred phases.
237. The Tohunga Suppression Act disrupted tikanga and ceremonies around women’s menstruation, birthing and menopause. Rituals, karakia and the application of tikanga that kept women well during these vulnerable phases were stopped.

238. Traditionally, wāhine Māori were not expected to cook or work in gardens during menstruation, birthing and menopause phases. However, with the implementation of colonisation, this practice was reversed and you were deemed 'paru'. Colonisation subverted the traditional ideal about providing a time for the body of a wāhine Māori to rest. These phases came under heavy scrutiny of health officials and professionals.
239. As a result of the imposition and encroachment of these colonising ideas and subversion of traditional birth methods and tikanga, wāhine Māori suffered an increase of poor birthing outcomes and their mana has been eroded.

The Claimants Experience

240. The Claimants have experienced the undermining and diminution of their mana, tikanga and mātauranga in relation to menstruation, birthing and menopause.
241. The Claimants have experienced bias and discrimination by the Ministry of Health and health professionals in respect of their traditional practices.
242. This has resulted in traditional practices being eroded.

Prejudice

243. As a result of the Crown's actions and omissions, the Claimants as wāhine Māori have suffered the following prejudice:
- a. Lack of protection from coercion in relation to consenting to an adoption;
 - b. Lack of protection under legislative and Crown policies in respect of birthing, adoption and related issues;
 - c. Poor engagement with Crown agencies;

- d. Powerlessness against the Crown agencies and paternalistic male authorities; and
- e. Tikanga Māori and rituals relating to wahine Māori health have been subverted and eroded.

RELIEF

244. The relief sought is as follows:

- a. A finding that the claim is well-founded;
- b. A finding that the Crown breached its duties of partnership, active protection, equality, and good faith that it owed to the Claimants.
- c. A recommendation that the Crown make a sincere and public apology to the Claimants for:
 - i. Their actions and omissions in not protecting the mana of wahine Maori;
 - ii. The lack of a genuine voice in consultation over decisions around land and the environment;
 - iii. Their inability to hold the kaitiaki (guardianship) status that many women held over their tribal lands;
 - iv. The enforcement of British/western/colonial ideology at the expense of Tikanga;
 - v. Negative social, educational and health outcomes for many Māori women;

- vi. The position of structural social and economic disadvantage that many Māori women find themselves in;
 - vii. Its failure to provide adequate educational opportunities for wāhine Māori, resulting in reduced employment and income opportunities;
 - viii. Its failure to protect wāhine Māori from the adverse effects of colonial settlement, namely the destruction of traditional whānau structures and the diminished mana of wāhine Māori, that left wahine Māori vulnerable to domestic violence;
 - ix. Its failure to protect the mana of Māori wahine throughout colonisation which eroded the status of Māori women and left them vulnerable to sexual exploitation, abuse and violence;
 - x. Its failure to protect wahine Māori from sexual violence;
 - xi. Its failure to mitigate the effects of sexual abuse and violence by providing inadequate support for the reporting of sexual violence and for its traumatic effects; and
 - xii. Its failure to provide sufficient protection for young mothers who are coerced into adoption or abortions.
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- d. A recommendation that the Ministry of Education implement a policy of non-discrimination and training to mitigate against unconscious bias;
 - e. A recommendation that the Ministry of Education incorporates and funds for all business and management diplomas and degrees a foundational study course on the Treaty of Waitangi, and the social impacts of colonisation on Māori, and unconscious bias;

- f. A recommendation that the Crown increase its funding of the Māori Women's Refuges and provide a campaign to address domestic and sexual violence of wahine Māori;
- g. A recommendation that ACC increases public awareness of its provision of treatment for survivors of sexual violence;
- h. A recommendation that ACC extends the provision of the sensitive claim's therapist to victims of domestic violence;
- i. A recommendation that ACC incorporates a tikanga Māori alternative to therapy for those wahine Māori who have suffered as a result of sexual violence;
- j. A recommendation that ACC sensitive claim treatment is not limited to sixteen sessions and provide counselling for an indefinite period of time taking into account the fact that sexual violence and abuse, and physical and psychological abuse can affect a survivor for their lifetime; and

- k. Such other findings and recommendations that the Tribunal considers appropriate in the circumstances.

Dated at **Opotiki** this **8th** day of **November 2019**



Stephanie Roughton

Counsel Acting

This Statement of Claim is filed by **STEPHANIE ROUGHTON**, Solicitor for the Claimants, of the firm Tamaki Legal Limited. The address for service of the Claimants is at the office of Tamaki Legal Limited, Barristers and Solicitors, Cuilam Building, Level 2, 15 Osterley Way, Manukau, Auckland. Documents for service on the Claimants may be left at that address for service or may be:

Posted to the Solicitor at PO Box 75-517, Manurewa, Auckland 2243; or

Emailed to the solicitors at stephanie@tamakilegal.com.