

**IN THE WAITANGI TRIBUNAL**

**Wai 2700**  
**Wai 2660**  
**Wai 2750**  
**Wai 1040**  
**Wai 1524**

**IN THE MATTER OF** the Treaty of Waitangi Act 1975

**AND**

**IN THE MATTER OF** the Mana Wāhine Kaupapa  
Inquiry

**AND** a claim by Louisa Te Matekino  
Collier, Hineamaru Akinihi  
Lyndon, and Ira Norman, on behalf  
of themselves, and on behalf of  
Pomare Kingi and Patira Te Taka,  
who were of Ngāti Kahu o  
Torongare, Te Parawhau, Te Uri  
Roroī, Ngāti Te Rino, Ngāti Manu,  
Ngāti Hine, and Ngai Tahuu, and  
on behalf of their wāhine tupuna  
Hera Whakakati, Mere  
Wharenikau, and Kataraina Kaffler

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**FOURTH AMENDED STATEMENT OF CLAIM**

**31 August 2018**

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## **MAY IT PLEASE THE TRIBUNAL:**

### **A: The Claimants**

1. The claimants are Louisa Te Matekino Collier, Hineamaru Akinihi Lyndon, and Ira Norman, on behalf of themselves, and on behalf of Pomare Kingi and Patira Te Taka, who were of Ngāti Kahu o Torongare, Te Parawhau, Te Uri Roroi, Ngāti Te Rino, Ngāti Manu, Ngāti Hine, and Ngai Tahuu, and on behalf of their wāhine tupuna Hera Whakakati, Mere Wharenikau, and Kataraina Kaffler (“the Claimants”).
2. The Claimants’ wāhine tupuna also include Te Raungaanga, Te Wherowhero, Teaho, Te Marae Amuketi, Te Kono Teaho, Grace Patira, Leah Astle, Ira Maybelle Campbell and Ani Maniapoto.
3. The Claimants rely upon the findings made in Stage One of Te Paparahi o Te Raki Inquiry, which are:

In February 1840, the rangatira who signed te Tiriti did not cede their sovereignty. That is, they did not cede their authority to make and enforce law over their people or their territories. Rather, they agreed to share power and authority with the Governor. They agreed to a relationship: one in which they and Hobson were to be equal - equal while having different roles and different spheres of influence. In essence, rangatira retained their authority over their hapū and territories, while Hobson was given authority to control Pākehā.<sup>1</sup>

4. In this Fourth Amended Statement of Claim (“ASoC”), the word “Partnership” is used to mean the Partnership envisaged under te Tiriti o Waitangi/the Treaty of Waitangi (“te Tiriti/the Treaty”), which was elucidated by the Tribunal in Stage One of Te Paparahi o Te Raki Inquiry, as comprising 3 distinct spheres of authority, namely:

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<sup>1</sup> Waitangi Tribunal, *He Whakaputanga me te Tiriti The Declaration and the Treaty: The Report on Stage 1 of the Paparahi o Te Raki Inquiry* (Wai 1040, 2011).

- a. the British Crown governing its subjects over land legitimately acquired by it or them (“British Authority”);
- b. Māori Tino Rangatiratanga over Māori peoples, lands and other taonga (“Māori Authority”); and
- c. a partnership, to be discussed and agreed where Māori and English peoples intermingled (“Shared Authority”).

**B: The Claim Area**

5. The claim area in this instance concerns Mangakāhia, Whangarei, Mahurangi Tamaki Makaurau and Peowhairangi and in particular, the following blocks:

- a. Peowhairangi;
- b. Waikare;
- c. Karetu;
- d. Taumarere;
- e. Mohinui;
- f. Ruapekapeka;
- g. Puhipuhi Maruata;
- h. Whatatiri;
- i. Porotiti Maungarongo;
- j. Waitomotomo;
- k. Nuku Tawhiti;
- l. Parakao;
- m. Te Pakotai;
- n. Ururangi;
- o. Ruarangi;
- p. Ketinikau;
- q. Raumaunga;
- r. Motukiore;

- s.** Parihaka;
- t.** Hihiaua;
- u.** Okara;
- v.** Kamo;
- w.** Ngararatunua;
- x.** Ruatangata;
- y.** Purua;
- z.** Hikurangi;
- aa.** Hikurangi swamp;
- bb.** Waro;
- cc.** Manaia;
- dd.** Poupou Whenua;
- ee.** Ruakaka;
- ff.** Urutiti
- gg.** Parua Bay;
- hh.** Waikaraka;
- ii.** Terenga Paraoua;
- jj.** Tikoraina;
- kk.** Toetoe;
- ll.** Urutiti;
- mm.** Waipu;
- nn.** Mangawhai;
- oo.** Mahurangi;
- pp.** Motukawau;
- qq.** Waiwera;
- rr.** Orewa;
- ss.** Whangaparoa;
- tt.** Hauturu;
- uu.** Tiritiri Matangi;
- vv.** Takapuna;
- ww.** Tamaki;

- xx.** Hauraki;
- yy.** Otahuhu;
- zz.** Mangere;
- aaa.** Manukau;
- bbb.** Whatipu;
- ccc.** Piha;
- ddd.** Muriwai;
- eee.** Kaipara;
- fff.** Manganui Bluff;
- ggg.** Hokianga;
- hhh.** Muriwhenua;
- iii.** Te Rarawa;
- jjj.** Ahipara;
- kkk.** Teringa Wairua;
- lll.** Kerikeri and Rawhiti, in particular Rawhiti 3B2, Omakiwi and Te Kokinga;
- mmm.** Kaikohe;
- nnn.** Bay of Islands;
- ooo.** Pararako;
- ppp.** Kahikatoa;
- qqq.** Pumanawa;
- rrr.** Whangae;
- sss.** Mahinepua;
- ttt.** Ririwha;
- uuu.** Te Ngaere;
- vvv.** Matauri; and
- www.** Whakaare.

## **C: Jurisdiction**

6. 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 Māori, and
  - b. they have been, and continue to be, or are likely to be, prejudicially affected by the various Acts and Crown land purchasing policies, in particular, the Tohunga Suppression Act 1907, and the Native Land Court and its systems, and thereby other attendant legislation, or regulations, and also by the various policies, practices, acts and omissions adopted by, or on behalf of, the Crown, or its agents.
  
7. The Claimants say that as a consequence of the Crown's actions, inaction, and omissions, whether by way of legislation, policy, practice or any other means, the Crown has breached the terms and principles of te Tiriti/the Treaty ("the Principles"), namely:
  - a. the full and exclusive undisturbed possession of their lands;
  - b. the duty to act reasonably and in good faith;
  - c. the Crown's duty of active protection; and
  - d. the right of Māori to retain Rangatiratanga over their resources and taonga, and to have all the rights and privileges of citizenship.
  
8. The essence of this Claim is that the Crown, by way of its policies and practices which surround the ownership, governance, control and management of the Takutai Moana, have breached te Tiriti/the Treaty and the Principles by:
  - a. failing to recognise and give effect to the Claimants' mana and Tino Rangatiratanga over their taonga, namely, the Takutai Moana;

- b. failing to actively protect the Claimants’ mana and Tino Rangatiratanga over the Takutai Moana;
  - c. failing to uphold the Partnership envisaged under te Tiriti/the Treaty; and
  - d. failing to collaborate with Māori, including the Claimants, in all decisions related to their Takutai Moana.
  
- 9. The essence of this Claim is that the Crown, by way of its policies and practices which surround the status and treatment of Māori women have breached te Tiriti/the Treaty and the Principles by:
  - a. failing to recognise and give effect to Māori women’s Mana and Tino Rangatiratanga over all their taonga, namely, their tamariki, their peoples and their lands and all other taonga;
  - b. failing to recognise to recognise the tikanga of ngā Puhitanga and Te Kawa, Nga Ritenga, Mana Whenua, and Mana Wairua;
  - c. failing to actively protect Māori women’s Mana and Tino Rangatiratanga over their tamariki, their peoples and their lands, and all taonga;
  - d. failing to actively protect Māori women and their lands;
  - e. failing to uphold the Partnership envisaged under te Tiriti/the Treaty; and
  - f. failing to appropriately collaborate with Māori, including the Claimants, in all decisions related to Māori women.

**D: The Claim**

**DI: Pomare Kingi and the Tohunga Suppression Act**

- 10. Mangakāhia and all surrounding whenua was exposed to considerable land purchasing pressure from the Crown.

11. Māori found themselves unable to deal with the ever-increasing pressure from Pākehā and the Crown to provide land for sale for Pākehā settlers.
12. The pressure mounted to such a degree that Pomare Kingi threatened a business owner. The business owner was also involved in land purchases in and around Mangakāhia at the time.
13. Pomare was imprisoned for his actions against the business owners. While incarcerated Pomare recited karakia.
14. These karakia were interpreted as ‘spells’ and ‘black magic’ curses against the prison guards and others.
15. Pomare was then put into a mental health unit by virtue of the Tohunga Suppression Act in Auckland somewhere near Waitakere. While in the mental health unit, his lands were alienated from him.
16. The Claimants allege the Native Land Court and the Crown should have actively protected Pomare’s land interests in Mangakāhia.
17. The Claimants allege that Pomare’s detention and subsequent loss of property breaches not only the principles and terms of the Treaty, but also the Magna Carta in that:
  - a. he was illegally detained;
  - b. he was denied his customs;
  - c. he was dispossessed of his property; and
  - d. the right of Māori to retain Rangatiratanga over their resources and taonga and to have all the rights and privileges of citizenship.

## **DII: Housing**

- 18.** The Claimants did not cede their Tino Rangatiratanga to the Crown. The Crown's imposition of Kāwanatanga over them was a grave breach of te Tiriti/the Treaty. In imposing its laws over them, the Crown put in place various mechanisms, including, the Old Land Claims processes, Crown purchases and other direct acquisitions and confiscations, and the various NLC regimes, which facilitated, in breach of te Tiriti/the Treaty, the wrongful transfer of Māori lands to the new settler communities.
- 19.** The wrongful land takings were significant, and incentivised many Māori to move away from what little of their ancestral homelands they still possessed, and into urban centres. This dispossession of land, and the migration to inadequate housing furthered the loss of culture, and resulted in highly detrimental economic and health consequences. The consequences of urban migration also exacerbated the disparity between Māori and Pakeha in relation to home ownership and homelessness statistics.
- 20.** In addition, early land alienation and dispossession saw Māori stripped of the ability to generate the inter-generational wealth which is achieved through home ownership. The rapid urbanisation of Māori led to severe housing deprivation, and the substandard housing conditions led to serious physical and mental health issues for Māori.
- 21.** In imposing its laws over them, the Crown forced the Claimants to abandon their own holistic housing systems, and instead imposed its own social, cultural, and housing norms. Doing so resulted in widespread social, cultural, health and economic devastation for the Claimants.
- 22.** The Crown has not, since 1840, legitimately acquired, in any way, the Tino Rangatiratanga which Māori have over their peoples, including; under te Tiriti/the Treaty, under international laws and norms, under statute, nor under the common law. As such, Māori Tino Rangatiratanga over their own peoples remains extant.

- 23.** Currently, the disparity between Māori and non-Māori in relation to housing severely prejudices and disadvantages many Māori. Māori are more likely to suffer from homelessness, State housing reliance, and to constitute a disproportionate number of the renting population, all of which has had significant consequences for Māori health, economic welfare, and education.
- 24.** The Claimants allege that the current Crown laws, policies and conduct in relation to housing services and outcomes for Māori are in breach of te Tiriti/the Treaty.
- 25.** Some of the issues of particular concern to the Claimants include the following:

  - a.** the national framework for housing services;
  - b.** the delivery of housing services to Māori;
  - c.** the alleged disparity between services provided to Māori and non-Māori;
  - d.** the disparities in housing outcomes for Māori and non-Māori;
  - e.** regulations, and in particular, the over-regulation of Māori housing on their own whenua, and of Māori communal buildings, such as Marae;
  - f.** the imposition of rates on Māori land and buildings;
  - g.** inadequate assistance and policies to incentivise Māori to return to their own housing systems on their own whenua;
  - h.** the growing levels of homelessness in New Zealand, which disproportionately affect Maori;
  - i.** the lack of emergency housing for the homeless;
  - j.** the lack of policies and programmes which address the physical and mental health of the homeless;
  - k.** the effects of historical Government housing programmes which assimilated rural Māori into urban communities,

resulting in a loss of resources and the severance of their cultural connection to their whenua;

- l.** the failure of Crown housing policies to accommodate and reflect Mātauranga Māori and customary social and cultural structures;
- m.** the disproportionate levels of Māori living in overcrowded housing, and the lack of Crown policies addressing this;
- n.** the disproportionately low rates of home ownership for Māori;
- o.** the lack of Crown policy providing protection and rental security for private rental tenants, of which Māori form a disproportionately large number;
- p.** a lack of comprehensive universal quality standards for rental properties, which impacts the health and well-being of the occupants, particularly children;
- q.** the failure of the Crown to uphold international obligations to provide a minimum standard of housing which provides security, peace and dignity; and
- r.** the enactment of the Building Act 1991 and the Building Code 1992, which prevented Māori from building and repairing their own homes, which, given the disproportionately low incomes earned by Māori, was to the detriment of their economic and social wellbeing.

### **DIII: Marine and Coastal Area (Takutai Moana) Act**

- 26.** The Claimants say that, since time immemorial, Māori have collectively exercised mana and Tino Rangatiratanga over the Takutai Moana, in accordance with their own extensive body of regulatory laws, called Tikanga Māori.

- 27.** In 1840, certain Rangatira signed te Tiriti/the Treaty, which guaranteed Māori their Tino Rangatiratanga over their taonga, including the Takutai Moana. The Crown has not, since 1840, legitimately acquired, in any way, the authority/Tino Rangatiratanga which Māori have exercised, and are entitled to continue to exercise, over their Takutai Moana.
- 28.** The Takutai Moana is a taonga under te Tiriti/the Treaty, and the exercise of Tino Rangatiratanga and Kāwanatanga over it resides legitimately with Māori themselves.
- 29.** Nevertheless, since 1840, Crown laws and policy in respect of the Takutai Moana have undermined and eroded Hapū Tino Rangatiratanga and therefore breached te Tiriti/the Treaty. The Crown, in assuming control over the Takutai Moana, has mismanaged, polluted and exploited the Takutai Moana.
- 30.** The illegitimate assumption of Crown sovereignty since 1840 has undermined and impacted upon the Claimants' ability to exercise Tino Rangatiratanga and Kaitiakitanga. It has allocated use rights and the rights to profit from the Takutai Moana to third party commercial operators, without the informed consent of Māori. The Crown has not acted consistently with Tikanga Māori, nor has it taken Tikanga Māori or Kaitiakitanga into account in legislation and regulation. In fact, it has worked to undermine and erode Tikanga Māori.
- 31.** In 1975, the Crown, in recognition of the fact that it had breached te Tiriti/the Treaty and, in doing so, had been responsible for causing great and widespread harm to Māori peoples, established the Waitangi Tribunal and entered into Tiriti/Treaty settlement discussions and negotiations with various Māori Hapū and Iwi groups. This constituted an attempt to recognise its breaches of te Tiriti/the Treaty, and the wrongs it had perpetrated over the

Māori people, including its illegitimate acquisitions of taonga which had hitherto been the responsibility of Māori.

32. The Claimants allege that the current Crown laws, policies and conduct in relation to the Takutai Moana are in breach of te Tiriti/the Treaty, in particular the administration of the MACA Act by the Ministry of Justice, and the conduct of the Minister of Treaty of Waitangi Negotiations and Attorney-General, and the Prime Minister.
33. The Claimants do not distinguish between dry land or land covered by water. Both are land, and include:
  - a. the airspace and water space above land; and
  - b. the subsoil, bedrock, water, oil, petroleum and any other matters below land; and
  - c. trees, rocks, water and any other matters above land.
34. In the *Report on the Crown's Foreshore and Seabed Policy*, the Tribunal explained that Māori have an interest in both the Takutai Moana and dry land:

Here, we emphasise that we see no reason why Māori custom should stop where or when the tide comes in. Indeed, the claimants before us showed a much stronger connection to and use of the beach and its resources than they might have done to the mountainous interior and some of the ostensibly unoccupied acres that so much troubled Earl Grey. As claimant counsel Ms Sykes argued, and claimant witnesses demonstrated before us, Māori have a holistic view that does not compartmentalise the beach and sea into dry land above high tide, tidal land uncovered at low tide, land permanently covered by the sea, and the waters of the sea itself. Māori law, use, authority, and rights extended seamlessly from land fronting the beach, out into the ocean....

...For the claimants, the foreshore/seabed is papamoana, the continuation of whenua into and beneath the sea. We were reminded of a world view in which Māori extended their deep sense of spirituality to the whole of creation, acknowledging atua who

bequeathed all of nature's resources to them, in their creation stories. We heard of the interrelationships of the various atua, especially of Tangaroa and Papatuanuku, and the merging of their energies with those of Ranginui where they meet on the papamoana, forming a lasting mauri. For some claimants, though customs differ, the waters lapping on the beach are part of the amniotic fluids nourishing the whenua and the tangata whenua....

...This accords with the views of the Muriwhenua Fishing Tribunal and others. To an extent, authority extended as far from the beach as it could be enforced. The example of Te Rauparaha in Raukawa Moana, as put to us by Ngati Toa, indicates that this could be far indeed. In 1955, eight members of the Taumata Kaumatua o Ngapuhi ('Speaking Elders of Ngapuhi') brought a claim to the Māori Land Court for appointment as trustees of Te Moana Nui a Kiwa ('the Pacific Ocean'). The claim encompassed 'the ocean around New Zealand' and the sea routes from Hawaiki to Aotearoa. The kaumatua gave evidence of how their rights came from the gods and were exemplified, under tikanga, in pou (pillars of fire and pillars of cloud).<sup>2</sup>

35. Nevertheless, Aotearoa New Zealand jurisprudence in this area demonstrates that the Crown has consistently disputed the existence of these customary proprietary rights.<sup>3</sup>
36. *Attorney-General v Ngati Apa*<sup>4</sup> is currently the leading case on Māori customary proprietary rights in the Takutai Moana. In that case, the Court of Appeal asserted that Māori customary title has always existed as a part of the common law of Aotearoa New Zealand, and the Māori Land Court was afforded jurisdiction to determine the status of Takutai Moana brought before it.
37. The result in *Attorney-General v Ngati Apa* prompted Cabinet to immediately propose policy which went directly against the decision in *Ngati Apa*. That policy eventually was enacted in the form of the Foreshore and Seabed Act

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<sup>2</sup> Waitangi Tribunal *Report on the Crown's Foreshore and Seabed Policy* (Wai 1071, 2004) at 18-19.

<sup>3</sup> See *Generic Closing Submissions in relation to Issue 11 – Takutai Moana/Foreshore and Seabed* (Wai 1040 #3.3.229).

<sup>4</sup> *Attorney-General v Ngati Apa* 3 NZLR 643 at [55].

2004 (“the FSA”). The FSA effectively overturned the *Ngati Apa* decision, removing the jurisdiction of the Māori Land Court to determine applications for title to the Takutai Moana, and by doing so, extinguishing all or part of the property rights in the Takutai Moana held by Māori. The FSA vested the Takutai Moana in the Crown.<sup>5</sup>

- 38.** In response to ongoing and widespread opposition to the FSA, the Marine and Coastal Area (Takutai Moana) Act 2011 (“the MACA Act”) was introduced. The MACA Act purports to give the Takutai Moana a special status, whereby neither the Crown nor any other person owns, or is capable of owning, it.<sup>6</sup>
- 39.** Under section 95(2) and 100(2) of the MACA Act, Claimants are required to seek recognition of narrowly-defined rights to the Takutai Moana by the 3<sup>rd</sup> of April 2017 (“the Statutory Deadline”) in the High Court or through negotiations with the Responsible Minister on behalf of the Crown.<sup>7</sup> Under the MACA Act, the Responsible Minister is defined as the Minister of the Crown who, with the authority of the Prime Minister, is for the time being responsible for the administration of any provision in this Act.<sup>8</sup> The current Responsible Minister is the Attorney-General, Hon David Parker.
- 40.** The funding process available under the Crown’s policy:

  - a.** is administered by the Office of Treaty Settlements (“OTS”), located within the Ministry of Justice, as opposed to being administered by Legal Aid Services (“LAS”), and is not independent or free from bias or interference from the Crown;
  - b.** sets an upper funding limit for claims;

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<sup>5</sup> Foreshore and Seabed Act 2004, s 13.

<sup>6</sup> Marine and Coastal Area (Takutai Moana) Act 2011, s 11(2).

<sup>7</sup> Marine and Coastal Area (Takutai Moana) Act 2011, preamble.

<sup>8</sup> Marine and Coastal Area (Takutai Moana) Act 2011, s 9.

- c. is retrospective, requiring the Claimants to meet costs involved upfront; and
- d. is not transparent, with no clear criteria for claimants to meet to receive funding.

41. The Claimants say that the lack of funding and the lack of independence serves as a disincentive for Māori to make applications under the MACA Act for recognition of their customary proprietary rights.

**DIV: Mana Wāhine**

42. Some of the issues of particular concern to the Claimants include the following:

- a. the imposition of a legal and constitutional structure over Māori women without their prior informed consent;
- b. the lack of recognition and respect for Māori women's economic, political and social status under Tikanga Māori, as the law of Aotearoa New Zealand;
- c. the takings of Māori women's lands, waters and other natural resources without their consent;
- d. the destruction of political and social structures which housed and protected the standing and status of Māori women as critical leaders, thinkers, strategists, and decision-makers of their Whānau and Hapū;
- e. the violent severing of tapu connections between Māori women, their children, their lands, and their waters;
- f. subjugating Māori women under a foreign legal and political regime, harmful to their status, and which relegated them to a status lower than all other groups in society;

- g.** the Crown's failure to address economic, social, political, psychological, emotional, spiritual physical and sexual violence against Māori women and their children;
  - h.** the disproportionate representation of Māori women in the criminal justice system; and
  - i.** the below average status of Māori women in education, health, housing, employment and economic statistics.
  
- 43.** The Claimants say that, since time immemorial, Māori women have collectively exercised Mana and Tino Rangatiratanga, in accordance with their body of Māori regulatory laws, called Tikanga, over their tamariki, their peoples, their lands and all other taonga.
  
- 44.** In 1840, certain Rangatira signed te Tiriti, which guaranteed Māori, including Māori women, their Tino Rangatiratanga over their taonga, including their tamariki, their peoples, their lands, and all other taonga. The Crown has not, since 1840, legitimately acquired, in any way, the authority/Tino Rangatiratanga which Māori have exercised, and are entitled to continue to exercise, over their tamariki, their peoples, their lands and all other taonga.
  
- 45.** Their tamariki, their peoples, and their lands are all taonga under te Tiriti/the Treaty and the responsibility for exercising Mana and Tino Rangatiratanga over all these taonga resides legitimately with Māori, including Māori women, themselves.
  
- 46.** Nevertheless, after the execution of te Tiriti/the Treaty, the British Crown, usurped the authority of Māori under te Tiriti/the Treaty, and attempted to enforce its regime of governance over all Māori in Aotearoa New Zealand and over all of their taonga. Lands, and other resources, were illegally taken, any signs of Māori resistance were met with aggression, acts of war and violence, and the Māori people were stripped of their language and culture.

47. Their body of laws, or Tikanga, was forcibly subjugated under the dominant Westminster framework of laws and governance, which had been introduced by the British Crown. The Westminster framework was then utilised as a mechanism to facilitate the alienation of Māori lands and other taonga, and to further subdue any resistance.
48. Māori women did not cede their Tino Rangatiratanga to the Crown. The Crown's imposition of Kāwanatanga over them was a grave breach of te Tiriti/the Treaty. In imposing its laws over them, the Crown put in place various mechanisms, including, the Old Land Claims processes, Crown purchases and other direct acquisitions and confiscations, and the various Native Land Court regimes, which facilitated, in breach of te Tiriti/the Treaty, the wrongful transfer of Māori lands to the new settler communities.
49. The Crown has not, since 1840, legitimately acquired, in any way, the Tino Rangatiratanga which Māori women have over their tamariki, their peoples, their lands, and all taonga, including; under te Tiriti/the Treaty, under international laws and norms, under statute, nor under the common law. As such, Māori women's Tino Rangatiratanga over their own peoples remains extant.
50. Currently, the disparity between Māori women and non-Māori women severely prejudices and disadvantages many Māori women. Māori women are more likely to suffer poor educational, health, housing, employment and economic outcomes.
51. The Claimants allege that the current Crown laws, policies and conduct in relation to the status and treatment of Māori women are in breach of te Tiriti/the Treaty.

### ***Tino Rangatiratanga and Mana Whenua***

52. The Claimants submit that, in Te Ao Māori, women and men were valued equally. They submit that the status and authority of Māori women only began to diminish with the imposition of colonisation and English law. They allege that, following the signing of te Tiriti/the Treaty, and the successive imposition of Crown

kāwanatanga, Māori women, like Pākehā women, became subordinate to men. Their Rangatiratanga was undermined, and Māori women were forced out of taking on leadership roles.

53. The Claimants submit that it was the women who held Mana Whenua over land in Te Ao Māori. However, during the process of colonisation, Māori and, in particular, Māori women, lost the vast majority of their lands, in large part due to the policies and practices of the Crown, which were predicated on the idea that women could not own property and therefore could not hold Mana Whenua.
54. The Claimants submit that, as part of their Mana Whenua status, women were responsible for exercising kaitiakitanga over their tamariki, peoples, lands and all other taonga. However, because the Crown refused to accept or acknowledge the Mana Whenua that Māori women held, women were prevented from exercising Tino Rangatiratanga and kaitiakitanga over their lands and all taonga.

#### *Loss of Whānau Connections*

55. In Te Ao Māori, the Whānau provided significant support to, and respect for, women, which both protected women and allowed them to fulfil a range of roles. The Claimants submit that, with the imposition of Crown institutions and policies, underpinned by a flawed philosophy of individualism, the Whānau structure, and the status and role of women, were marginalised.
56. In particular, the Crown's policies and practices which promoted urbanisation, and which resulted in land losses, directly led to the loss of connections between Māori women and their lands, waters, Whānau, Hapū and Tikanga.

#### *Violence Against Women*

57. The Claimants submit that, while violence against women and their children is, and has always been, a breach of Tikanga Māori, it has nevertheless increased to epidemic levels under Crown policy and practice.
58. The Claimants allege that the Crown's policies and practices are directly responsible for violence against Māori women and their children. They say that colonisation brought with it new ways, including privileging the place of men, which rendered women and children as their possessions.
59. The Claimants further allege that the Crown has failed to address the issue of violence against Māori women and their children appropriately, creating further prejudice to Māori women. They say that the Crown's predominantly Western, individualistic policies to reduce violence are antithetical to what is needed by Māori women and their children.

### ***Incarceration***

60. The Claimants submit that the overrepresentation of Māori women in the criminal justice system is symbolic of the Crown's wider failure in not recognising the status and standing of Māori women.
61. The Claimants allege that the Crown has failed to adequately address the disproportionate rate of incarceration of Māori women, and this has prejudicially affected their tamariki, Whānau, Hapū, and Iwi, and the ability of their communities to sustain their wellbeing, their culture and their Mana.

### **E: BREACHES OF TE TIRITI/ THE TREATY**

62. The relevant Principles that have been breached by the Crown in relation to the Takutai Moana are:

- a.** in breach of Article 2, failing to recognise and provide for their Taonga, namely, the Takutai Moana, and proposing a property recognition regime which is intended by the Crown to be restrictive and confiscatory, without the prior informed consent of Maori;
- b.** in breach of Article 1, proposing a governance and regulatory regime over the Takutai Moana, without the prior informed consent of Maori, thus directly undermining the exercise of their mana and Tino Rangatiratanga over the area; and
- c.** failing to honour the Partnership envisaged in te Tiriti/the Treaty.

**63.** The causes of action, which breach the Principles and which give rise to the Claimants' grievances are:

- a.** the Crown's failure to recognise and give effect to the Claimants' mana and Tino Rangatiratanga under Articles 1 and 2 of te Tiriti/the Treaty. Under Article 2 of te Tiriti/the Treaty, Māori retained the full, exclusive and undisturbed possession of their Taonga. Consequently, Tino Rangatiratanga over the Takutai Moana should reside with Māori;
- b.** the Crown's failure to recognise and give effect to the Tino Rangatiratanga of the Māori rangatira over the Takutai Moana, which was never ceded under Article 1 of te Tiriti/the Treaty. Article 1 of the te Tiriti/the Treaty gave the British Crown the authority to govern over their own subjects and over land legitimately acquired by them, but not to unilaterally enforce their regulatory and legal regimes over the Māori people and their lands and other taonga. Reliance is placed

upon the findings in the Tribunal Report which came out of Stage 1 of Te Paparahi o Te Raki Inquiry;<sup>9</sup>

- c.** the Crown's purported reliance on the common law of New Zealand, and/or legislation in New Zealand and/or international law as having had the effect of not recognising and/or, in the alternative, extinguishing Māori authority and Tino Rangatiratanga over the Takutai Moana, when those customary rights are still extant;
- d.** the Crown's enactment, without the prior free informed consent of Māori, including the Claimants, of the MACA Act, which is not consistent with te Tiriti/the Treaty and its Principles, because the MACA Act and the Crown's conduct and policies in administering the Act:
  - i.** purport to govern over the Takutai Moana, as if Māori ceded their authority to the Crown;
  - ii.** does not provide for the exercise of Tino Rangatiratanga, instead vesting the management of the Takutai Moana in the Crown;
  - iii.** does not properly recognise and give effect to the Claimants' customary proprietary rights in the Takutai Moana;
  - iv.** inappropriately imposes a limitation period, designed as a disincentive for Māori to make applications;
  - v.** provides an unfair, arbitrary, and conflicted funding regime; and
  - vi.** has involved the Minister responsible for administering the Act and the Prime Minister making statements which could have the effect

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<sup>9</sup> Wai 1040.

of inappropriately influencing the courts in their decisions on the application of the various criteria set out in the MACA Act.

**64.** The relevant Principles that have been breached by the Crown in relation to Mana Wāhine are:

- a.** in breach of Article 2, failing to actively protect Māori women and all of their taonga, namely their peoples and lands;
- b.** in breach of Article 1, administering a governance and regulatory regime over Māori women, without their prior informed consent, thus directly undermining the exercise of their Mana and Tino Rangatiratanga over their own lands and peoples, and all taonga;
- c.** failing to honour the Partnership envisaged in te Tiriti/the Treaty; and
- d.** failing to enter into an appropriate level of collaboration.

**65.** The causes of action, which breach the Principles and which give rise to the Claimants' grievances, are:

- a.** the Crown's failure to recognise and give effect to the Mana and Tino Rangatiratanga of Māori women, including the Claimants, under Articles 1 and 2 of te Tiriti/the Treaty. Under Article 2 of te Tiriti/the Treaty, Māori women retained Mana and Tino Rangatiratanga over their peoples, lands and all other taonga;
- b.** the Crown's failure to recognise and give effect to the Tino Rangatiratanga of the Māori Rangatira over their peoples, and lands and all other taonga, which was never ceded under Article 1 of te Tiriti/the Treaty. Article 1 of te Tiriti/the Treaty gave the British Crown the authority to govern over their own subjects and over land legitimately acquired by them, but not to unilaterally

enforce their regulatory and legal regimes over Māori and/or their taonga. Reliance is placed upon the conclusions in the Tribunal Report which came out of Stage One of Te Paparahi o Te Raki Inquiry;<sup>10</sup>

- c. the Crown's purported reliance on the common law of New Zealand, and/or legislation in New Zealand and/or international law as having had the effect of not recognising and/or, in the alternative, extinguishing Māori women's authority and Tino Rangatiratanga over their peoples and lands, when those customary rights are still extant;
- d. the Crown's enactment, without the adequate collaboration, and prior, free, informed consent of Māori women, including the Claimants, of the current laws in respect of Māori women, contrary to the principles of te Tiriti/the Treaty because:
  - i. they purport to govern over Māori women, as if Māori women ceded their authority to the Crown; and, in doing so;
  - ii. they are in conflict with Māori women's responsibility for exercising Mana and Tino Rangatiratanga over their own peoples, lands, and all other taonga.

## **F: Prejudice**

- 66. The Claimants are suffering significant, irreversible and ongoing prejudice as a result of the effect of the Crown's acts and omissions, and as particularised in this ASOC.
- 67. The Claimants say that the Crown's actions, inactions, and omission whether by way of legislation, policy, practice or other means, had the effect, whether intended or unintended, of:

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<sup>10</sup> Wai 1040.

- a. causing undue emotional harm to the Claimants and their Whānau;
- b. detrimentally affecting the mana of Pomare Kingi, the Claimants and their Whānau;
- c. diminishing the Claimants land holdings and interests in Mangakāhia;
- d. creating a practical barrier to the Claimants and their Whānau settling at Mangakāhia, which as a consequence means the Claimants' connection to Mangakāhia and their hapū was weakened;
- e. depriving the Claimants of:
  - i. the opportunity to enjoy undisturbed and quiet possession of their whenua;
  - ii. the ability to maintain their interests in their whenua;
  - iii. the ability to use their whenua as they see fit;
  - iv. the opportunity to labour and undertake production on their land; and
  - v. the opportunity and ability to accumulate capital as a result of their significant land holdings.

**68.** The breaches of te Tiriti/the Treaty in relation to housing services and outcomes identified have caused, are causing, and will continue to cause, significant and irreversible prejudice to the Claimants, as follows:

- a. the Claimants' Tino Rangatiratanga has been interfered with and diminished, causing severe harm and prejudice to the mana, self-governance, and status to the Claimants;
- b. the Claimants' responsibility to ensure the adequate and appropriate housing of their own peoples, in accordance with their own Tikanga and in a manner befitting their status as the

original inhabitants of Aotearoa New Zealand, and as the Crown's Tiriti/Treaty partner, has been interfered with and diminished, causing severe harm and prejudice to the mana, well-being and status of the Māori people; and

- c. the Claimants rights to live in accordance with their own Tikanga and customs has been interfered with and diminished, causing irreparable harm to themselves, and, to their Whānau, Hapū and Iwi.

**69.** The breaches of te Tiriti/the Treaty in relation to the Takutai Moana have caused, is causing, and will continue to cause significant and irreversible prejudice to all Māori, including the Claimants as follows:

- a. the Claimants' Tino Rangatiratanga has been interfered with and diminished, causing severe harm and prejudice to the mana, self-governance, and status of the Māori people;
- b. the nature and extent of the Claimants' customary proprietary rights in their Takutai Moana have been denied, interfered with, and diminished, causing irreparable prejudice, and economic, social and cultural harm, to themselves, and to their Whānau, Hapū and Iwi; and
- c. the Claimants' responsibility to exercise Tino Rangatiratanga and kaitiakitanga over the Takutai Moana, in accordance with their own Tikanga Māori and in a matter befitting their status as the original inhabitants of Aotearoa New Zealand, and as the Crown's Tiriti/Treaty Partner, have been interfered with and diminished, causing severe harm and prejudice to the mana and status of the Māori people.

**70.** The breaches of te Tiriti/the Treaty in relation to Mana Wāhine have caused, are causing, and will continue to cause significant and irreversible prejudice to all Māori, including the Claimants as follows:

- a.** the Claimants' Tino Rangatiratanga has been interfered with and diminished, causing severe harm and prejudice to the Mana, self-governance, and status of Māori women;
- b.** the Claimants' Mana and Tino Rangatiratanga over their peoples, lands and taonga have been denied, interfered with, and diminished, causing irreparable prejudice, and economic, social and cultural harm, to themselves, and to their Whānau, Hapū and Iwi;
- c.** the Claimants' responsibility to exercise Mana and Tino Rangatiratanga over their tamariki, their peoples, and their lands and taonga, in accordance with their own Tikanga Māori and in a manner befitting their status as the original inhabitants of Aotearoa New Zealand, and as the Crown's Tiriti/Treaty Partner, have been interfered with and diminished, causing severe harm and prejudice to the Mana and status of Māori women; and
- d.** Māori women's rights to live in accordance with their own Tikanga and customs has been interfered with and diminished, causing irreparable harm to themselves, and, to their tamariki, and their Whānau, Hapū and Iwi.

## **G: Relief and Findings Sought**

**71.** The Claimants seek any or all of the following relief:

### *Generic*

- a.** a finding of the facts in their favour;

- b.** a finding that their claim is well founded;
- c.** all costs associated with the bringing of this claim; and

### *Housing*

- d.** a finding that:
  - i.** at or shortly prior to 1840, Māori collectively exercised mana and Tino Rangatiratanga, over their peoples and other taonga;
  - ii.** the exercise of mana and Tino Rangatiratanga included the responsibility for ensuring adequate tūrangawaewae and papakainga systems for their own peoples in accordance with their own extensive body of regulatory laws or Tikanga;
  - iii.** under Article 2 of te Tiriti/the Treaty, Māori retained the full, exclusive and undisturbed possession of their taonga, including their peoples and their tūrangawaewae and papakainga systems;
  - iv.** the Tino Rangatiratanga of Māori Rangatira over their peoples, and their tūrangawaewae and papakainga systems was never ceded under Article 1 of te Tiriti/the Treaty; and
  - v.** consequently, the responsibility for the provision of adequate and appropriate tūrangawaewae and papakainga services resides with Māori;
- e.** Crown acknowledgment that the full responsibility for ensuring the health and wellbeing of Māori remains with Māori;
- f.** the transfer of the provision of the Claimants' tūrangawaewae and papakainga services, along with the requisite funding, and technical support, where deemed necessary, to the Claimants;

- g.** restitution, comprising the return of all decision-making (including both local-level decision-making and national-level decision-making) in relation to the Claimants' tūrangawaewae and papakainga systems to the Claimants; and
- h.** compensation for all losses suffered as a result of the Crown's conduct in depriving the Claimants of their rights and entitlements to Tino Rangatiratanga over the tūrangawaewae and papakainga systems of their peoples; and

### ***Takutai Moana***

- i.** a finding that:
  - i.** the exercise of mana and Tino Rangatiratanga at custom included the ownership, governance, control and management of their Takutai Moana in accordance with their own extensive body of regulatory laws or Tikanga Māori;
  - ii.** under Article 2 of te Tiriti/the Treaty, Māori retained the full, exclusive and undisturbed possession of their lands, estates, forest, fisheries and other taonga, including their Takutai Moana;
  - iii.** the Tino Rangatiratanga of the Māori Rangatira over their peoples, lands and other taonga, including their Takutai Moana, was never ceded under Article 1 of the Tiriti/Treaty;
  - iv.** consequently, all ownership, governance, control and management rights in the Takutai Moana with Māori;
- j.** Crown acknowledgment that the full rights of customary ownership, governance, control and management of Māori in the Takutai Moana are extant and remain with the customary

Māori Hapū/Iwi owners and Tangata Whenua Rangatira (“the Māori Owners”);

- k.** the establishment of a process by which the Māori Owners of the Takutai Moana are determined, and that the Maori Owners of the Takutai Moana will govern and control the management of the Takutai Moana;
- l.** in the interim period, and so long as the MACA Act regime remains in place:
  - i.** that the funding regime be transferred to Legal Aid Services to administer, in the manner in which they administer funding for Waitangi Tribunal claims;
- m.** restitution, comprising the return of all decision-making in relation to the care and protection of, the regulation of, and the allocation of use rights over the Takutai Moana, to an entity or entities controlled and/or governed by their Māori Owners;
- n.** compensation for all losses suffered as a result of the Crown’s conduct in, inter alia, depriving Māori of their rights and entitlements to own, govern, control and manage their Takutai Moana; and

### ***Mana Wāhine***

- o.** a finding that:
  - i.** at or shortly prior to 1840, Māori women collectively exercised Mana and Tino Rangatiratanga, over their tamariki, peoples, lands and all other taonga;
  - ii.** under Article 2 of te Tiriti/the Treaty, Māori women retained the full, exclusive and undisturbed possession of all their taonga, including their tamariki, their peoples and their lands;

- iii. the Tino Rangatiratanga of Māori women over their tamariki, peoples, lands and all other taonga was never ceded under Article 1 of te Tiriti/the Treaty; and
- iv. consequently, responsibility for exercising Mana and Tino Rangatiratanga over their tamariki, peoples, lands and all other taonga resides with Māori women;
- p. Crown acknowledgment that the full responsibility for ensuring the health and wellbeing of Māori women remains with Māori;
- q. the transfer of the provision of Māori women’s services, along with the requisite funding, and technical support, where deemed necessary, to Māori women;
- r. restitution, comprising the return of all decision-making (including both local-level decision-making and national-level decision-making) in relation to Māori women, to them;
- s. compensation for all losses suffered as a result of the Crown’s conduct in depriving Māori women of their rights and entitlements to Tino Rangatiratanga over their tamariki, their peoples, and their lands and all other taonga;
- t. all costs incurred as a result of bringing this Claim; and
- u. such other relief as the Tribunal may see fit.

**Dated 31 August 2018**



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**Janet Mason**

**Counsel Acting**

**Sophia Collinson**

**Counsel Assisting**

To: The Registrar, Waitangi Tribunal  
And to: Counsel for the Crown on behalf of Crown Law Office  
Ministry of Justice  
Legal Aid Services

This Statement of Claim is filed by Janet Mason, Solicitor for the Claimants, of Phoenix Law Ltd, Wellington. The address for service of the Claimants is at the offices of Phoenix Law Ltd, 200 Willis Street, Wellington.

Documents for Service on the Claimants may be left at the above address for service or may be:

- posted to P.O Box 27400, Wellington; or
- sent by electronic mail to [mason@phoenixlaw.expert](mailto:mason@phoenixlaw.expert)