

IN THE WAITANGI TRIBUNAL

WAI 2700

Wai 1531

IN THE MATTER

of the Treaty of Waitangi Act 1975

AND

IN THE MATTER

of the **Mana Wāhine Kaupapa Inquiry**

AND

IN THE MATTER

a claim by **Te Enga Harris and Lee Harris** on behalf of **themselves** and the **Harris whānau**.

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**SIXTH AMENDED STATEMENT OF CLAIM FOR WAI 1531**

**Dated 31 August 2018**

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RECEIVED

Waitangi Tribunal

**31 Aug 2018**

Ministry of Justice  
WELLINGTON

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## **MAY IT PLEASE THE TRIBUNAL**

### **THE CLAIM**

1. This Sixth Amended Statement of Claim is filed on behalf of Te Enga Harris and Lee Harris on behalf of the Harris whānau (“the Claimants”).
2. This Sixth Amended Statement of Claim includes claims relating to mana wāhine (“the causes of action”). The Claimants have not pleaded the causes of action herein in the Te Paparahi o Te Raki Inquiry, the Health Services and Outcomes Inquiry, or the Housing Policy and Services Kaupapa Inquiry.
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 Māori, and
  - b. they have been and continue 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 Sixth Amended Statement of Claim.

### **Background**

5. The Claimants are survivors of a Crown legislative regime which has severely impacted the Harris whānau. Ms Te Enga Harris as the matriarch of the family has been the victim of countless atrocities that have been inflicted upon her as a result of Crown policies which were instrumental in dictating how and where she lived. A ward of the state at aged 10, Ms Harris has been subjected to physical, mental and sexual abuse all while under the protection of the Crown. The impacts of these atrocities are still being felt by the Harris whānau today.
6. The Claimants bring this claim to highlight the failure of the Crown to preserve the rangatiratanga of wāhine Māori. The Claimants whanau have

suffered significantly as a result of that failure and intend to discuss how those failures have severely impacted their lives, the lives of their children and now the lives of their mokopuna.

## TE TIRITI O WAITANGI PRINCIPLES

### Partnership

7. The constitutional status of Māori as first peoples<sup>1</sup> gives rise to a presumption of equal status between Treaty partners. The rights (of governance and autonomy) each Treaty partner accords to the other are not absolute but subject to each partner's needs.<sup>2</sup>
8. Māori and the Crown should act honourably, reasonably and in good faith towards one another because of their special relationship created by Te Tiriti o Waitangi ("Te Tiriti").<sup>3</sup> Moreover, for this partnership to work, the Crown *must* deal openly and honestly with Māori.<sup>4</sup>
9. Reciprocity is a fundamental cornerstone of partnership. The exchanges required within a functioning partnership should involve benefits that are mutual, with advantages flowing in both directions.<sup>5</sup>
10. The Crown has a duty to consult Māori. District hapū/iwi should be consulted with respect to local issues.<sup>6</sup> A failure to consult is likely to result in an affront to Māori.<sup>7</sup>
11. One party should not benefit by constraining the other party from benefitting.<sup>8</sup>

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<sup>1</sup> 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 Tautahi*, (Wai 143, 1996), at 18 – 21; Waitangi Tribunal, *Muriwhenua Land Report*, (Wai 45, 1997), at 114 and Waitangi Tribunal *The Wananga Capital Establishment Report*, (Wai 718, 1999), at 44.

<sup>2</sup> Waitangi Tribunal, *Te Whānau o Waipareira*, (Wai 414, 1998), at 8.

<sup>3</sup> *NZ Māori Council v Attorney-General* [1994] 1 NZLR 513 (Broadcasting Assets); *NZ Māori Council v Attorney-General* [1987] 1 NZLR 641 (Lands).

<sup>4</sup> Waitangi Tribunal, *He Whiritaunoka: The Whanganui Land Report*, (Wai 903, 2015), at 156.

<sup>5</sup> Waitangi Tribunal *He Whiritaunoka: The Whanganui Land Report*, (Wai 903, 2015), at 156.

<sup>6</sup> Waitangi Tribunal, *Report of the Waitangi Tribunal on the Mangonui Sewerage Claim*, (Wai 17, 1988), at 187.

<sup>7</sup> Waitangi Tribunal *Report of the Waitangi Tribunal on the Manukau Claim*, (Wai 8, 2<sup>nd</sup> ed, 1989), at 87.

## Active Protection

12. Through Te Tiriti, the Crown assured Māori that their existing rights would be actively protected with the utmost good faith<sup>9</sup> and to the fullest practicable extent.<sup>10</sup> The principle of active protection applies to non-kin based Māori communities<sup>11</sup> and to all Māori interests,<sup>12</sup> Māori health outcomes,<sup>13</sup> and Te Reo Māori.<sup>14</sup>
13. Active protection extends not merely to tāonga but to the Māori people possessing them.<sup>15</sup> The concept of tāonga includes all valued resources and intangible cultural assets which are highly valued by Māori.<sup>16</sup>
14. The concept of tino rangatiratanga includes management of resources and other tāonga according to Māori cultural preferences.<sup>17</sup>
15. Te Tiriti placed an enduring obligation on the Crown to protect Māori from the adverse transitional effects of settlement.<sup>18</sup> This obligation arises over and above considerations of equity. It calls for additional resources and effort to be deployed in favor of Māori whenever general programmes afford them insufficient protection.<sup>19</sup>
16. The Crown may not offer exclusively monocultural services but must respect tikanga Māori in social service provisions.<sup>20</sup>

## Equal Treatment

17. Under Article three of Te Tiriti o Waitangi, Māori have the same rights and privileges as British subjects. In this respect, the Crown has a duty to

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<sup>8</sup> Waitangi Tribunal, *The Ngai Tahu Sea Fisheries Report*, (Wai 27, 1992), at 273 – 274.

<sup>9</sup> *New Zealand Māori Council v Attorney General* [1987] 1 NZLR at 715.

<sup>10</sup> Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, (Wai 814, 2004), Vol 1, at 120.

<sup>11</sup> Waitangi Tribunal, *Te Whānau o Waipareira Report*, (Wai 414, 1998), at 16.

<sup>12</sup> Waitangi Tribunal, *Te Whānau o Waipareira Report*, (Wai 414, 1998), at 16.

<sup>13</sup> Waitangi Tribunal, *The Napier Hospital and Health Service Report*, (Wai 692, 2001), at 62.

<sup>14</sup> Waitangi Tribunal, *The Te Reo Māori Claim* (Wai 11, 1986), at 20.

<sup>15</sup> Waitangi Tribunal, *The Napier Hospital and Health Service Report*, (Wai 692, 2001), at xxv.

<sup>16</sup> Waitangi Tribunal, *Report of The Waitangi Tribunal on The Orakei Claim*, (Wai 9, 1987), at 147.

<sup>17</sup> 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.

<sup>18</sup> Waitangi Tribunal, *The Napier Hospital and Health Service Report*, (Wai 692, 2001), at xxv.

<sup>19</sup> Waitangi Tribunal, *The Napier Hospital and Health Service Report*, (Wai 692, 2001), at 53.

<sup>20</sup> Waitangi Tribunal, *The Napier Hospital and Health Service Report*, (Wai 692, 2001), at 48 and 65.

provide equality of services, treatment and outcomes to Māori and non-Māori.

### **Self Determination**

18. Māori autonomy is the ability of tribal communities to govern themselves as they have done for centuries, to determine their own internal political, economic and social rights and objectives, and to act collectively in accordance with those determinants.<sup>21</sup> The self-determination principle assures Māori the right to choose their social and cultural path.<sup>22</sup>
19. Māori could reasonably expect to obtain or retain the resources necessary for them to develop and prosper in the new, shared, nation state.<sup>23</sup>

### **Right to Development**

20. The right to development underpins the relationship between the Crown and Māori. Māori have the right to develop as a people, culturally, socially, economically and politically.<sup>24</sup> The Crown has the responsibility to guarantee that Māori have the right to develop, since such development is essential to Māori well-being.<sup>25</sup>
21. The Crown has a duty to actively consider assisting with development opportunities when they arise in respect of Crown-owned or Crown-regulated resources or industries.<sup>26</sup>
22. A Māori iwi or hapū may have a right to participate in any development occurring within their rohe, in any development related to tāonga or in any development that would assist their cultural, social, or economic

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<sup>21</sup> Waitangi Tribunal *Turanga Tangata Turanga Whenua* (2004), Wellington, Vol.1, at 113.

<sup>22</sup> Waitangi Tribunal, *Crown's Foreshore and Seabed Policy* (2004), Wellington, at 133 - 134.

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

<sup>24</sup> Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008), at 914.

<sup>25</sup> Waitangi Tribunal, *The Report on Claims Concerning the Allocation of Radio Frequencies*, (Wai 150, 1990), at 41 – 3; Waitangi Tribunal, *The Radio Spectrum Management and Development Final Report*, (Wai 776, 1999), at 7.

<sup>26</sup> Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008), at 913.

development by contributing to the redress of past Treaty breaches.<sup>27</sup> This right has been recognised in respect of geothermal resources,<sup>28</sup> hydro-electricity<sup>29</sup> and fisheries.<sup>30</sup>

## **Redress**

23. The Crown's duty to remedy past breaches of Te Tiriti involves granting redress.<sup>31</sup> Tribunal jurisprudence has emphasised an active restorative approach.<sup>32</sup>

## **FIRST CAUSE OF ACTION: THE FAILURE TO ACTIVELY PROTECT MANA WĀHINE**

### **Allegation**

24. 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.
25. 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.
26. 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.

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<sup>27</sup> Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008), at 913 – 914.

<sup>28</sup> Waitangi Tribunal, *Preliminary on the Te Arawa Representative Geothermal Resource Claims*, (1993), Wellington, at 28 – 9.

<sup>29</sup> *Te Runanganui o Te Ika Whenua Incorporated Society v Attorney-General* [1994] 2 NZLR 20.

<sup>30</sup> The Mangonui Tribunal, also in 1988, noted that there was an understanding arising, 'that traditional mechanisms for tribal controls would continue to be respected and maintained.' [Waitangi Tribunal, *Report of the Waitangi Tribunal on the Mangonui Sewerage Claim*, (Wai 17, 1988), at 47].

<sup>31</sup> *New Zealand Māori Council v Attorney General* [1987] 1 NZLR, at 666.

<sup>32</sup> Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008), at 1248.

27. The Crown through legislation and policies took away from Māori the option to maintain their traditional culture or to assimilate into the colonising culture.
28. Māori women's mana and status was diminished by the imposition of the lesser status of women in European culture and politics.

## Particulars

### *The Erosion of the Status of Māori Wāhine*

29. In the period of early contact between Māori and Europeans a culturally different attitude towards the role of women existed.
30. Māori society embraced a worldview determined by whakapapa and people would reckon their kinship to each other by descent from a common ancestor.<sup>33</sup>
31. Descent from bilateral senior lines conferred senior status upon a person was 'not confined to males'<sup>34</sup>
32. There were women of pre-eminent rank that 'personified mana over land and people in their communities and descent groups'.<sup>35</sup>
33. 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.<sup>36</sup>
34. At least five women of rank signed the Treaty of Waitangi in 1840.<sup>37</sup> Further, at least thirteen women<sup>38</sup> have been identified as having signed Te Tiriti and 'Taitokerau women feature strongly among them.'<sup>39</sup>

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<sup>33</sup> 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.

<sup>34</sup> 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.

<sup>35</sup> 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.

<sup>36</sup> 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

35. Many, if not all of these wāhine signatories 'were rangatira in their own right and exercised mana whenua within Te Taitokerau'.<sup>40</sup>
36. 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'.<sup>41</sup>
37. 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.<sup>42</sup>
38. Evidence shows that Māori women of mana had a 'large share of power, status, control and obligations'<sup>43</sup> whereas in the Pākehā world, power, status control and obligations were 'reserved exclusively for males.'<sup>44</sup>
39. The mana of female rangatira was evident in the early years of contact with Europeans.<sup>45</sup>
40. This mana was often passed down from female ancestors to male or female descendants.<sup>46</sup>
41. The wāhine of Māori played key roles within hapū and iwi.

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<sup>37</sup> 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.

<sup>38</sup> 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.

<sup>39</sup> Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37, at 453.

<sup>40</sup> Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37, at 454.

<sup>41</sup> A. Mikaere, *Māori Women: Caught in the contradictions of a Colonised Reality*, 2 Waikato L. Rev. 125 (1994), at 132.

<sup>42</sup> Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37, at 527.

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

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

<sup>45</sup> Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37, at 242.

<sup>46</sup> Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37, at 244.

42. Dispute resolution was one key function of women. Their important peace making role is encapsulated by the phrase 'rongo ā whare.'<sup>47</sup>
43. The vitally important tohunga role could be filled by both men and women.
44. There were many important female spiritual leaders who arose throughout the region in the nineteenth century.<sup>48</sup>
45. Female healers were respected and recognised in Māori society when European doctors at the time were almost exclusively male.<sup>49</sup>
46. Rangatira women, similar to their male counterparts, also took a share of the labour required in a communal economy.<sup>50</sup>
47. Wāhine Māori were 'renowned for their abilities in many areas that were generally denied to women in Western society.'<sup>51</sup>
48. There is 'unmistakable evidence that [Māori] women's lives were richer and more varied'<sup>52</sup> than Colonial and Pākehā scholarship indicates.
49. The significant changes that occurred during the post 1840 colonial period saw many officials 'keen to render silent' the voices of Māori women.<sup>53</sup>
50. There existed palpable frustration amongst Māori women 'by the restrictions placed on them by the male dominated British society.'<sup>54</sup>

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<sup>47</sup> Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37, at 258.

<sup>48</sup> Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37, at 261.

<sup>49</sup> Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37, at 264.

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

<sup>51</sup> Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37, at 265.

<sup>52</sup> Binney, J, *Some Observations on the Status of Maori Women*, NZJH, 38, 2 (October 2004), at 234.

<sup>53</sup> Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37, at 510.

<sup>54</sup> Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37.

51. 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*

52. The Tohunga Suppression Act 1907 destroyed Māori women’s role as spiritual guides.
53. 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.’<sup>55</sup>
54. 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.
55. 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.

#### *Property Rights of Wāhine Māori*

56. Māori customary law allowed wāhine to be property owners in their own right.<sup>56</sup>
57. Under the Native Lands Act 1869 conveyances of property by married Māori women were just as valid as those signed by single or widowed women.<sup>57</sup>
58. This provision was, at times, challenged by Pākehā men married to Māori women.<sup>58</sup>

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<sup>55</sup> Tohunga Suppression Act 1907, s 2(1).

<sup>56</sup> Binney, J, *Some Observations on the Status of Maori Women*, NZJH, 38, 2 (October 2004), at 265 – 266.

<sup>57</sup> Section 22 of the Native Lands Act 1869.

59. Over time, the roles and positions of Māori wāhine began to be affected by Crown actions over land tenure and related legislation that specifically disempowered and/or discriminated against them.<sup>59</sup>
60. Initially, Māori wāhine ‘were not considered to be the ‘property’ of their menfolk as wives and daughters were under British law.”
61. Section 86 of the Native Lands Act 1873 provided that husbands should be party to all deeds executed by married women that were required by law to be acknowledged before commissioners.<sup>60</sup>
62. This legislative measure ran counter to Māori custom/usage that enabled particular women to deal with their land without reference to their husband.
63. Claims for succession under hereditary tenure were not strictly gender based in Māori society.<sup>61</sup>
64. Inheritance was bilateral and a range of property could be passed down to specific children whether male or female.<sup>62</sup>
65. Following Te Tiriti and the imposition of Westminster law, Māori women could and did, make wills in which they determined who inherited their land(s).
66. However, following the passage of legislative measures such as the 1873 Native Lands Act, ‘[b]ritish testamentary law allowed Pākehā men who were married to Māori women to determine the way that they bequeathed

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<sup>58</sup> Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37 at 512.

<sup>59</sup> Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37 at 513.

<sup>60</sup> Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37.

<sup>61</sup> Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37 at 512.

<sup>62</sup> 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 134.

land'<sup>63</sup> regardless of the way in which such land had originally been acquired.

67. For example, some Pākehā men 'could withhold inheritance from their half-caste children who decided to marry Māori rather than Pākehā spouses.'<sup>64</sup>
68. The prevailing legislative environment allowed this to occur.
69. The complex land laws introduced by the Crown continued to threaten and undermine the position of Māori women.
70. Section 86 of the Native Lands Act 1873 remained unchanged until 1881.
71. The rights of Māori women were further undermined in that year by the Native Succession Act 1881.
72. Women who were validly married according to native customs and usage were made subject to the law of New Zealand in regards to hereditaments.<sup>65</sup>
73. Alienation of lands through Crown purchasing within the various rohe of Māori also diminished women's status as land owners and guardians.
74. Māori women 'are...credited with being the earliest cultivators of their tribal regions.'<sup>66</sup>
75. The opportunity to continue kaitiaki roles in respect to the natural environments of their rohe was also removed from the women of Māori by alienation of lands.
76. Māori women certainly were not alone in suffering the negative effects of land alienation but they suffered those effects even more acutely than men

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<sup>63</sup> Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37 at 513.

<sup>64</sup> Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37 at 514.

<sup>65</sup> Native Succession Act 1881, s 3.

<sup>66</sup> Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37 at 245.

by not being offered a genuine legal/political forum within which to air their grievances.

77. The Native Lands regime, Crown purchasing, and the Resource Management Act 1991 as well as other statutory enactments regarding land and the environment have consistently bypassed Māori women and failed to provide them a participatory role in decisions over what were traditionally their own lands.

#### *Wāhine as Advocates for Māori Society*

78. Māori wāhine have been faced with an uphill battle for recognition since the 'disenfranchisement [and] relegation to a lower status than their male counterparts'<sup>67</sup> that came with the colonial take-over of Aotearoa.
79. The world that they began to inhabit at the onset of the twentieth century was a 'dual one.'<sup>68</sup>
80. In spite of this Māori women have continued to assert their political influence in a variety of ways and through various institutions.
81. Urbanization of Māori during World War Two, as many Māori flocked to the industrial centres, was a primary concern for many Māori.
82. The working and living conditions of many young Māori women was of particular concern. For example, the Northern Advocate at one stage ran the headline 'Auckland Māoris Living in Squalor.'<sup>69</sup>
83. Problems that emerged due to urbanization included social disorder, venereal disease, excessive drinking, degradation and a lack of support networks to assist Māori with adapting to an urban lifestyle.<sup>70</sup>

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<sup>67</sup> Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview*, (2009), Wai 1040 #A37 at 454.

<sup>68</sup> Binney, J, *Some Observations on the Status of Maori Women*, NZJH, 38, 2 (October 2004), at 233.

<sup>69</sup> Cleaver, P and Francis, Dr A, *Aspects of Political Engagement Between Iwi and Hapū of the Te Paparahi o Te Raki Inquiry District and the Crown, 1910 – 1975*, 2015, Wai 1040, #A50, at 289.

<sup>70</sup> Cleaver, P and Francis, Dr A, *Aspects of Political Engagement Between Iwi and Hapū of the Te Paparahi o Te Raki Inquiry District and the Crown, 1910 – 1975*, 2015, Wai 1040, #A50, at 291.

84. Māori women in the cities felt these problems acutely.
85. Various organisations throughout the war attempted to address many of the problems with varying success.
86. A voice was given to Māori through groups such as the Māori War Effort Organisation (“MWEO”). Women played a strong role welfare role within this organisation’s efforts.
87. The organisation provided Māori with a measure of autonomy.
88. The MWEO (which ended in 1945) “provided a vital link for Māori transitioning between rural and urban life.”<sup>71</sup>
89. The autonomy enjoyed under the MWEO was quickly eroded at the cessation of World War Two.
90. Post 1945 legislation ‘did not provide for a national Māori voice.’<sup>72</sup> It was left up to Māori to advance their own interests and women were at the forefront of this effort.
91. Whilst Māori women had made strides in advocating on behalf of themselves, their hapū, iwi and Māori society in general, they remained a marginalised group in terms of legislative consideration and government policy.

#### *Negative Statistics in Māori Woman’s Health and Education*

92. In today’s world most, if not all, Māori women ‘participate in the modern Pakeha structured society.’<sup>73</sup>

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<sup>71</sup> Cleaver, P and Francis, Dr A, *Aspects of Political Engagement Between Iwi and Hapū of the Te Paparahi o Te Raki Inquiry District and the Crown, 1910 – 1975*, 2015, Wai 1040, #A50, at 307.

<sup>72</sup> Cleaver, P and Francis, Dr A, *Aspects of Political Engagement Between Iwi and Hapū of the Te Paparahi o Te Raki Inquiry District and the Crown, 1910 – 1975*, 2015, Wai 1040, #A50, at 358.

<sup>73</sup> Binney, J, *Some Observations on the Status of Maori Women*, NZJH, 38, 2 (October 2004), at 233.

93. However, many Māori women 'betray a colonization of the mind'<sup>74</sup> and an acceptance of 'the proletarianization of their men...themselves and their close relatives.'<sup>75</sup>
94. Māori women remain an at-risk group in New Zealand society as the post-colonial hangover for wāhine endures.
95. The statistics bear this out.<sup>76</sup>
96. Māori women have the lowest rate of 18-year olds with NCEA level 2 or above at 69.6%.
97. Only 32% of Māori have an NZQF qualification above level four. This is the second lowest amongst ethnic groups in New Zealand.
98. Early Crown policy around education laid the foundations for the poor educational results seen in the modern day.
99. 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.
100. A common view in the 19<sup>th</sup> 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.'<sup>77</sup>
101. This view survived throughout much of the twentieth century in certain influential sectors of New Zealand society.
102. The health statistics for Māori women in today's New Zealand are even more alarming.
103. An astronomical 41.8 percent of Māori women smoke. This is the highest rate among all ethnic and gender groups in New Zealand.

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<sup>74</sup> Binney, J, *Some Observations on the Status of Maori Women*, NZJH, 38, 2 (October 2004).

<sup>75</sup> Binney, J, *Some Observations on the Status of Maori Women*, NZJH, 38, 2 (October 2004).

<sup>76</sup> The following statistical statements based on statistics viewed at [www.stats.govt.nz](http://www.stats.govt.nz).

<sup>77</sup> Barrington, JM, *Northern Language, Culture and Education*, 2005, Wai 1040, #A2, at 200.

104. 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.
105. The life expectancy for Māori women is 77.1 years. For non-Māori women life expectancy is 83.9 years.
106. Approximately 11.7 percent of Māori women experience a high level of psychological distress. This too is the highest rate among women in New Zealand being 1.5% higher than Pacific women and a staggering 4.7% higher than European women.
107. Māori women also have over double the rate of suicides per 100,000 people as compared to non-Māori women.
108. The Crown has much to do to address these negative statistics and so far, has failed to do so adequately.

#### *The Claimants Experience*

109. The Claimants mother had a share in her iwi mana whenua, however the Māori trustee took control over the land, so when their mother passed the Claimants succeeded to her share as shareholders.
110. The Māori trustee has full control over this land, precluding the Claimants from making any decisions in relation to their shares of the land.
111. Additionally, the Claimants are unable to access this land for their own personal use.
112. The Claimant face an array of health issues, however due to their economic state in comparison to the cost of living, they find it difficult to manage these illnesses and improve their health outcomes.
113. Diabetes is one of the health issues faced. As healthy food is costly the Claimants struggle to improve their diets to maintain and manage their health.

114. Rongoā Māori is a method of healing prominently used by the Harris whānau. They provide this service to others in the wider community.
115. As the Crown has suppressed the use of these methods in mainstream healthcare, the whānau is unable to gain government funding, so they take a koha in exchange for the services given.

### **Prejudice**

116. As a result of the Crown's acts and omission, the Claimants claim that they have been prejudicially affected, in that the wāhine of Ngāti Taimanawaiti have suffered a diminution of the mana due to:
  - a. The alienation of Māori women from their traditional lands;
  - b. The undermining of their rangatira status;
  - c. The lack of a genuine voice in consultation over decisions around land and the environment;
  - d. Their inability to hold the kaitiaki (guardianship) status that many women held over their tribal lands;
  - e. The enforcement of British/western/colonial ideology at the expense of Tikanga; and
  - f. Negative social, educational and health outcomes for many Māori women.
  - g. The position of structural social and economic disadvantage that many Māori women find themselves in.

## SECOND CAUSE OF ACTION: CROWN FAILURE TO ACTIVELY PROTECT WĀHINE MĀORI IN THEIR ENGAGEMENT WITH CROWN AGENCIES

### Allegation

117. 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.
118. 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

#### *The New Zealand Justice System*

119. In pre-colonial Māori society, wāhine Māori could govern and/or participate in decisions relating to the political, military, social, economic, spiritual and cultural directions of their polities. This was because wāhine Māori lived in societies that:<sup>78</sup>

...embraced a world view determined by whakapapa; people reckoned their kinship to each other, including their seniority or inferiority, by descent from former common ancestors. Descent from bilateral senior lines conferred status which was, by definition, not confined to males. In a society which recognised the pre-eminent rank and status of some women, all women could not be regarded as inferior to all men.

120. Wāhine Māori could participate directly in the administration of justice, either as people of rank or as part of the collective group by making decisions by consensus.<sup>79</sup>

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<sup>78</sup> C Wickliffe, *Te Timatanga. Maori women's access to justice* (New Zealand Yearbook of New Zealand Jurisprudence, 2005), accessed at <<http://www.nzlii.org/nz/journals/NZYbkNZJur/2005/21.html>>.

<sup>79</sup> C Wickliffe, *Te Timatanga. Maori women's access to justice* (New Zealand Yearbook of New Zealand Jurisprudence, 2005), accessed at <<http://www.nzlii.org/nz/journals/NZYbkNZJur/2005/21.html>>.

121. Between 1840 and 1865, Māori women of rank maintained powerful positions within the social and political organisations of their tribal nations. This is reflected in the fact that they expected to participate in the signing of the Treaty of Waitangi.<sup>80</sup>
122. Under such auspicious beginnings, there was an expectation that wāhine Māori would continue to play a significant role in the administration of New Zealand laws.
123. With the exposure of Māori to aspects of colonisation such as the new economy, introduced disease, land alienation and Christianity, the role and status of wāhine Māori with regards to control, authority and direct participation in Māori self-government, as well as the development of Māori law and the administration of justice, changed.<sup>81</sup>
124. The role and status of wāhine Māori in society today is a far cry from what they initially held at 1840.

#### **Values and Lack of Engagement**

125. The values of the justice system are based upon a lack of engagement with Māori in the design and implementation of projects, and a lack of cultural sensitivity.
126. Biased practices exist within the system, in procedures from apprehending alleged offenders, to sentencing, which contribute to the higher imprisonment rates of Māori including wāhine Māori.<sup>82</sup>
127. The justice system often fails to respond to the needs of wāhine Māori.<sup>83</sup>
128. The Crown has failed to ensure that the justice system addresses socio-economic disadvantages to wāhine Māori and negative attitudes within the justice sector.<sup>84</sup>

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<sup>80</sup> C Wickliffe, *Te Timatanga. Maori women's access to justice* (New Zealand Yearbook of New Zealand Jurisprudence, 2005), accessed at <<http://www.nzlii.org/nz/journals/NZYbkNZJur/2005/21.html>>..

<sup>81</sup> C Wickliffe, *Te Timatanga. Maori women's access to justice* (New Zealand Yearbook of New Zealand Jurisprudence, 2005), accessed at <<http://www.nzlii.org/nz/journals/NZYbkNZJur/2005/21.html>>..

<sup>82</sup> The Human Rights Commission, *A Fair Go for All*, 2012, at 34.

<sup>83</sup> Law Commission, *Justice: The Experiences of Māori Women* dated April 1999, at 36.

129. This has led to wāhine Māori experiencing significant barriers to accessing justice and the perception that wāhine Māori are not valued by the justice system.<sup>85</sup>
130. Values important to wāhine Māori which are largely ignored by the justice sector include:<sup>86</sup>
- a. Whakamā;
  - b. Whānau;
  - c. Te reo Māori, and
  - d. Whenua.
131. Whakamā is not just about shame; it includes a sharing of guilt with other members of the whānau as well as re-integration into the community.<sup>87</sup> Recognition and acknowledgement of the whole whānau's whakamā is an important aspect of rehabilitation that is often lacking in the justice system.
132. Whānau includes the wider community. It is important for wāhine Māori to support whānau that appear before the courts. However, court facilities are not designed to accommodate whānau, nor those who come to give support to whānau.<sup>88</sup> The court system continues to fail to provide adequate facilities to accommodate the support of whānau at court cases.
133. Te reo Māori is important to wāhine Māori. The limited or poor use of te reo Māori is taken by many wāhine Māori to be an indication of the level of cultural awareness of those providing legal services. Poor pronunciation of Māori names is evidence that the system does not respect them.<sup>89</sup>
134. Whenua is steeped in cultural and spiritual identity, livelihood, social structure and values. The loss of the whenua is physical, cultural and

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<sup>84</sup> Law Commission, *Justice: The Experiences of Māori Women* dated April 1999, at 43.

<sup>85</sup> Law Commission, *Justice: The Experiences of Māori Women* dated April 1999, at 43,142, 144.

<sup>86</sup> Law Commission, *Justice: The Experiences of Māori Women* dated April 1999, at 28-32.

<sup>87</sup> Law Commission, *Justice: The Experiences of Māori Women* dated April 1999, at 28-29.

<sup>88</sup> Law Commission, *Justice: The Experiences of Māori Women* dated April 1999, at 30.

<sup>89</sup> Law Commission, *Justice: The Experiences of Māori Women* dated April 1999, at 31-32.

spiritual.<sup>90</sup> The justice sector fails to recognise the impact that the loss of whenua has on wāhine Māori. Failing to acknowledge the historical impacts of land alienation further disenfranchises wāhine Māori.

135. The Crown failure to acknowledge these values within the justice system alienates wāhine Māori from the justice sector and results in less engagement, less likelihood of rehabilitation, and an increase in the risk of re-offending.
136. This has resulted in wāhine Māori finding state services to be unresponsive and ineffectual.
137. The effects of colonisation, detribalisation, the breakdown of Māori society and institutions, and the lack of adequate systems and resources to respond to these issues have further contributed to the perception that wāhine Māori are accorded little or no value in the justice system.<sup>91</sup>
138. This failure effectively reduces the ability and desire of wāhine Māori to participate in the justice system.

#### *New Zealand Police*

139. Justice sector institutions such as the Police exercise specific powers, and officials and agents within these institutions are perceived to be powerful because of the positions they occupy, the responsibilities they are called upon to discharge and the resources they have at their disposal.<sup>92</sup>
140. Police interactions with wāhine Māori often fall short of the standard of common decency and dignity.<sup>93</sup>
141. The Police minimise the domestic violence concerns of wāhine Māori.<sup>94</sup>

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<sup>90</sup> Law Commission, *Justice: The Experiences of Māori Women* dated April 1999, at 32.

<sup>91</sup> Law Commission, *Justice: The Experiences of Māori Women* dated April 1999, at page 27; Lindsay Mitchel - *Te Oranga o te Iwi Maori: A Study of Maori Economic and Social Progress - Maori and Welfare* at 8

<sup>92</sup> Law Commission, *Justice: The Experiences of Māori Women* dated April 1999, at 34-35

<sup>93</sup> Law Commission, *Justice: The Experiences of Māori Women* dated April 1999, at 34-35

<sup>94</sup> Law Commission, *Justice: The Experiences of Māori Women* dated April 1999, at 35

142. High-handedness, stereotyping and minimisation of concerns results in a distrust of Police and detachment from the justice system.
143. This has led to wāhine Māori being less likely to report crime and, as a consequence, be less likely to be referred to services by Police.<sup>95</sup>
144. Many wāhine Māori prefer to live with violence rather than deal with a system that they perceive will exacerbate their own feelings of little value.<sup>96</sup>
145. In tikanga Māori, the whānau, hapū and iwi of the victim and offender are also affected by any wrongdoing.<sup>97</sup>
146. Police have difficulty accepting the view that Māori offenders had whānau members who were interested in their well-being and that whānau should be advised and consulted about the circumstances of a family member's interaction with Police.<sup>98</sup>
147. Failure to apply tikanga has resulted in distrust of state agencies and disenfranchisement of wāhine Māori and their wider collective group.

#### *Socio-economic Issues and Welfare Agency Engagement*

148. A large proportion of wāhine Māori are beneficiaries,<sup>99</sup> which is attributable to their childbearing role and associated childcare responsibilities.<sup>100</sup>
149. Wāhine Māori have been treated unfairly, patronised, exploited, duped and marginalised in relation to their interactions with state welfare agencies.<sup>101</sup>
150. Many wāhine Māori feel denied, derided or degraded by welfare agencies and suffer diminution of their mana in their engagement with these agencies.

<sup>95</sup> Law Commission, *Justice: The Experiences of Māori Women* dated April 1999, at 35-36

<sup>96</sup> Law Commission, *Justice: The Experiences of Māori Women* dated April 1999, at 36

<sup>97</sup> The Human Rights Commission, *A Fair Go for All*, 2012, at 34

<sup>98</sup> Law Commission, *Justice: The Experiences of Māori Women* dated April 1999, at page 35-36

<sup>99</sup> L Mitchel, *Te Oranga o te Iwi Maori: A Study of Maori Economic and Social Progress - Maori and Welfare*, at 23

<sup>100</sup> C Leggatt-Cook, *Gendered Pathways to Employment: An Analysis of the Experiences of Māori, Mixed Māori and Non-Māori Young People*, 2008, at 21

<sup>101</sup> L Mitchel, *Te Oranga o te Iwi Maori: A Study of Maori Economic and Social Progress - Maori and Welfare*, at 37

151. Wāhine Māori view state agencies as being intrusive and/or obstructive. A lack of knowledge about which services are available and the amount of time and effort required to receive assistance act as barriers to addressing their issues and encouraging their engagement.<sup>102</sup>
152. For wāhine Māori, engaging with Crown agencies can be intimidating<sup>103</sup> as there are perceptions of unhelpfulness and stereotyping.<sup>104</sup>
153. High-handedness and condescending approaches by state agents at vulnerable seasons discourages their engagement with these agencies.
154. The paternalistic approach of having a state department as the primary agent that controls the income of people on welfare, and which attempts to control their lives and activities, undermines principles of self-determination and tino rangatiratanga.

*Oranga Tamariki/Ministry for Children*

155. Traditionally, issues relating to the custody and support of children were sorted out within the whānau context.<sup>105</sup>
156. In colonial New Zealand, the father was given legal authority over the children.<sup>106</sup>
157. 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'.<sup>107</sup>

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<sup>102</sup> A Barry, L Gray, E Wilson, F Alikhan, C Carter, I Chan, T Dyce, L Elliot, K Fong, S Jury, H Louis, H Othman, S Rose, J Shin, E Tan, H Watson, M Wilson, TYang, *Trade-offs and Solutions : Investigating Survival Strategies and Decisionmaking to Mediate the Effects of Poverty in Whānau*, at 4

C Rawiri, *Adolescent Maori Mothers Experiences With Social Support During Pregnancy, Birth And Motherhood And Their Participation In Education*, at 26

<sup>103</sup> C Rawiri, *Adolescent Maori Mothers Experiences With Social Support During Pregnancy, Birth And Motherhood And Their Participation In Education*, at 103

<sup>104</sup> C Rawiri, *Adolescent Maori Mothers Experiences With Social Support During Pregnancy, Birth And Motherhood And Their Participation In Education*, at 54

<sup>105</sup> A Mikaere, *Māori Women: Caught in the contradictions of a Colonised Reality*, 2 Waikato L. Rev. 125 (1994), at 127.

<sup>106</sup> 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.

158. Male ownership of the children meant that a mother had no rights whatsoever to her children.<sup>108</sup>
159. Even today, the diminution of the mana of wāhine Māori is reinforced by frequent inequities in division of matrimonial property<sup>109</sup> as well as the continued trivialisation by the law and law enforcement agencies of domestic violence.<sup>110</sup>
160. Oranga Tamariki (previously Child, Youth and Families (“CYFS”)) is the statutory service charged with protecting children from abuse and neglect, providing secure care to those who need it, and the care of children who have committed an offence.<sup>111</sup>
161. For wāhine Māori, the ill-effects of having their children taken from them due to being ‘unsafe’ is part of the complex web of oppression resulting from the aggressive assimilationism of the coloniser.
162. Māori women have been ill-equipped to fight a Crown agency like the Oranga Tamariki service, and often fail to do so.
163. Under the Oranga Tamariki Act 1989 (“the Act”), any person with the leave of the Court can apply for a child or young person to be in need of care and protection,<sup>112</sup> which means that any person, and those with a grudge, can create a situation where a Māori mother may lose her children to the state.
164. Although it is possible for wāhine Māori to be granted custody of their children under the Oranga Tamariki Act 1989, this is unlikely as the mother or parent is not specifically named in the Act.<sup>113</sup>

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<sup>107</sup> 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.

<sup>108</sup> 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.

<sup>109</sup> *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.

<sup>110</sup> 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.

<sup>111</sup> Ministry of Social development, *State of Care 2015: At a glance*, at 4.

<sup>112</sup> Oranga Tamariki Act 1989, s 68.

<sup>113</sup> Oranga Tamariki Act 1989, s 79(e).

165. Under the Act, the child may be returned to their mother, but the Act allows the court to impose conditions relating to the supervision of the child.<sup>114</sup>
166. The power of having their children returned to them lies outside of the control of wāhine Māori, and in the hands of powerful state organisations and the judiciary.

#### *The Claimants Experience*

167. The Claimants whānau are largely involved in gangs where the men are constantly subject to extreme violence. This has a significant impact on the wider whānau as many of the wāhine experience their partners and husbands being imprisoned or killed from their gang involvement.
168. The involvement in gangs has come about as a result of the Crown failing to provide adequate education and employment opportunities to Māori, so as a result they are compelled to turn to a life of crime in order to survive.
169. The Claimants whānau are well known to authorities and are targeted, intimidated and provoked by the police as a result.
170. The Claimants have little respect for Crown institutions and authorities, as they have had poor interactions with them. The Crown institutions fail to recognise the Claimants status as treaty partners and are constantly being shunned and treated as second class citizens.
171. The Claimant has made a significant number of queries with Work and Income, Department of Corrections, New Zealand Police, Inland Revenue Department, Coroner's Office, Housing New Zealand and each time she is shunted from department to department. This exacerbates the distrust and lack of respect that the Claimants have for Crown agencies.
172. The Claimant has a significant number of whānau members with methamphetamine (P) addiction problems that have run into trouble with the authorities and the Family courts as a result.

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<sup>114</sup> Oranga Tamariki Act 1989, s 82.

173. One of the Claimants nieces opened up about her addiction as she needed some form of help to combat it. She was pregnant at the time, so the police obtained a warrant to take the child from her care as soon as it was born.
174. The Claimants niece did not want her child to be taken from her she wanted assistance to overcome her addiction. There was whānau willing to look after the child however the Police and the Child, Youth and Family office (“CYFS”) failed to show any compassion. She saw no other option other than to go on the run for a few months.
175. The Claimants whānau ended up in the family court, fighting against CYFS (now called Oranga Tamariki- Ministry for Children) for custody.
176. Child, Youth and Family were adamant that the child should be in their care, however an agreement was reached where the whānau could have custody of the child on the condition that the mother, father and the Claimant resided in the one dwelling to take care of the child.
177. Many of the Claimants whānau are unemployed however they avoid going through Work and Income New Zealand as they do not like the way the system operates and do not want to be reliant on the government due to the government being the cause of many of their grievances.

### **Prejudice**

178. As a result of the Crown’s actions and omissions, the Claimants as wāhine Māori have suffered the following prejudice:
  - a. Poor engagement with Crown agencies;
  - b. Powerlessness against the Crown agencies that seek to imprison them, or take their children away; and
  - c. Tikanga Māori and rituals relating to wahine Māori health have been subverted and eroded.

## THIRD CAUSE OF ACTION: THE FAILURE TO ACTIVELY PROTECT WĀHINE MĀORI FROM INEQUITIES IN THE EMPLOYMENT MARKET

### Allegation

185. In breach of the Treaty principles of active protection and equality, the Crown has failed to protect wāhine Māori from inequities in the employment market and to ensure equal treatment of Māori.

### Particulars

#### *Equal Opportunities and Pay Equity*

186. The role of wāhine in their whānau and hapū changed as interaction with Pākehā settlers intensified.<sup>115</sup>

187. Following World War II, wāhine Māori, like Pākehā women, entered the workforce but unlike Pākehā women, wāhine Māori were channelled into low-paying factory jobs.<sup>116</sup>

188. There is currently no legal obligation upon private sector employers to adopt equal employment opportunities policies or to uphold diversity quotas.<sup>117</sup>

189. The provisions of the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990 which prohibit 'discrimination' have failed to actively protect wāhine Māori from discrimination, as the statistics bear out:<sup>118</sup>

- a. Pākehā women earn between \$3 and \$6 more per hour than Māori, Pasifika and Asian women;<sup>119</sup>

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<sup>115</sup> A Mikaere, *Maori Women: Caught in the Contradictions of a Colonised Reality* (Waikato Law Review, Vol 2, 1994), at 133.

<sup>116</sup> T Pouwhare, *Māori Women and Work Community Research*, at 7, accessed at <<http://www.communityresearch.org.nz/wp-content/uploads/formidable/fitzpatrick8.pdf>>.

<sup>117</sup> L Te Aho, *EEO for Maori Women in Maori Organisations* (Waikato Law Review, 2001), at 190.

<sup>118</sup> New Zealand Bill of Rights Act 1990, s 19(1); Human Rights Act 1993, s 22.

<sup>119</sup> G Pacheco, *Empirical evidence of the gender pay gap in New Zealand* (Ministry for Women, 2017), at 13, accessed at <[http://women.govt.nz/sites/public\\_files/Empirical%20evidence%20of%20GPG%20in%20NZ%20-%20Mar2017\\_0.pdf](http://women.govt.nz/sites/public_files/Empirical%20evidence%20of%20GPG%20in%20NZ%20-%20Mar2017_0.pdf)>.

- b. Pākehā women in the public sector have had the largest increase in salaries in 2017 while pay gaps for Māori have worsened;<sup>120</sup> and
  - c. In 2017, Māori woman had a higher unemployment rate compared to women of other ethnicities.<sup>121</sup>
190. The Crown has a duty under Article 3 of Te Tiriti to address disparities between Māori and non-Māori, and is accountable for failing in its role as a regulator of employers and as an employer itself.
191. The Crown's failure to fulfil these duties is evident through the statistics on current disparities and inequities between wāhine Māori and Pākehā women and men in the employment market.

#### *Career Advancement*

192. Institutional racism and unconscious bias<sup>122</sup> impact the ability of wāhine Māori to advance their careers and move up the socio-economic scale.
193. Institutional racism, also called structural racism, is defined as:<sup>123</sup>

An entrenched pattern of differential access to material resources and state power determined by ethnicity and culture, which advantages one population while disadvantaging another.

194. In the employment market this form of racism operates by way of institutional policies and practices, such as hiring procedures, which are

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<sup>120</sup> State Services Commission, *Public Service Workforce Data (2017)*, at 33, accessed at <<http://www.ssc.govt.nz/sites/all/files/public-service-workforce-data-2017-v2.pdf>>.

<sup>121</sup> Statistics New Zealand, *Women in the Workforce 2017 (2018)*, accessed at <<https://www.stats.govt.nz/infographics/women-in-the-workforce-2017>>.

<sup>122</sup> A Blank, C Houkamau and H Kingi, *Unconscious Bias and Education: A comparative study of Māori and African American students* (Oranui, 2016), at 5: 'Unconscious bias refers to a social stereotype about certain groups of people that individuals form outside their own conscious awareness.'

<sup>123</sup> H Came, T McCreanor, *Pathways to Transform Institutional (and Everyday) Racism in New Zealand* (Journal of Social Anthropology and Cultural Studies, Vol 12, Issue 2, 2015), at 2.

shaped by individuals who, knowingly or not, maybe motivated by racial prejudice.<sup>124</sup>

195. It can also operate in the institutional practices that restrict professional access and advancement of individuals or groups on the basis of race or ethnicity.<sup>125</sup>

196. The Department of Social Welfare<sup>126</sup> has acknowledged the existence of institutional racism in 1988 in an historic report, *Puao-Te-Ata-Tu*.<sup>127</sup>

It is our view that the presence of racism in the Department is a reflection of racism which exists generally within the community. Institutional racism exists within the Department as it does generally through our national institutional structures. Its effects in this case are monocultural laws and administration in child and family welfare, social security or other departmental responsibilities. Whether or not intended, it gives rise to practices which are discriminatory against Māori.

197. These biases stem from an innate human tendency to organise social worlds by categorising.<sup>128</sup>

198. Māori are highly vulnerable to unconscious bias in New Zealand, due to stereotypes held against Māori.<sup>129</sup>

199. International and New Zealand research has detailed the extent of unconscious bias in the employment market.<sup>130</sup>

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<sup>124</sup> MA Rivera and JD Ward, *Employment Equity and Institutional Commitments to Diversity: Disciplinary Perspectives from Public Administration and Public Affairs Education* (Journal of Public Affairs Education, Vol 14 Issue 1, 2008), at 10.

<sup>125</sup> MA Rivera and JD Ward, *Employment Equity and Institutional Commitments to Diversity: Disciplinary Perspectives from Public Administration and Public Affairs Education* (Journal of Public Affairs Education, Vol 14 Issue 1, 2008), at 10.

<sup>126</sup> Now called the 'Ministry of Social Development'.

<sup>127</sup> The Maori Perspective Advisory Committee, *Puao-Te-Ata-Tu: The Report of the Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare* (Wellington, 1988), at 24.

<sup>128</sup> A Blank, C Houkamau and H Kingi, *Unconscious Bias and Education: A comparative study of Māori and African American students* (Oranui, 2016), at 5.

<sup>129</sup> A Blank, C Houkamau and H Kingi, *Unconscious Bias and Education: A comparative study of Māori and African American students* (Oranui, 2016), at 31.

<sup>130</sup> The University of Auckland, *Bias in employment and education*, accessed at <<https://www.auckland.ac.nz/en/about-us/about-the-university/equity-at-the-university/safe-inclusive-equitable-university/unconscious-bias/bias-in-employment-and-education.html>>.

200. The Crown has failed to adequately address the institutional racism and the unconscious bias that exists in the employment market causing the inequities between Māori and non-Māori.

#### *The Claimants Experience*

201. The Claimants are hard workers and have sought employment in a variety of roles.
202. A significant amount of jobs the claimants undertake are farm related and are paid under the table, they do what they can to survive.
203. As employment is often hard to find the Claimants have to be entrepreneurial and have found roles teaching traditional Māori practices such as speaking te reo, weaving and various other arts.
204. The Claimant is also a kuia of a company called Mackay that is involved in event planning. They are given gifts in exchange for their services instead of monetary payment.
205. Many of the Claimants whānau are unemployed but do not receive benefits, as these benefits are restrictive and the systems and institutions that provide these benefits are difficult to engage with.

#### **Prejudice**

206. As a result of the Crown's actions and omissions, the Claimants have suffered the following prejudice:
- a. Unemployment;
  - b. Exploitation; and
  - c. Unfair treatment.

## **FOURTH CAUSE OF ACTION: THE FAILURE TO ACTIVELY PROTECT MĀORI WĀHINE FROM SEXUAL VIOLENCE**

### **Allegation**

207. The Crown, through legislation, policies and practices diminished the mana of Māori wāhine throughout colonisation which has eroded the status of Māori women and left them vulnerable to sexual exploitation, abuse and violence.
208. The Crown, through legislation and colonial and modern-day policy failed to actively protect Māori women from sexual violence.
209. Te Tiriti placed an enduring obligation on the Crown to protect Māori from the adverse transitional effects of settlement.<sup>131</sup> This obligation arises over and above considerations of equity. It calls for additional resources and effort to be deployed in favor of Māori whenever general programmes afford them insufficient protection.<sup>132</sup> 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**

#### *Introduction*

210. In traditional Māori society, Māori women were highly valued and treasured by members of the whānau and hapū.
211. An assault on a wāhine Māori, be it sexual or otherwise, 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.<sup>133</sup>
212. Instances of abuse against women and children were regarded as whānau concerns and action would inevitably be taken against the perpetrator. As

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<sup>131</sup> Waitangi Tribunal, *The Napier Hospital and Health Service Report*, (Wai 692, 2001), at xxv.

<sup>132</sup> Waitangi Tribunal, *The Napier Hospital and Health Service Report*, (Wai 692, 2001), at 53.

<sup>133</sup> S. Cox (Ed), "*To us the dreamers are important*" in *Public and Private Worlds* (1987) at 57.

'In pre-colonial Maori society a man's house was not his castle. The community intervened to prevent and punish violence against one's partner in a very straightforward way'.<sup>134</sup>

213. If there was misconduct, divorce would be the result, which contained no stigma and the wronged wāhine would return to her whānau.
214. Her rights and place within her whānau was not affected by marriage.
215. The absence of distinction between private and public domains in the context of family arrangements protected and affirmed Māori wāhine.<sup>135</sup>

#### *Impact of Colonisation*

216. According to the English common law, the head of the family (the husband/father) was in control of the household, 'women and children were chattels to be used and abused by the paterfamilias as he chose'.<sup>136</sup>
217. During colonisation, it is accepted that sexual violence and sexual harassment were common, but were seldom discussed or reported.<sup>137</sup>
218. 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.<sup>138</sup>
219. The age of consent was raised to 16 in 1896, and incest was criminalised in 1900.<sup>139</sup>

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<sup>134</sup> S. Milroy, *Domestic Violence: Legal Representation of Māori Women* dated 1994, unpublished paper, at 12.

<sup>135</sup> A. Mikaere, *Māori Women: Caught in the contradictions of a Colonised Reality*, 2 Waikato L. Rev. 125 (1994), at 127.

<sup>136</sup> Quoted in Scutt, J, *Even in the Best of Homes* dated 1983, at 9.

<sup>137</sup> 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.

<sup>138</sup> 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.

<sup>139</sup> 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.

220. 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 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.<sup>140</sup>
221. The frequent inequities in division of matrimonial property<sup>141</sup> as well as the continued trivialisation by the law and law enforcement agencies of domestic violence<sup>142</sup> 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.
222. Throughout colonisation, the Crown failed to protect Māori wāhine from sexual violence, assault or incest.
223. Rape<sup>143</sup> became a significant public issue in the 1970s when politicians were lobbied to change the law and policing practices.<sup>144</sup> This resulted in the first legal measure aimed at protecting women from violence by male partners being enacted in 1982. In 1985 marital rape became a crime.<sup>145</sup>

#### *Modern Incidence of Sexual Violence*

224. Today, sexual violence affects one in three women in New Zealand, and is most likely to be experienced as a child.<sup>146</sup>

<sup>140</sup> 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.

<sup>141</sup> *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.

<sup>142</sup> 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.

<sup>143</sup> Crimes Act 1961, s 128(2); Rape is ordinarily understood as sexual intercourse without consent; but does not require full penetration.

<sup>144</sup> 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).

<sup>145</sup> 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; As a result of the Crimes Amendment Act (No 3) 1985, it is now possible for a husband to be charged with the rape of his legal spouse (see s 128(4) of the Crimes Act 1961).

<sup>146</sup> N. Wood and S. Dickson, *Reporting Sexual Violence in Aotearoa New Zealand* (Tauwi Prevention Project, Tauwi Caucus of TOAH-NNEST), at 8.

225. 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.<sup>147</sup>
226. 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.<sup>148</sup>
227. The effects of colonisation such as a high prevalence of deprivation, poverty and poor health outcomes function to exacerbate the impacts of sexual abuse.<sup>149</sup>
228. Survivors of sexual violence generally do not report sexual violence due to fear, shame and the belief that they will be to blame.<sup>150</sup>
229. 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.<sup>151</sup>
230. Out of 56 countries, New Zealand has the third highest prevalence of non-partner sexual violence.<sup>152</sup>

### *Reporting Sexual Crime*

231. 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.<sup>153</sup>

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<sup>147</sup> 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/>>.

<sup>148</sup> New Zealand Family Violence Clearinghouse, *Briefing Paper: The Community Sexual Violence Sector Auckland Region 2011*, (2011), at 5.

<sup>149</sup> New Zealand Family Violence Clearinghouse, *Briefing Paper: The Community Sexual Violence Sector Auckland Region 2011*, (2011), at 5.

<sup>150</sup> N. Wood and S. Dickson, *Reporting Sexual Violence in Aotearoa New Zealand* (Taiwi Prevention Project, Taiwi Caucus of TOAH-NNEST), at 8.

<sup>151</sup> N. Wood and S. Dickson, *Reporting Sexual Violence in Aotearoa New Zealand* (Taiwi Prevention Project, Taiwi Caucus of TOAH-NNEST), at 12.

<sup>152</sup> N. Abrahams, K. Devries, C. Watts, C. Pallitto, M Petzold, S. Shamu and C. Garcia-Moreno, *Worldwide prevalence of non-partner sexual violence: a systematic review* (2014) Vol 383, 1648, Lancet at 1651.

<sup>153</sup> 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).

232. 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.<sup>154</sup>
233. In 2004, it was reported that '[u]p to one in five women will experience sexual assault as an adult'.<sup>155</sup>
234. 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'.<sup>156</sup>
235. For Maori wāhine, 'the likelihood of sexual violence is nearly twice as high as the general population'.<sup>157</sup>
236. In New Zealand, most victims of sexual violence never tell the authorities, 'with an estimated 9 percent of incidents being reported to police'.<sup>158</sup>

### *Sexual Assault*

237. In 1978, there were 908 reported sexual assaults. In 1993, the number had increased 'steeply to a peak of 3,222'.<sup>159</sup>
238. Changes to the law in the 1980s made it easier to report sexual assault because the Crown had criminalised sexual violence.
239. The fact that there were significant increases to rates of reported offences in the late 1980s and early 1990s<sup>160</sup> is directly attributable to the amendment to the Crimes Act 1961. Notwithstanding, from 1840 until 1985, the Crown did nothing to protect Māori wāhine from sexual attack including rape, sexual assault and incest.

<sup>154</sup> 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).

<sup>155</sup> 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.

<sup>156</sup> 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.

<sup>157</sup> Mayhew, P. and Reilly, J., Ministry of Justice, *The New Zealand Crime and Safety Survey 2006*, 2009.

<sup>158</sup> Ministry of Women's Affairs (2009). *Restoring Soul: Effective Interventions for adult victims/survivors of sexual violence*. MWA: Wellington.

<sup>159</sup> 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).

<sup>160</sup> 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).

240. Between 1997 and 2009, the number of recorded sexual attacks averaged at over 2,500 a year.<sup>161</sup>
241. In 2014, 4,056 sexual assaults were reported, yet only half were resolved.<sup>162</sup>
242. In 2013, 19 percent of Māori experienced more than one violent interpersonal offence.<sup>163</sup>
243. Despite the drastic rise in recorded sexual assaults, it is estimated that only 10 percent of all sexual assaults are reported.<sup>164</sup>
244. Within the last ten years, the Crown deemed that Māori wāhine were more likely than the Māori average to be repeatedly victimised<sup>165</sup> yet little action to mitigate this risk of harm has been implemented by the Crown.

### *Incest*

245. Incest<sup>166</sup> 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'.<sup>167</sup>
246. Thirty two per cent of adult women (up to 65 years old) stated they had unwanted sexual experiences before they turned 16.<sup>168</sup>

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<sup>161</sup> G. 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).

<sup>162</sup> G. 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).

<sup>163</sup> 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.

<sup>164</sup> 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).

<sup>165</sup> 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.

<sup>166</sup> Incest is sexual abuse or sexual conduct between relatives in one's immediate family or extended family.

<sup>167</sup> Rape Prevention Education Whakatu Mauri, *Types of Sexual Violence – Incest* (<http://rpe.co.nz/information/types-of-sexual-violence/incest/>), Sourced 25 July 2018.

<sup>168</sup> 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.

247. Twenty percent reported unwanted touching of their genitals, or attempted or completed sexual intercourse.<sup>169</sup>
248. Despite the fact that incest leaves a lasting, significant harm in its victim, the Crown did not criminalise it until 1985.

#### *Support Services*

249. 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.<sup>170</sup>
250. 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.
251. 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.
252. Every time they see a new therapist, they must recount their trauma.

#### *Protecting those at risk*

253. Throughout colonisation, Crown action to protect Māori wāhine 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

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<sup>169</sup> E. Davies, and J. Masson, “*Emma Davies and Jeffrey Masson question the psychological research*” in *A City Possessed*, NZLJ, September 2003.

<sup>170</sup> Accident Compensation Corporation (<https://www.acc.co.nz/about-us/who-we-are/our-history/#1972--the-accident-compensation-act>), Sourced 29 August 2018.

violence by providing inadequate support for the reporting of sexual violence and for its traumatic effects.

254. 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.<sup>171</sup>
255. 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.<sup>172</sup>
256. 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.<sup>173</sup>
257. 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'.<sup>174</sup> This equated to an additional \$250 for each refuge home.
258. 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.
259. The Crown's response to the issue of providing a safe haven for the survivors of sexual violence and assault is insufficient and obtuse.

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<sup>171</sup> New Zealand Women's Refuge, *Our story: Working for women past present and future*, at 1.

<sup>172</sup> New Zealand Women's Refuge, *Our story: Working for women past present and future*, at 1.

<sup>173</sup> New Zealand Women's Refuge, *Our story: Working for women past present and future*, at 2.

<sup>174</sup> 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.

### *The Claimants Experience*

260. Sexual abuse has been a prominent issue within the Claimants whānau and has caused a significant amount of trauma.
261. The Claimant was sexually abused in her childhood by various whānau members, and foster parents while she was a ward of state.
262. The Claimant's daughter was also sexually abused as a child by her uncle who was also sexually abused as a ward of state.
263. Relationships of incest, both voluntary and involuntarily have occurred within the Claimants whānau which has put a strain on close whānau bonds.
264. As a result of the Crown's actions and policies sexual abuse within the Claimants whānau has been intergenerational and has had a significant impact on other aspects of their lives.

### **Prejudice**

265. As a result of the Crown's actions and omissions the Claimants have endured the following prejudice:
  - a. Wāhine Māori have suffered as a result of being survivors of sexual abuse, sexual violence, rape and incest; and
  - b. Wāhine Māori have not been actively protected, and in the case of abuse, assault, rape or incest, not had the proper support or relief.

### **RELIEF**

266. The Claimants seek the following relief:
  - 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 wāhine 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 inequities in the employment market and to ensure equal treatment of Māori wāhine;
  - ix. 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 wāhine Māori vulnerable to familial or domestic violence;

- x. Its failure to protect the mana of Māori wāhine throughout colonisation which eroded the status of Māori women and left them vulnerable to sexual exploitation, abuse and violence;
  - xi. Its failure to protect wāhine Māori from sexual violence; and
  - xii. 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.
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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 Crown implement legislation to address inequities within the employment market in relation to pay disparity experienced by wāhine Māori, and barriers to career development due to unconscious bias and discrimination;
  - f. A recommendation that the Crown fund equal opportunities for Māori wāhine;
  - g. A recommendation that the Crown funds a special wāhine Māori youth training programme;
  - h. A recommendation that the Ministry of Business, Innovation and Employment implement training and policy manuals, and publications for all businesses on unconscious bias and systemic racism to address the issue of racial discrimination;
  - i. 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;

- j. 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 wāhine Māori;
- k. A recommendation that ACC increases public awareness of its provision of treatment for survivors of sexual violence;
- l. A recommendation that ACC extends the provision of the sensitive claims therapist to victims of domestic violence;
- m. A recommendation that ACC incorporates a tikanga Māori alternative to therapy for those wāhine Māori who have suffered as a result of sexual violence;
- n. A recommendation that the Crown reviews the Prostitution Reform Act 2003 and relevant policies in relation to the impact on Māori wāhine in street sex work; and
- o. Such other findings and recommendations that the Tribunal considers appropriate in the circumstances.

Dated at **Auckland** this **31st** day of **August 2018**



**Darrell Naden**  
**Counsel Acting**



**Stephanie Roughton**  
**Counsel Acting**



**Karuna Deobhakta**  
**Counsel Acting**

This Statement of Claim is filed by **DARRELL CY FREDERICK NADEN**, Solicitor for the Claimants, of the firm Tamaki Legal Limited. The address for service of the Claimants is at the office of Tamaki Legal Ltd, Barristers and Solicitors, 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 [darrell@tamakilegal.com](mailto:darrell@tamakilegal.com).