BEFORE THE WAITANGI TRIBUNAL

WAI 2700
WAI 2494

IN THE MATTER OF the Treaty of Waitangi Act 1975

AND

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

AND

IN THE MATTER OF a claim by **Donna Awatere-Huata** of Ngāti Porou, Ngāti Whakaue and Ngāti Hine, on behalf of herself and all Māori (**Wai 2494**)

SECOND AMENDED STATEMENT OF CLAIM

Dated this 8th day of May 2025

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MAY IT PLEASE THE TRIBUNAL

Introduction

1. This Amended Statement of Claim is filed on behalf of Donna Awatere-Huata of Ngāti Porou, Ngāti Whakaue and Ngāti Hine, on behalf of herself and all Māori ("the claimant").

2. The Wai 2494 claim is being amended to assert further Crown breaches of the principles of Te Tiriti o Waitangi in relation to the undermining of the rangatiratanga of Wāhine Māori and imposing a set of patriarchal partnership, ideologies, systems and beliefs that enabled the Crown to co-opt Māori men to influence other Māori constructs and institution, that the role of whakapapa in connecting us with nature, our reciprocal relationship with nature, our kawa, our tikanga, our reo - towards the Pākehā agenda of the promotion of Pākehā rights and Pākehā superiority over Wāhine Māori.

Background

3. Mana Wāhine embodies many elements of Mana – or power(s).

4. One element is **Mana Atua** – female godliness - the cosmology of Māori women – our spiritual presence in the beginnings of the universe as Atua, as having powers and responsibilities to that universe. Mana Atua is integral to the tino rangatiratanga of Māori women.

5. Another element is **Mana Whenua** – the right to exercise mana whenua to inherit their lands, to assert their leadership, to hold a place in whakapapa that is integral to the rangatiratanga of women.

6. Another element is **Mana Tangata** – attributing mana to women as rangatira in their own right, as the whare tangata of humankind and for their services to the whānau and hapū of which wāhine Māori are the nurturing womb of evolution and from there the threads of whenua (the lands), moana (the oceans) and tangata (humankind) are interconnected to protect, guide and sustain our universe, Te Ao Māori.

The Claim

7. The core of this claim is that the Crown has failed to protect the claimant and Wāhine Māori from racism, racist policies, Acts, omissions and other prejudice which has impacted on their mana, their rangatiratanga, their tāonga and their ability to be treated as equals in education, in the media, in justice, in housing and in health.

8. Awatere has a "sharp focus on white supremacy" and the exercise of racism within the justice system,

> *Racism is an integral part of the white separatist state. Racism exists because it is supposed to exist. It is the effect of white separatism and white supremacy. Racism will not vanish by simply acknowledging that it's there and telling those who do it to stop. Merely telling judges that statistics and research show that they are seven times more likely to find any Māori guilty than any white will not stop them from doing it. Neither will telling the police that they are six times more likely to arrest any Māori as any white will stop them doing it. Again, they are supposed to act this way […]. Of course they are […]*[1]

9. As a direct result of Crown breaches Māori are prevented from fair and equal treatment as Wāhine Māori. This has negatively impacted on Māori well-being and the ability to progress. Furthermore, the Crown has allowed institutionalised racism to deprive Māori of their potential, their women leaders, their assets and of their autonomy.

Te Tiriti o Waitangi

10. By 1840, the British view of the worthlessness of Māori women was already entrenched. Only 11 women signed Te Tiriti and there was such a fuss made by some Māori men over some women signing.

11. However, once the Treaty was signed and the floodgates opened for immigration, the world of the whānau became a mirror image of that of the British patriarchy, Māori girls and women were relegated to the same kinds of economic

[1] Awatere, Donna. 1984. *Māori sovereignty.* Auckland: Broadsheet. p.26

powerlessness, inability to inherit, without status or a voice and became victims of the same kinds of savage abuse experienced by British women at that time.

12. Te Tiriti o Waitangi recognises Māori autonomy and outlines the obligations of the Crown:

    a) Article I of Te Tiriti recognises Māori sovereignty and guarantees the protection of Māori land, waterways and tāonga;

    b) Article II of Te Tiriti recognises tino rangatiratanga and guarantees to Māori the protection of te ao Māori including social organisations, papa kainga and whenua noho; and

    c) Article III of Te Tiriti guarantees to Māori the same rights and privileges of Pākehā.

13. The Crown has failed and continues to fail to honour all that was guaranteed to Māori under Te Tiriti which has led to a break down in intergenerational support, isolation from papakāinga, crowded living conditions, homelessness and a high number of Māori living in poverty.

14. There is a clear contrast between the promises made by the Crown under Te Tiriti and what was and what is being delivered to Māori.

FIRST CAUSE OF ACTION: ACTS OF DISCRIMINATION AND RACISM TOWARDS WĀHINE MĀORI

Allegations

15. In breach of the principles of Te Tiriti o Waitangi, Crown policies, practices and omissions to intervene have diminished the status of Māori women and made them vulnerable to discrimination and racism in all contexts of economic, social, cultural and spiritual well-being.

Particulars

16. Racism involves the prejudices of individuals as well as institutional actions both of which are underpinned in one's own racial and cultural superiority. The hallmark

of racism is the belief in the superiority of one's own race and the inferiority of the others.[2]

17. The effect of the Crown's denial of the inherent mana and role of wāhine Māori has resulted in systemic discrimination, deprivation and inequities. This is evident in:

    a) the appointment, representation and participation of wāhine Māori in governance and decision-making across all sectors; and

    b) all areas of wellbeing including cultural, spiritual, political, health, justice, social, economic, education and environmental.

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

19. The Crown's failure to acknowledge the presence and impacts of racism, racist policies, acts and omissions, is to deny their racism and normalise colonisation as the dominant culture whilst oppressing the indigenous culture of Māori.

20. Urbanisation also brought exposure to systemic racism and socio-economic inequities, with Māori often relegated to low-wage, labour-intensive jobs and substandard housing. Wāhine Māori bore the brunt of these challenges as they worked to provide for their families while contending with discrimination and the loss of traditional whānau support systems. The shift from rural to urban living altered the social fabric of whānau, eroding the roles and responsibilities of wāhine Māori as central figures in sustaining whakapapa and cultural traditions.[3]

21. The Claimants say that the Crown has breached the principles of Te Tiriti by failing to protect the interests of wāhine Māori across all areas of wellbeing including spiritual, cultural, political, social, education, health, justice, economic and environmental, thereby resulting in the systemic deprivation of and inequitable outcomes for wāhine Māori.

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[2] Statement of Evidence of Donna Awatere-Huata, 30 March 2016, Wai 2500, #A155 at [9].

[3] Māna Wahine Inquiry – Wai #2700 Whānau & Whakapapa Draft Report, Fiona Cram, PhD, Katoa Ltd, 4 February 2025.

22. The claimants say that the Crown has breached the principles of Te Tiriti by institutionalising ethnicity and gender based discrimination against wāhine Māori within Crown policies, practices, processes, structures and systems.

23. The Claimants say that the Crown has breached the principles of Te Tiriti by failing to afford wahine Maori equal access, opportunities, resources and outcomes as non-Maori.

24. The Claimants say that the Crown has breached and continues to breach the principles of Te Tiriti by failing to remedy systemic inequities experienced by wāhine Māori.

25. The claimants say further that wahine Maori should not be viewed as a comparator group against other groups within the Crown's hierarchy of oppression. Rather, the Crowns breaches of Te Tiriti in respect of wahine Maori must be viewed against the restoration of balance that once existed and the reclamation of the rightful place and dignity of wahine Maori.

26. Attitudes, actions and decisions made on the basis of race is racist. However, the impact of racist actions is the same as those motivated by racial hatred.[4]

27. The fundamental driver, the attitude and belief engine propelling racist actions has never been taken seriously by the Crown nor identified as the underpinning rationale for racism and eventually for actions that breach Te Tiriti.[5]

28. Wāhine Māori were most adversely affected because the (re)imaging and (re)construction of the mana and role of wāhine Māori were replaced by Western ideologies and social, political and religious constructs that men were superior, and therefore the impacts of colonisation on wāhine Māori were far greater.

29. We outline these in the following parts:

    a) Wāhine Māori (Re)Imaging and Othering;

    b) The (Re)Construction of the Role of Māori Women;

[4] Statement of Evidence of Donna Awatere-Huata, 30 March 2016, Wai 2500, #A155 at [13].
[5] Statement of Evidence of Donna Awatere-Huata, 30 March 2016, Wai 2500, #A155 at [15].

c) Wāhine Māori in political decision making; and

d) The Marginalisation of women in Education and Te Reo Māori.

30. Patriarchal and colonial ideologies are inextricably linked. Sandra Ponzanesi states that it "is a striking fact that colonial authority and racial distinctions were implicitly structured in gendered terms".[6] She maintains that eugenics, scientific and ethnological evidence was used to construct scientific racism, and that women were reduced to the quintessence of their biological anatomies. Ponzanesi argues that colonial discourse constructed the black body as an iconography of sexuality and desire.[7]

31. In particular, the black female body was sexualised and represented as both "inherently primitive-and-sexually-available and menacing-and-dangerous".[8] The black feminine was essentialised and de-anatomised to 'her' body parts; the penetrative-scientific - 'white'- gaze demarcated and dissected the black body to 'produce' knowledge to justify the colonial invention of 'race'.[9]

32. In this way "research on women's bodies went hand in hand with the colonial production of knowledge of race and alterity".[10]

Wāhine Māori (Re)Imaging and Othering

33. Aroha Yates-Smith,[11] in her cosmological exploration of the feminine in Māori spirituality argues that 'Hine' (the feminine) was the source of generative power for the Universe. She explains that despite the powers of the goddesses, the effects of colonisation and the Christianisation of Māori society marginalised the feminine, rendering 'her' invisible and voiceless within the old religion: "with time

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6 Ponzanesi, Sandra, *Beyond the Black Venus. Colonial Sexual Politics and Contemporary Visual Practices*, 2005.

7 Ponzanesi, Sandra, *Beyond the Black Venus. Colonial Sexual Politics and Contemporary Visual Practices*, 2005.

8 Ponzanesi, Sandra, *Beyond the Black Venus. Colonial Sexual Politics and Contemporary Visual Practices*, 2005.

9 Ponzanesi, Sandra, *Beyond the Black Venus. Colonial Sexual Politics and Contemporary Visual Practices*, 2005.

10 Ponzanesi, Sandra, *Beyond the Black Venus. Colonial Sexual Politics and Contemporary Visual Practices*, 2005.

11 Yates-Smith, Aroha, *Hine! e Hine!: Rediscovering the feminine in Māori spirituality*, PhD Thesis, University of Waikato, 1998.

the virtual nullification of the atua wāhine [goddesses] within Māori cosmology would result in a corresponding marginalisation of women in Māori society".[12]

34. Yates-Smith also argues that female deities were written out of history and superseded with male Gods to reinforce patriarchal systems of thought. This happened quite severely in the Māori context, as ethnographers recorded accounts from Māori men and then interpreted them in a Eurocentric and patriarchal way.[13]

35. Linda Tuhiwai Smith[14] maintains that at the very level of language, the translation of Māori conceptualisations into English subjected Māori to a process of engendering; this was problematic due to the nineteenth century men-higher-than-women thinking of European society inherent in the English language.

36. Thus, through language and phallocentric subjectivity Māori women have not only had their spiritual role minimised, there were rendered hyper-Other: 'less than' white men, white women, and Māori men or rendered incapable of participating in any political decision-making processes.

37. In 1974, Hilda Halkyard faced racism head on at a time when discrimination against Māori in the cities was rife especially at the Auckland University campus.

38. On 1 May 1979 a Māori and Pacific Island group called He Tauā took exception to engineering students making fun of the haka as part of capping week celebrations. Drunk Pākehā students in grass skirts disrespected Polynesian culture by painting male genitals on their bodies and performing the haka with sexual gestures.

39. In doing so the engineering students ignored 25 years of criticism and submissions by Māori. The engineering students stated: "We can do what we like and no one is going to stop us".

40. Ms Halkyard took matters into her own hands and replied *"How dare you bastardise our culture, stop it now".* The incident ended in an altercation on campus and a court case with eight He Tauā members being charged with assault.

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[12] Yates-Smith, Aroha, *Hine! e Hine!: Rediscovering the feminine in Māori spirituality*, PhD Thesis, University of Waikato, 1998 at 4.

[13] Yates-Smith, Aroha, *Hine! e Hine!: Rediscovering the feminine in Māori spirituality*, PhD Thesis, University of Waikato, 1998 at 4.

[14] Tuhiwai Smith, Linda, *Decolonizing Methodologies: Research and Indigenous Peoples*, Zed Books, London, 1999.

This raised the issue of racism against Māori in the 70s and the role of the haka in Māoridom.

41. He Tauā was the first group to take action and it paved the way for more protests by Māori over Te Tiriti issues. It never happened again and the 1979 incident sent a message to the Pākehā students on campus who would never exploit Māori culture or the haka again. Janet Roth, President of the Auckland University Students Association, was dismissed by her colleagues for challenging the cultural violence of the Engineering students.

Political Decision-Making Processes

42. The claimants say that, inconsistent with customary political systems of Maori and Te Tiriti, the Crown further implemented legislation and policies that denied the voice of Wahine Maori. Examples include:

    a) The New Zealand Constitution Act 1852, which denied women the right to vote in the parliamentary process; and

    b) The Māori Representation Act 1867, which established four Māori seats in parliament but denied Māori women the right to vote in parliament until 1919.

43. The exclusion of wahine Māori from participating in decisions that directly affected them, their whānau, hapu and iwi prevented wahine Maori from exercising their tino rangatiratanga, in breach of their right guaranteed under Te Tiriti.

44. The claimants say further that the Crowns breaches of Tino Rangatiratanga have resulted in the erosion of mana wahine with iwi and hapu decision making. In particular:

    a) The Crown reinforced colonial gender norms through legislation, policies and practices.

    b) Crown actions contributed to the internalisation of such colonial gender norms within Māori society that has, at times, confused or diminished the role of wahine Māori.

    c) By its actions and omissions, the Crown has contributed to the disruption and distortion of the balance that once existed in the

> rangatiratanga sphere, with patriarchal models of authority normalised and embedded in tikanga as its practiced today.

45. The exercise of political authority by women was part of Māori life and a feature of Māori society. *The People of Many Peaks*[15] provides examples of wāhine Māori who lived between 1769 – 1869 and wielded huge political influence in their tribes.

46. One of these wāhine rangatira was Rangi Topeora who was the daughter of Waitohi from Ngāti Toa Rangatira and Ngāti Raukawa. She was also one of the female signatories to te Tiriti.

47. The fact that te Tiriti was signed predominantly by men is a reflection of pre-colonised attitudes towards women and an indication of the influence of the colonising culture. Those seeking signatories either ignored or rejected the possibility of women signing. It is also partly the result of Māori women signatories having been rendered invisible.

48. As Dr Kathy Irwin explains:[16]

> *Our women, and their stories, have been buried deeper and deeper in the annals of time by the processes of oppression that seek to render us invisible and keep us out of the records.*

49. Wāhine Māori retained their land rights throughout their lives however once the Native Land Court was established in 1865, it forced Māori to convert their customary communal title into individualised title derived from the Crown, wāhine Māori become legally recognised land owners. They were unaware that upon marriage the law held that their land interests passed to their husbands. Upon learning that, some women refused to marry rather than lose their land rights.[17]

50. It is well documented in whakapapa histories of whānau that Pākeha men intentionally sought out marriage with wāhine Māori in order to acquire their lands and divorced soon after title was changed, leaving those wāhine and her whānau, helpless and landless.

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[15] Orange, C (ed) *The People of Many Peaks: the Māori biographies from the Dictionary of New Zealand biography,* Volume 1, 1769-1869 (Bridget Williams Books,Wellington, 1991).

[16] Irwin K, 'Towards Theories of Māori Feminism' in *Feminist Voices: a Women's Studies Text for Aotearoa/New Zealand,* Du Plessis, R and Bunkle, P et all (eds) (Oxford University Press, Auckland, 1992) at 1.

[17] Coney, S, *Standing in the Sunshine: A History of New Zealand Women since they won the Vote*, (Viking Penguin Books, Auckland, 1993) at 189.

51. Ani Mikaere describes how Māori frustration with the Crown breaches of Te Tiriti increased and culminated in attempts to set up parallel systems of government for Māori. In 1892, Kaungahanganui was established by King Tawhiao and in the same year at Te Tiriti o Waitangi marae, Kotahitanga mō Te Tiriti o Waitangi, the unification of the tribes under the Treaty[18].

52. By 1893, there were 21,900 members of Te Kotahitanga which grew to 35,000 by 1895. Wāhine Māori who had the mandate of their iwi to speak in the Māori Parliament, did not have the right to vote or stand as members. Meri Mangakāhia of Te Rarawa, another great wāhine Māori political leader of the time, put forward a motion that women should be able to do both.

53. Meri Mangakāhia's logic was that wāhine Māori were land owners, and knowledgeable as to land management. She pointed out that efforts of men to bring about change in land legislation had been fruitless and it was therefore time to let the women try.[19]

54. Some four years later in 1897 her motion was passed but by then the women had formed Ngā Kōmiti Wāhine, a national network of Māori women's committees and operated from their marae bases until well into the century.

55. In 1902, Te Kotahitanga held its last meeting and Dr Ranginui Walker suggested that its demise was partly as a result of the inability of Te Kotahitanga and the King Movement to unite, the introduction of the Māori Councils Act 1900 and the Native Lands Administration Act of that same year.

56. In September 1951, wāhine Māori established its first ever national Māori organisation, the Māori Women's Welfare League ("the League"). Te Puea Herangi became its patron and Whina Cooper its inaugural President.

57. The breadth of the League's activities and political influence caused concern in some departments and in 1953 a letter to the Minister of Māori Affairs complained that the League had usurped the authority of the men and taken control of the Pā. This eventually led to the Department of Māori Affairs withdrawing its administrative support for the League in 1960. In 1962, the Māori Welfare Act

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[18] Walker, R, *Ka Whawhai Tonu Matou: Struggle without end,* (Penguin, Auckland, 1990) at 165 and 169.

[19] Rei, Tania, *Māori Women and the Vote*, Huia Publishers, Wellington, 1993 at 18.

abolished the tribal committees and established the New Zealand Māori Council, which was, and has remained, a largely male and conservative institution.

58. One of the most poignant wāhine Māori leaders of that era, Dame Mira Szászy observed that:[20]

> *After 10 years of Māori women running the Māori world there a reaction amongst men, that they were being left out of things…So the men moved to get the government to approve the establishing of the National Māori Council…For me that was the beginning of the dichotomy of power and development within the Māori world.*

59. Māori men, with the support of the governments of that time, actively supported the relegation of the League to what was assumed to be domestic, non-political activities, accepting the Pākeha delineation between public spaces being the male domain and private spheres, the female domain.

60. The New Zealand Māori Council became the government's "sounding board"[21] for legislation and were provided with administrative support. In more recent times the National Iwi Chairs Forum (NICF) has emerged as the key stakeholder group with access to key cabinet strategies on Treaty issues. This has enabled the Crown to entertain national settlements on key resources like climate change, freshwater, geothermal and foreshore and seabed rather than dealing with these issues in accordance with Te Tiriti guarantees. The Crown appears to be engineering a Treaty partner in its own image that is subordinate to it.

61. Māori women remain largely absent and/or underrepresented from consultative and advisory bodies established by the Crown to provide Māori input into decision-making processes. Whilst gender balance is an ongoing issue for all women, wāhine Māori representation is a much larger issue, in particular, in areas where the wellbeing of tamariki and mokopuna Māori are pivotal.

62. Instead of being represented on these boards, Māori (including Māori women) are consulted with post-facto or in special circumstances where there is a pressing need for Māori input on particular issues. The consultation processes have been subject

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[20] Szásy, M, Rogers, M & Simpson, A, *Te Tīmatanga – Tātau Tātau: Te Rōpū Wāhine Māori Toko i te Ora, Early stories from founding members of the Māori Women's Welfare League* (Bridget Williams Books, 1993) at 225.

[21] Walker, R, *Ka Whawhai Tonu Matou: Struggle without end,* (Penguin, Auckland, 1990) at 206.

to ongoing concern in the Crown's ongoing failure to include the opinion of Wāhine Māori.

63. 178 years after signing Te Tiriti the Crown continues to negotiate with Māori men while ignoring Māori women. That is the gravamen of the claim (Wai 381) lodged by Judge Denese Henare:[22]

> *Māori women [have seen] that injustice and said to each other ... There's something wrong with the way the Crown continues to perpetuate this attitude of no value in Māori women.*

64. The Wai 381 claimants have been waiting patiently for 28 years and the Crown's dismissiveness does little to affirm Mana Wāhine at a time where racism is rife in Aotearoa and the Crown's policies and actions since 1840 have systematically discriminated against wāhine Māori depriving them of their spiritual, cultural, social and economic well-being.

65. We understand that the impetus for the claim was the removal of a respected Māori woman elder from the shortlist of appointees to the Treaty of Waitangi Fisheries Commission and the control of the fisheries settlement process almost exclusively by the Crown and Māori men. The Minister of Māori Affairs at the time, Doug Kidd, responded to news of the claim with the comment that *"the lack of status accorded to Māori women was the fault of Māori men — not the Crown?"*

66. The Minister's comment illustrated the Crown's unsympathetic attitude towards the position of Wāhine Māori and the Crown's unwillingness to consider its part in discriminating against Māori women.

Entities managing Māori interests and Māori-owned assets

67. The Crown's failure to implement adequate provisions that reflect the special status and rangatiratanga of wāhine Māori to make decisions for their whānau, hapū and iwi is particularly evident in entities that manage Māori interests and Māori-owned assets for the benefit of Māori, but are dominated by the Crown and tāne Māori.Examples of the lack of Crown protection for wāhine Māori decision-making.

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[22] Henare, D "Carrying the Burden of Arguing the Treaty" in Ihimaera, W (ed) *Vision Aotearoa: Kaupapa New Zealand (*1994) at 126.

68. In such entities include, but are not limited to:

a) The fisheries settlement process and Crown-made appointments to the Treaty of Waitangi Fisheries Commission under the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992;

b) Crown-made individual appointments to Te Māngai Pāho (previously known as Te Reo Whakapuaki Irirangi), especially considering the instrumental role of wāhine Māori leaders in the promotion of te reo Māori and tikanga Māori; and

c) the disestablishment of Te Putahi Paoho as a body that appoints Māori Television Directors and the transfer of its functions to Te Mātāwai and the resulting changes to the way in which wāhine Māori were represented.

69. Because such entities manage Māori interests and Māori-owned assets for the benefit of Māori, there is an obligation on the Crown to be satisfied that those making decisions within such organisations are equitably representative of and have the authority of whānau, hapū and iwi, which necessarily includes wāhine Māori.

70. The Claimants say that the Crown, in breach of te Tiriti and its principles, failed to afford to Māori women equal and equitable opportunity that had otherwise been made available to non-Māori men and women and tāne Māori.

Treaty of Waitangi settlement negotiations

71. The Claimants say that it would have been prudent and consistent with te Tiriti for the Crown to implement appropriate provisions that ensure that there are mandatory requirements for representation of wāhine Māori on the negotiation bodies for settlement.

72. The Claimants say however that the Crown has failed to implement such policies, in both the policies governing Te Arawhiti (the Crown agency responsible for negotiating historical grievances) and the provisions governing the selection or appointment of the negotiation representatives for claimants and iwi.

73. The result is that in a number of instances the negotiating bodies for claimants and iwi are highly influenced by Western patriarchal ideologies and dominated by men, therefore perpetuating the imbalance of representation between tāne and wāhine.

Crown bodies

74. The Claimants say that Crown legislation and policies fail to ensure that there is representation of wāhine Māori throughout the decision-making bodies across all government sectors.

75. Examples of such failures include, but are not limited to:

a) local government – the Local Government Act 2002,[23] whilst encouraging the contribution of Māori to its decision-making processes, fails to require local authorities to give particular recognition to the voice of wāhine Māori by consultation or appointment to local government roles.

b) Parliament – while Māori electoral seats are a means by which Māori are guaranteed representation in Parliament, there is nothing guaranteeing the representation of wāhine Māori.

c) State sector boards and committees – the lack of recognition of wāhine Māori as a distinct group that require representation in their own right, outside of the "Māori" or "female" umbrellas.

d) The education sector – the Education Act 1989 and the appointment of members to the Tertiary Education Commission Board and the Tertiary Education Institution (**TEI**) councils.

e) the health sector – the representation of wāhine Māori on health boards or bodies including district health boards and Māori partnership boards.[24]

f) the cultural sector – the Arts Council of New Zealand Toi Aotearoa Act 2014 and the representation of wāhine Māori on the Arts Council.

[23] Section 81.
[24] Cossar, D. & Alliston, L (2006). *The participation and engagement of Māori in decision making processes and other government initiatives; A literature review prepared for the Electoral Commission* (Research New Zealand) at 100.

g) other government-appointed advisory and review bodies across justice, economic and social welfare sectors.

76. The Claimants say that the Crown's failure to ensure adequate representation of wāhine Māori in decision-making structures diminishes the value and role of wāhine Māori in their whānau, hapū and iwi and perpetuates the disempowerment of wāhine Māori in society which continues to cause prejudice to the social, cultural and economic well-being of wāhine Māori and their whānau.

77. The value of wāhine in te ao Māori is best described by the following whakatauki/whakatauāki:

a) "*He wāhine, he whenua, ka ngaro te tangata*" which translates to mean "humanity would be lost without women and land" and speaks of the relationship between humankind and land which forms our whakapapa and refers to the nourishing role that women and land fulfil, without which humanity would be lost; and

b) *"He wāhine he whenua riro ai te whenua. He wāhine he whenua ngaro ai te whenua*" which translates to mean that it is from women that land derives, but it is also from women that land can be lost. This whakatauāki expresses the special mana of wāhine in the preservation of whakapapa.

78. These proverbs underpin the distinction between the significance of wāhine Māori in Māoridom and in the Western world. This is that the rights and whakapapa of people to land derive from women, in contrast to British concepts where women were prevented from any rights to land.

The Marginalisation of Māori women in Education and Te Reo Māori

79. In 1972 Hana Jackson led a petition to Parliament and gathered over 30,000 signatures for Te Reo Māori to be taught in primary schools. It was led by young urban Māori who did not speak Te Reo Māori. Sir Graham and Lady Emily Latimer mortgaged their home to finance the New Zealand Māori Council Reo Claim to the Privy Council which ultimately led to the recognition of Te Reo Māori as an official language in 1987. They were joined in their struggle for recognition and reclamation of Te Reo Māori by notable women leaders including: Dame Te

Ataairangi Kaahu, Te Reo, Dame Katarina Mataira, Lena Manuel, Eva Rickard and Dame Iritana Tāwhiwhirangi.

80. For 110 years, Te Reo Māori was banned in schools as a result of the Education Ordinance 1847 which only provided state funding to Mission Schools provided that the language of instruction was English.

81. For wāhine Māori, the Ordinance merely confirmed for them the few educational choices be available to them if they had any hopes of surviving in the world, but it came with huge costs and losses to Māori whānau on the whole.

82. The Native Schools Act 1867 saw the establishment of secular village schools or "day schools" for tamariki Māori. They were simply called "Native Schools". The government did not replace the term "Native" with the word "Māori" until 1947.

83. However, if a Māori community wanted a school, they had to provide the land for the school and contribute to the teacher's salary. This piece of legislation established a national system of schooling and administration still controlled by the government, a curriculum developed by the government to be instructed by Pākehā teachers. Teachers' salaries were paid for by the community who had been called upon to pay for the schools to be set up on Māori land were then transacted by tuku for that purpose.

84. The Native Schools Code 1880 was written to improve teaching practices and standards with a strong emphasis on: "*Europeanising of the Māori as quickly as possible*" and "*assimilate as speedily as possible the habits and usages of the native to those of the European population*".[25]

85. The aim of the state was to assimilate tamariki Māori through actively discouraging Māori language, belief systems and culture. Dr Ranginui Walker described this as "*cultural surrender*" or at the very least, the suppression of Māori identity.[26]

86. The claimants say that the Crown implemented legislation, policies and practices that sought to destroy, limit or assimilate Maori knowledge with British values and knowledge, resulting in negative effects on wahine Maori.

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[25] The Native Trust Ordinance 1844, preamble.

[26] Walker, Ranginui, *Liberating Māori from educational subjugation, (*University of Auckland: Research Unit for Māori Education, 1991) at 5.

87. The loss of te reo Māori for several generations has significantly impacted on Māori communities. It particularly impacted wāhine Māori who had been the primary teachers within the whānau and were the repositories for the intergenerational transmission of Mātauranga Māori and Te Reo me Ona Tikanga.

88. Unsurprisingly by the 1970s some thought that Te Reo was only for tohunga and ariki. The drive for reo education to be recognised in the courts and taught in schools was seen as radical and was ridiculed by Māori and Pākehā alike. The dogma of racism impacted so that Māori communities devalued Mātauranga Māori and philosophies and succumbed to the subjugation of Māori to a greater superiority, British or Pākehā authority. Māori women began to accept that they, as Māori, were unworthy of Māori advancement. Cultural assimilation saw the invisiblisation of Māori Women, customs and traditions.

89. The Te Reo Māori renaissance movement in the 1980s and the Māori Language Act 1981 saw the establishment of Kōhanga Reo and Kura Kaupapa which emerged from Māori grassroot movements and created Māori learning spaces for the te reo Māori lifestyles they desired to maintain.

90. These grassroots strategies began in homes and garages and were started by Kaumātua, kuia, Mums, Dads and young parents whose goal was to rescue, reclaim and teach Te Reo Māori in a whānau friendly tikanga Māori environment. Māori Women like Dr Kathy Dewes, Rosina Hauiti, Hilda Halkyard Harawira, Dame Iritana Tāwhiwhirangi and Dame Katarina Mataira were driving forces behind this renaissance.

91. Both the Kōhanga Reo and Kura Kaupapa Movements are interdependent and have laid intergenerational foundations for the retention and transmission of Te Reo Māori.

92. Both Movements were led by Māori women who saw it as their duty to guard and protect the rangatiratanga after years of being assimilated by Crown mechanisms that had denied the existence of Te Reo Māori for a century.

93. The historical trauma that these wāhine Māori suffered at Native Schools led them to reclaim their mana and gather strength for what would be one of the most significant historical moments in (re)defining the history of wāhine Māori.

94. Te Reo Māori survived as a result of the sheer resilience of those kaumātua and kuia and the belief that Te Reo Māori will heal our people.

95. Although te reo Māori flourished as a result of Kōhanga Reo and Kura Kaupapa, they are both still vulnerable and are only as stable as the next government's Education Policy allows.

96. Crown polices, acts and omissions do not guarantee te reo Māori is safe nor sustainable for future generations. There are still no meaningful policy implementations or funding that ensure te reo Māori is treated as equal to or on the same basis as English language in this country.

97. The dismissive and racist attitudes towards Māori and te reo Māori can be witnessed daily in mainstream media, for example, the racist attack of Māori by high profile New Zealander Sir Bob Jones,[27] the intentional mispronunciation of Māori names to cause insult,[28] to the depicting of Māori women in cartoons in the New Zealand Herald.[29]

The (Re)Construction of the Role of Māori Women

98. Colonisation has brought about the changes in perception of the role of women, in particular wāhine Māori and the effect colonisation has had on the perception of ourselves.

99. Māori women's role in Māori society demonstrated female leadership roles in inter-tribal wars, collective hapū, inter-tribal peace-making processes and Tikanga Māori justice if any person was to commit *hara* or *takahi tikanga*.

100. As Ani Mikaere accurately observes:[30]

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[27] 'Column calling for Māori servitude for a day pulled after outrage', Newshub, accessed from: http://www.newshub.co.nz/home/new-zealand/2018/02/column-calling-for-Māori-servitude-for-a-day-pulled-after-outrage.html.

[28] 'ACT's mispronunciation of Māori names 'deliberate'', Newshub, accessed from: http://www.newshub.co.nz/general/acts-mispronunciation-of-Māori-names-deliberate-2011071113.

[29] 'Controversial Fairfax Media cartoons could have made racism against Māori worse, panel member says', Newshub, accessed from: https://www.stuff.co.nz/national/99124605/Controversial-Fairfax-Media-cartoons-could-have-made-racism-against-M-ori-worse-panel-member-says.

[30] Mikaere, Ani, *Māori Women: Caught in the Contradictions of a Colonised Reality*, Waikato Law Review, 1994 at 125.

> *Both men and women were essential parts of the collective whole, both formed part of the whakapapa that linked Māori people back to the beginning of the world and women in particular played a key role in linking the past with the present and the future. The very survival of the whole was absolutely dependent upon everyone who made it up, and therefore each and every person within the group has his or her own intrinsic value. They were all part of the collective, it was therefore a collective responsibility to see that their respective roles were valued and protected.*

101. This view is supported by Dr Rose Pere where she says:[31]

> *…my forebearers, prior to the introduction of Christianity… were extremely liberated as compared to my English tupuna… there women were never regarded as chattels or possessions; they retained their own names on marriage… Retaining their own identity and whakapapa (genealogy) was of utmost importance and children could identify with the kinship group of either or both parents.*

102. With the deliberate destruction of spiritual practices and beliefs of Māori cosmology, Māori birthing practices, Māori philosophies and values and the attempted replacement of them with those of the missionaries and settlers, Māori have been "*caught in the contradictions of a colonised reality*".[32]

103. As for colonialist policies on wāhine Māori during the mid-1800s, it has been written by Jahnke that:[33]

> *Within the context of colonisation, the oppressive forces of missionary evangelism and assimilationist policies instituted by the settler government successfully rendered invisible any notion of Māori women's customary autonomy, role and status. Schools were established as major sites for transforming gender roles in Māori society by constructing and redefining the roles of Māori women and men, first by missionaries and their wives…as*

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31 Pere, R, *Te Wheke*, Ao Ako Global Learning: New Zealand, 1991 at 9.

32 Mikaere, Ani, Māori Women: *Caught in the Contradictions of a Colonised Reality* in Waikato Law Review, Volume 2, 1994.

33 Jahnke, Huia, *Māori Women and Education: Historical and Contemporary Perspective* in Mai i Rangiaatea: Māori Wellbeing and Development edited by Pania Te Whaiti, Marie Barbara McCarthy and Aroha Durie, Auckland University Press, 1997.

early as 1816… and later by the State. The church and the state were intent on an agenda aimed at the domestication of Māori women and girls.

104. Māori girls were sent to Mission Boarding Schools to learn to be Pākehā. They had to leave their Māori values, culture and religion at the door and accept Christian values in their place. Māori girls were taught to be good domestic servants for the missionaries' wives, or good domesticated wives for their husbands-to-be.

105. The Education Ordinance 1847 allowed state funding of Mission Schools provided that the language of instruction was English. The Ordinance reinforced the government policy of assimilation and Māori were encouraged to 'gift' or give up their land for the setting up of schools.

106. Pania McArdell describes the Ordinance as at the heart of sexism and racism with Pākehā schooling, with officials ignoring the concerns of wāhine Māori.[34] Judith Simon writes,

> *Most Europeans of this time perceived the 'races' of the world in hierarchical terms ranging from inferior to superior, from 'savage' races through to 'civilized' races. The British in particular perceived themselves as representing the pinnacle of civilization…'Civilizing' the Maori involved persuading them to give up their customs, habits, values and language, and take on those of the European in other words, assimilating them to European culture.*[35]

107. Quite simply, one can say that Māori struggled at Native schools where they were being subjected to corporal punishment for speaking their mother tongue. By the time they were sent to Mission Boarding Schools they were well and truly isolated from their whānau and hapū support systems, taught religious instruction, used as slaves by the missionaries thereby completing the colonising practice of assimilation and the decimation of the traditional and collective roles of Māori women.

108. Assimilationist gender policies and practices such as the introduction of religious educational institutions such as mission schools, and mainstream government

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[34] McArdell, Pania. 1992. "Whānaupani." In *Feminist voices: Women's Studies texts for Aotearoa/New Zealand*, edited by Rosemary Du Plessis, Patricia Bunkle, Kathy Irwin, A Laurie and Sue Middleton, 74-90. Auckland: Oxford University Press. p.85

[35] Simon, Judith. 1992. "European style schooling for Maori: the first century." *Access: Contemporary Issues in Education* 11 (2): 77-87. p.78

schools such as native schools promoted the assimilation of Wāhine Māori and the determination of the system to create a working population for domestic duties.

109. Compare to Pākehā girls Māori girls continue to experience lower achievement levels in mainstream schooling and are less likely to engage in certain curricula areas.

110. Māori have lost their lands, tāonga and language through racist attitudes of the Crown and their colonising practices.

SECOND CAUSE OF ACITON: SEVERING THE CONNECTION TO TE AO TŪROA

Allegations

111. In breach of the principles of Te Tiriti o Waitangi the Crown has enacted legislation and developed policies that sever the connection Wāhine Māori have to Te Ao Tūroa.

Particulars

112. Wāhine Māori have a close relationship with the land and view Papatūānuku as our Mother Māori and therefore we have an inherent right to protect and nurture her. We were entirely dependent upon the environment for survival which created an emotional connection that shaped the process of thought and the development of ideas. It was a source of imagery for Māori as a means of describing the people around them.[36] This connection is also exemplified through whakapapa, Māori folklore, Māori poetry, Māori songs and Māori art. Furthermore, the natural environment provides Māori with a way of aligning the dualities of mankind, male and female, with the dualities of the natural environment – light and darkness, sky and earth.[37]

113. The close spiritual relationship with land stemmed from the "traditional concept of the basic origin of mankind deriving from the loving union of the Papa-tuu-aa-nuku and Rangi-nui-tuu-nei."[38] This spiritual and cultural connection places Māori in a position of guardianship over hunting and cultivating practices while also

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[36] Orbell, M, *The Natural World of the Māori*, Wellington: David Bateman Ltd, 1985 at 13.
[37] Orbell, M, *The Natural World of the Māori*, Wellington: David Bateman Ltd, 1985 at 39.
[38] Sinclair, D, 'Land: *Māori* view and European response' in King, M. (ed.), *Te Ao Hurihuri*, Auckland: Reed Books, 1975 at 64.

considering that Te Ao Tūroa must not be exploited and stripped of all its resources. This is further exemplified through the large number of place names that commemorate significant events in history, as well as mythology and imagery.[39]

114. Arapeta Awatere described the relationship Māori have with the land and waters as one which is closely linked to Māori identity:[40]

> *A Maaori person carries intangible values in his heart, of which his attachment to his land takes pride of place. The land is his identity. To part him from it or to take away from him is to take away his identity.*

115. Written accounts by early Europeans describe the relationships Māori held with each other and with the surrounding landscapes as "very dissimilar to us."[41] The customs, manners, ideas and religion highlighted the aspects of Māoridom which places great significance on the environment as a source of well-being, knowledge and support.

116. These historical accounts reinforce the impacts of colonisation on the Māori world view, and in particular how this has impacted not only an internal view driven by Māori men but an external view crafted by the Pākehā of wāhine Māori. Therefore, through the severing of the relationship wāhine Māori have with the environment, this source of strength and support was severed also.

117. The colonial project systematically severed wāhine Māori's sacred connections to whenua through the deliberate transformation of traditional narratives and knowledge systems. This operated through interconnected mechanisms - most significantly through the alteration of stories about atua wāhine to align with Christian patriarchal views that positioned wāhine as inferior and unsacred (August, 2004; Ngata, 2018; Murphy, 2011). The degradation of these narratives had implications, as they formed the foundation for cultural understanding of wāhine authority and their relationships with whenua me te ao tūroa.[42]

118. As Tui Warmenhoven powerfully states: *"As the land is being stripped and eroding, so are we as a people. And we're fighting to survive"* (Downstream

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[39] Sinclair, D, 'Land: Māori view and European response' in King, M. (ed.), *Te Ao Hurihuri,* Auckland: Reed Books, 1975 at 65.

[40] Awatere, A, *Awatere: A soldier's story,* Wellington: Huia Publishers, 2003 at 361.

[41] Salmond, A, *Between Worlds:Early exchanges between Māori and Europeans 1773-1815,* Auckland: Penguin Books Ltd, 1997 at 31.

[42] Ngā Uaua o Papatūānuku – the binding of wāhine ki te whenua me te ao tūroa Pou Hine – Whenua me te Ao Tūroa Research Report Draft December 2024

Documentary). Ngāhuia Murphy warns in NUKU100, "*We as a species are so fundamentally disconnected from the taiao it might lead to our extinction.*" And in a similar vein, Donna Kerridge observes that "*our consumerism is killing the planet and unless it's essential, we don't have it.*" (Matata-Sipu 2020d). These perspectives highlight how environmental degradation threatens not only cultural continuity but human survival itself, and importantly that there are specific ways that these kinds of disconnection and degradation impact Indigenous women and wāhine Māori.[43]

Hauora and health

119. The Claimants say that the Crown has implemented legislation and policies which failed to protect the rights of wāhine Māori in respect of health in all its forms, including prohibiting Māori health practices and obstructing wāhine Māori participation in the health system, and failing to provide equitable quality of and access to care.

120. In particular, wāhine Māori hauora is exemplified by systemic disparities in:

    a) health outcomes;

    b) exposure to the determinants of health;

    c) access to health services; and

    d) health system responsiveness.

121. Examples of such laws, policies and practices which contribute significantly to health services and outcomes (and inequities) for Māori women include the following, to varying degrees of influence (and contemporary relevance):

    a) the Tohunga Suppression Act 1907 which sought to diminish the spiritual aspect of the Māori way of life and outlawed Māori tohunga or experts, including health practices;

[43] Ngā Uaua o Papatūānuku – the binding of wāhine ki te whenua me te ao tūroa Pou Hine – Whenua me te Ao Tūroa Research Report Draft December 2024

b) the westernisation of the process of childbirth, directly attacking the role of wāhine Māori as the whare tangata who maintain and preserve whakapapa, whenua, hapū, whānau and whai rawa;

c) the westernisation of the idea of wellbeing which focuses on physical health and disregards the holistic Māori view of wellbeing;

d) Alcohol and Drug Addiction Act 1966;

e) Accident Compensation Act 2001;

f) Health Act 1956;

g) Health and Disability Commissioner Act 1994;

h) Health and Disability Services (Safety) Act 2001;

i) Health and Safety at Work Act 2015;

j) Health Practitioners Competence Assurance Act 2003;

k) Health Research Council Act 1990;

l) Māori Community Development Act 1962;

m) Māori Trust Boards Act 1955;

n) Medicines Act 1981;

o) Mental Health (Compulsory Assessment and Treatment) Act 1992;

p) Ministry of Māori Development Act 1989;

q) Misuse of Drugs Act 1975;

r) Oranga Tamariki Children's and Young People's Well-being Act 1989;

s) Psychoactive Substances Act 2013;

t) Sale and Supply of Alcohol Act 2012;

u) Social Security Act 1964;

v) Vulnerable Children Act 2014;

w) the underfunding of Māori organisations participating and engaged in the health sector, particularly those providing kaupapa Māori services;

x) the repeal of the changes made in the Smokefree Environments and Regulated Products (Smoked Tobacco) Amendment Act 2022; and

y) the disestablishment of Te Aka Whai Ora – the Māori Health Authority.

Whai Rawa: Economic and Business development

122. The claimants say that the Crown has implemented legislation and policies that have failed to address the economic and business under-development of wahine Maori resulting in disproportionate poverty and unemployment rates and pay inequities.

123. Examples of such laws, policies and practices include, but are not limited to:

a) the lack of funding and support for the economic and business development of Wahine Maori prior to the establishment of the Maori Womens Development fund in 1987 (now the Maori Women's Development incorporated which was registered in 1997);

b) the neoliberal restructuring of the 1980s and 1990s and the rise of mass unemployment in sectors in which Māori work;

c) barriers regarding the use of Maori land including access to finance and prohibitive planning rules

d) pay equity and the undervaluing of sectors where wahine Maori are more likely to work.

124. The claimants say that wahine Maori faced and continue to face inequity, inequity and discrimination in business and economic development.

Justice

125. The Claimants say that the Crown has implemented legislation and policies that have resulted in prejudicial scrutiny and action by the Police and criminal justice system against wāhine Māori, resulting in wāhine Māori being the most incarcerated group percentage wise in Aotearoa.

126. Examples of such laws, policies and practices include but are not limited to:

    a) sexual and domestic violence laws;

    b) the provision and accessibility of rehabilitative sentences to address mental health and substance abuse issues;

    c) racism and biases in law enforcement;

    d) ignoring existing research, reports and evidence that demand transformative change;

    e) the Bail Act 2000 and the increased remand numbers;

    f) the failure to review and address the basis of custodial sentences and the application of alternatives to prison;

    g) a lack of opportunities for wāhine Māori to be educated;

    h) the restoration of the three-strikes law; and

    i) an increased regulation of gangs and gang insignia.

127. The continued disproportionate incarceration of wāhine Māori is clear evidence that the Crown has failed to remedy the systemic discrimination of wāhine Māori in the justice sector.

THIRD CAUSE OF ACTION: URBANISATION LED TO WĀHINE MĀORI BEING EXPOSED TO RACISM

Allegations

128. In breach of the principles of Te Tiriti o Waitangi the Crown has failed to sufficiently address the detrimental impacts urbanisation has had and continues to have on wāhine Māori and their whānau.

Particulars

129. Post-World War II saw an increase in Māori migration into the urban cities. This was based on the belief that the movement would lead to better pay, housing, work and education opportunities.[44] This occurred at a time when Māori in rural communities were experiencing difficulties; due to the stagnation of rural land development Māori were unable to support themselves.[45]

130. State Advances Corporation and the Ministry of Māori Affairs established and managed the 1948 Māori housing scheme which was aimed at pepper-potting Māori families into Pākehā communities to encourage assimilation.[46] It became apparent that once Māori were placed among Pākehā, Māori were suppressed and forced to conform and adapt to a glorified Pākehā value system. Not only were Māori forced to live, to speak and to think like Pākehā but were also forced to do so on low-incomes and with little education, which consequently weakened Māori cultural identity.

131. Once in urban cities Māori were not well supported. Māori were confined to low-income employment which saw an increase in Māori reliance on State housing owing to the high rental costs in private residences.

132. Māori were facing hardships in the Housing sector over 70 years ago. This is not a crisis that has only materialised in the past decade. Successive governments have not been concerned to address indigenous marginalisation. The Crown has been unwilling to address the issues directly facing Māori. To now label the housing crisis a 'national concern' is to deny the fact that this has been an issue for Māori for many years.

133. Furthermore, the disadvantages faced by wāhine Māori in the housing sector are not stand-alone issues – each encourage and contribute to the other whereby creating a sickly environment for families. This is perhaps the most effective form of 'killing two birds with one stone' - by confining Māori families to poor-housing conditions, and whereby many of these families are single-mother families, this

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44 Sinclair, D, 'Land: Māori view and European response' in King, M. (ed.), *Te Ao Hurihuri,* Auckland: Reed Books, 1975 at 96.

45 Sinclair, D, 'Land: Māori view and European response' in King, M. (ed.), *Te Ao Hurihuri,* Auckland: Reed Books, 1975 at 96.

46 Sinclair, D, 'Land: Māori view and European response' in King, M. (ed.), *Te Ao Hurihuri,* Auckland: Reed Books, 1975 at 96.

ensures that wāhine Māori are their tamariki are weakened physically, spiritually, and mentally.

FOURTH CAUSE OF ACTION: FAILURE TO ELIMINATE OR DISCOURAGE RACIAL DISCRIMINATION IN THE HOUSING SECTOR

Allegations

134. In breach of the principles of Te Tiriti o Waitangi the Crown has failed to enact legislation or develop policies or practices that eliminate or discourage racial discrimination or to ensure proper sanctions against actions and omissions that promote racial hatred and racial discrimination against Māori women and their children.

Particulars

135. Racism includes a mixture of "prejudice, power, ideologies, stereotypes, domination, disparities and unequal treatment."[47]

136. A contributing factor to the overcrowded conditions of Māori households is the racial discrimination suffered in the private rental market.[48] This conduct is in direct breach of the New Zealand Bill of Rights Act 1990, the Human Rights Act 1993 and the Residential Tenancies Act 1986 which provide protection from all forms of discrimination.

137. David Ausubel also commented in 1959 on the difficulties Māori had renting accommodation,

> *Maoris [sic] living in the city find it virtually impossible, because of strong pakeha prejudice, to rent a desirable home in a good neighbourhood, and are thus confined to more or less dilapidated structures, badly in need of painting and repairs, in the slummiest parts of town. Because families tend to be large, even the better houses are dreadfully overcrowded.*[49]

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[47] Barnes, A, et al "Māori Experiences and Responses to Racism in Aotearoa New Zealand" (2013) 2 MAI Jrnl 64 at 64.

[48] Baker, M, McDonald, A, Zhang, J, Chapman, P, *Infectious Diseases Attributable to Household Crowding in New Zealand: A Systematic Review and Burden of Disease Estimate* He Kainga Oranga/Housing and Health Research Programme, 2013.

[49] Ausubel, David P. 1959. *Maori youth: A psychoethnological study of cultural deprivation.* New York: Holt, Rinehart & Winston, Inc. p.42

138. This racism in the private rental market persisted well into the 1980s (and beyond)[50] along with the outcomes for whānau of being segregated into high-poverty neighbourhoods and forced to live in poor quality housing (e.g., cold, damp, mouldy) with the consequent impacts on residents' health and wellbeing.[51]

139. The New Zealand Health Survey from 2002-2003 stated that Māori were 13 times more likely to experience self-reported racial discrimination when purchasing or renting housing.[52]

140. Observational studies also confirm that Māori experience racial discrimination from private landlords.[53]

141. This confirms some of the issues families in emergency housing are facing as described by the Koraunui Marae Charitable Trust.[54] The effect of racism suffered by Māori supports and reinforces cultural suppression and inequitable access to social and structural resources.[55]

142. Through Māori facing racial discrimination in the housing sector, this alters the expectations of Māori families who have been subjected to ill-treatment. Children are included in those families but are excluded from the private rental market because they are Māori. The Crown has failed the next generation of Māori who are suffering from the negative effects on their health and well-being due to living in poor conditions.

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50 McDonald, J. 1986. *Racism in the rental accommodation market.* Auckland: The Office of the Race Relations Conciliator.

51 Barwick, Helena. 1991. *The impact of economic and social factors on health.* Wellington: A report prepared by the Public Health Association of New Zealand for the Department of Health; Howden-Chapman, Philippa. 2004. "Housing standards: A glossary of housing and health." *Journal of Epidemiology and Community Health* 58 (3): 162-169; Howden-Chapman, Philippa, Sarah Bierre, and Chris Cunningham. 2013. "Building inequality." By Inequality in New Zealand, edited by Max Rashbrooke, 105-117. Wellington: Bridget Williams Books

52 Baker, M, McDonald, A, Zhang, J, Chapman, P, *Infectious Diseases Attributable to Household Crowding in New Zealand: A Systematic Review and Burden of Disease Estimate* He Kainga Oranga/Housing and Health Research Programme, 2013 at 68.

53 Baker, M, McDonald, A, Zhang, J, Chapman, P, *Infectious Diseases Attributable to Household Crowding in New Zealand: A Systematic Review and Burden of Disease Estimate* He Kainga Oranga/Housing and Health Research Programme, 2013 at 69.

54 Interview with Charmaine Whaanga-Mclean, Social worker (Te Kooanga Awatere-Reedy, teleconference, 5 April 2018).

55 Barnes, A, et al "Māori Experiences and Responses to Racism in Aotearoa New Zealand" (2013) 2 MAI Jrnl 64 at 64.

Impacts on Māori children

143. The next generation of Māori are facing very concerning circumstances where it is estimated that half of poor children are Māori and Pasifika.[56]

144. The higher risk of child poverty among Māori and Pasifika is alarming considering both are youthful ethnic groups, where a third of the Māori population are under 15 years of age.[57] The high number of poor Māori and Pasifika children in Aotearoa raises questions of social injustice and inequitable treatment.

145. The Children's Commissioner defines child poverty as:[58]

> *Children living in poverty are those who experience deprivation of the material resources and income that is required for them to develop and thrive, leaving such children unable to enjoy their rights, achieve their full potential and participate as full and equal members of New Zealand society.*

146. The higher poverty rate for Māori children reflects the relatively high proportion of Māori children living in sole-parent beneficiary families and households – approximately 47 per cent of all sole parent beneficiary recipients are Māori.

147. Over the period from 2015 to 2016, 45 per cent of children in low-income households were Māori or Pasifika.

148. Due to living in sub-standard living conditions, a high proportion of Māori and Pasifika children are exposed to infectious diseases which lead to hospitalisation.[59] "Children under the age of five years have the highest rate of hospitalisation of any paediatric group"; the rates are double for Māori children compared to Pākehā.[60]

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56 Barnes, A, et al "Māori Experiences and Responses to Racism in Aotearoa New Zealand" (2013) 2 MAI Jrnl 64 at 36.

57 Statistics New Zealand, *2013 QuickStats About Māori,* December, 2013 at 6.

58 Children's Commissioner *Child Poverty*, 2012.

59 Baker, M, McDonald, A, Zhang, J, Chapman, P, *Infectious Diseases Attributable to Household Crowding in New Zealand: A Systematic Review and Burden of Disease Estimate* He Kainga Oranga/Housing and Health Research Programme, 2013 at 68.

60 Baker, M, McDonald, A, Zhang, J, Chapman, P, *Infectious Diseases Attributable to Household Crowding in New Zealand: A Systematic Review and Burden of Disease Estimate* He Kainga Oranga/Housing and Health Research Programme, 2013 at 68.

149. As a signatory to the United Nations Conventions on the Rights of the Child (CRC), Aotearoa has committed to giving all children the opportunity to achieve their full potential and participate as equal members of society.[61]

150. There are specific rights applicable to Māori children living in poverty which the Crown has not upheld:

a) The right to be treated equally – children have the right to be protected from all forms of discrimination;[62]

b) The right to a good standard of living – children have the right to a standard of living suitable for the child's physical, mental, spiritual, moral and social development;[63]

c) The right to be healthy – children have the right to good quality healthcare, to clean water, nutritious food, and a clean environment[64]; and

d) The right to receive financial assistance – children in need have the right to extra assistance from the State.[65]

151. The current housing crisis emphasises the failings of the Crown to uphold all that was guaranteed under Te Tiriti.

152. This has led to countless Māori living in poverty, the break-down of Māori social support and has significantly weakened Māori connections to papakāinga.

FIFTH CAUSE OF ACTION: IGNORANCE OF THE DETRIMENTAL EFFECTS ON WĀHINE MĀORI

Allegations

[61] Conventions on the Rights of the Child 1577 UNTS 3 (opened for signature 20 November 1989, entered into force 2 September 1990).
[62] Conventions on the Rights of the Child 1577 UNTS 3 (opened for signature 20 November 1989, entered into force 2 September 1990), Article 2.
[63] Conventions on the Rights of the Child 1577 UNTS 3 (opened for signature 20 November 1989, entered into force 2 September 1990), Article 27.
[64] Conventions on the Rights of the Child 1577 UNTS 3 (opened for signature 20 November 1989, entered into force 2 September 1990), Article 24.
[65] Conventions on the Rights of the Child 1577 UNTS 3 (opened for signature 20 November 1989, entered into force 2 September 1990), Article 26.

153. In breach of the principles of Te Tiriti o Waitangi the Crown has ignored or overlooked the detrimental effects its housing legislation and policies have on Māori women and their children.

154. In breach of the principles of Te Tiriti o Waitangi the Crown has failed to adequately remedy the detrimental effects of its housing legislation and policies to the maintenance of the fundamental social institutions of Māori including whānau; hapū and iwi and papakāinga and marae.

Particulars

155. Māori are overrepresented in the areas of the Housing sector which require the most attention.

156. Some contributing factors to the current situation many Māori are facing are:

a) Māori are more than twice as likely to be a victim of a violent interpersonal offence by an intimate partner than non-Māori;[66]

b) Māori mothers are more likely to have children at younger ages, where in 2016, 42 per cent of Māori mothers who gave birth were 24 years or younger which can cause delays in prospects of gaining educational qualifications;[67]

c) Māori are twice as likely to be unemployed than non-Māori which results in Māori having a fixed-income and relying on the State for assistance;[68]

d) Māori are more likely to have no qualifications than non-Māori and less than 10 per cent of Māori have a bachelor's degree; this results in Māori having lower personal-income compared to those who have qualifications;[69]

66 Te Puni Kōkiri, *Māori Family Violence Infographic*, May 2017.
67 Te Puni Kōkiri, *Māori Family Violence Infographic*, May 2017.
68 Statistics New Zealand, "December Quater – Māori Unemployment rate at nine-year low, but twice New Zealand rate" (3 April 2018, Stats NZ). Accessed from: < www.stats.govt.nz>.
69 Statistics New Zealand, "December Quater – Māori Unemployment rate at nine-year low, but twice New Zealand rate" (3 April 2018, Stats NZ) at 14. Accessed from: < www.stats.govt.nz>.

e) Māori are four times more likely than Pākehā to be living in crowded conditions;[70]

f) Nearly a third of Māori living in crowded conditions are unable to meet the costs of everyday needs; this results in unhealthy food options and delaying medical appointments due to costs[71]; and

g) Low-income rates for Māori are consistently higher than those of Pākehā.[72]

157. It is clear that the State is failing Māori across the board – these statistics are clear indicators on the failing of the systems themselves. Furthermore, these statistics are an indication that Māori are disproportionately affected compared to non-Māori across every sector.

158. Land alienation had profound effects on Māori society, and in particular Māori women, as it destroyed the collective whānau/hapū unit. That the whānau/hapū unit was given less importance undermined the values that maintained its well-being. The erosion of those values – family and tribal history, language skills, mutual caring and support – eroded the importance of the roles and of the women who traditionally performed them.[73]

SIXTH CAUSE OF ACTION: FAILURE TO ADDRESS THE INCREASING NUMBER OF MĀORI IN STATE HOUSING

Allegations

159. In breach of the principles of Te Tiriti o Waitangi the Crown has failed to address, support or rectify the increasing number of Māori women and their children reliant on State Housing.

Particulars

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[70] Statistics New Zealand, *Living in a crowded house: Exploring the ethnicity and well-being of people in crowded households,* May 2018 at 15.

[71] Statistics New Zealand, *Living in a crowded house: Exploring the ethnicity and well-being of people in crowded households,* May 2018 at 31.

[72] Statistics New Zealand, *Living in a crowded house: Exploring the ethnicity and well-being of people in crowded households,* May 2018 at 131.

[73] New Zealand Law Commission. 1999. *Justice. The experiences of Māori women. Report 53.* Wellington: New Zealand Law Commission. p.22

160. As of March 2018, the Housing Register indicates that there are approximately 7,890 applicants waiting to be put into residential accommodation.[74] The total number of Māori on the waitlist is 3,543. Since at least the year 2015 Māori have continuously outnumbered non-Māori on the Housing Register. In the last three-month block from December 2017-March 2018 there has been a dramatic increase across all ethnic groups, however the highest increase is amongst Māori.

161. Of this total number of priority applicants, approximately 77 per cent are grouped under 'Priority A' which is described as those who are considered 'at risk' and includes households with a severe persistent housing need that must be addressed immediately.[75] Those who are grouped under 'Priority B' are categorised as those who have a 'serious housing need' and includes households with a significant and persistent need.[76] Māori make up a large number of both groups.

162. This data indicates that Māori are overrepresented amongst the countries most vulnerable – families who are unable to find suitable housing and who have nowhere else to go. Due to these circumstances, Māori are therefore more susceptible to feelings of low self-esteem, depression, frustration and anger.

Data

163. The claimants say that the data failings of the Crown in relation to wahine Maori (both in terms of lack of adequate data as well as the manner in which data collection occurs) is a breach of Te Tiriti.

164. In particular, the claimants assert that the Crown has failed to recognise data in relation to wahine Maori as a taonga that requires active protection under Te Tiriti.

165. The claimants say further that the Crown has failed to enable wahine Maori to access and use our own data which has, and continues to have, consequential impacts on the fair and equitable sharing of benefits with wahine Maori in respect of that data.

SEVENTH CAUSE OF ACTION: THE FAILURE OF THE CROWN'S HOUSING INITIATIVES TO SUPPORT WĀHINE MĀORI

[74] Ministry of Social Development, *Housing Quarterly Report – March 2018* at 10.
[75] Ministry of Social Development, *Housing Quarterly Report – March 2018* at 10.
[76] Ministry of Social Development, *Housing Quarterly Report – March 2018* at 10.

Allegations

166. In breach of the principles of Te Tiriti o Waitangi the Crown has developed housing initiatives that have failed to address the issues impacting wāhine Māori and their tamariki.

Particulars

167. In 2016 the Crown announced an initiative that would remove perpetrators of family violence in order to prevent victims becoming homeless and to prevent disruption in the families' lives.[77] It is enforced after a Police Safety Order has been issued and the suspected perpetrator is removed from the family home for up to five days.

168. This initiative fails to acknowledge that family violence incidents are most likely to be unreported to Police.[78] Māori are over-represented as both offenders and victims in incidents of family violence.

169. This initiative seeks to provide wrap-around support to those families once the perpetrator has been removed, although the five-day temporary eviction period is out of step with the overall purpose of the housing initiative. When considering the number of Māori families who are in emergency housing due to family breakdowns and family violence, this short-term assistance is ineffective.

170. In an attempt to cope with the increasing demands of housing, in 2016 the National-led government announced funding for 3,000 emergency housing places per year and allocated $41.1 million over the next four years for both contracted emergency housing providers and a new emergency housing grant.[79] Emergency housing providers offer short-term housing and assist individuals and families to find suitable, long-term accommodation within an average stay of 12 weeks.[80] The statistics indicate that this period is incorrect and families who are in short-term accommodation are there for much longer than anticipated.

171. The Koraunui Marae Charitable Trust is a contracted housing provider that has held a contract with the Ministry of Social Development since at least March 2017.[81]

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77 Ministry of Social Development, *Funding to house family violence perpetrators*, (August, 2016).
78 New Zealand Crime and Safety Survey: 2014 (2015).
79 Ministry of Social Development *Emergency Housing Funding*, May 2016.
80 Ministry of Social Development, *Transitional Housing*, July 2017.
81 Ministry of Social Development, *Emergency Housing Providers*, March 2017.

172. Over the past year, some of the core issues for the Koraunui Marae Charitable Trust are as follows:

a) There is nowhere for families to go, both in State housing and private rentals;

b) Families cannot move into private rentals because rental costs are too high;

c) There has been an increase in younger mothers who are seeking State support and are lacking basic life skills such as cooking and cleaning;

d) Some families experienced discrimination from landlords because of their race and because they are beneficiaries; and

e) Children are feeling the pressures of being in emergency housing and sometimes show signs of stress.[82]

173. Nga Whare Whakaruruhau o Aotearoa – National Collective of Independent Women's Refuge is another contracted emergency housing provider. The information provided by the organisation in this Inquiry will be valuable and will provide direct insight into the multi-faceted issues these housing providers are facing.[83]

EIGHTH CAUSE OF ACTION: THE FAILURE TO THE CROWN TO SUPPORT MĀORI SOCIAL STRUCTURES

Allegations

174. In breach of the principles of Te Tiriti o Waitangi the Crown has failed to protect Māori social structures and in turn, to ensure wāhine Māori are provided with support from their partners, their whānau and the State.

Particulars

175. Since the urbanisation of Māori by the State, there has resulted in a significant breakdown in Māori social structures and removed the essential support systems that ensured the family were protected. Furthermore, the role of women and men

[82] Interview with Charmaine Whaanga-Mclean, Social worker (Te Kooanga Awatere-Reedy, teleconference, 5 April 2018).
[83] Wai 2750, #3.1.30.

in Western cultures has influenced the way in which wāhine Māori are treated but also how wāhine Māori have been forced to carry the roles of the mother, the father and the wider whānau whereby wāhine Māori are subjected to further racist attacks aimed at their ethnicity, their relationship status and their parenting skills.

176. Focusing on the family types in New Zealand, the latest report by the Ministry of Social Development identified that:[84]

    a) Sole parents who are younger, have young children, belong to a Māori or Pacific family, are female or have more than three children, are more likely to experience multiple disadvantages;

    b) The plethora of issues facing Māori include food poverty, fuel poverty and housing poverty;

    c) The quality of whānau relationship is extremely important for whānau to thrive; and

    d) Over half of Māori sole parent families faced multiple disadvantages – income and housing were two of the most common types.

177. The *Tamariki Māori Regional Reports Northland* which was published over a decade ago identified the same key issues facing wāhine Māori. The report focused on the northland region and which produced some key findings on the situation of whānau structures. The findings of the report are further supported by the 2013 Census, which identified that most 'parent in one parent with dependent children' families are women.[85]

178. With a strong focus on Māori families, the report shed light on the family environments wāhine Māori and tamariki Māori are living in.[86] Forty-two percent of Northland Tamariki lived in one-parent families. Furthermore, of those Tamariki living in one-parent families, 84 per cent were in the care of their mother.

179. The high number of single-parent families is not only worrying but is creating an illusion that this is normal for whānau, and in particular that it is normal for wāhine Māori to raise their children on their own. There have been numerous reports over

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84 Ministry of Social Development, *Families and Whānau Status Report 2018* (June 2018).
85 Statistics New Zealand, *2013 Census: QuickStats about Families and Households*, (November, 2014).
86 Statistics New Zealand, *Tamariki Māori Regional Reports Northland*, (2001).

the years which identify again and again the same issues but which are filed away in-order to make room for another 'staggering' report to be released a year later. Meanwhile, wāhine Māori continue to fill the pool of the most disadvantaged citizens in our society.

NINTH CAUSE OF ACTION: FAMILY VIOLENCE PROGRAMMES ARE FAILING TO SUPPORT WĀHINE MĀORI

Allegations

180. In breach of the principles of Te Tiriti o Waitangi the Crown have failed to protect wāhine Māori from violence within the home and in particular, have created a reputation for wāhine Māori as inadequate mothers by removing their children from then, thereby reinforcing racist stereotypes.

Particulars

181. According to the findings in the Glen Inquiry Report:[87]

> *The impacts of family violence do not fall evenly, with disproportionate harm occurring to women, babies, small children, and Māori. The poor are also more affected – deaths are ten times more likely among lower socio-economic groups*.

182. Furthermore, wāhine Māori are not only at greater risk of experiencing abuse and violence within the home, but are also more susceptible to experiencing violence from access services.[88] The justification for this marginalisation is that service providers cannot provide effective support for wāhine Māori because of their 'unique needs'.[89]

183. These 'unique needs' include lower-levels of education, low-income levels, living in poor quality housing, and have younger children to care for.[90] As a result of this, wāhine Māori experience racist attitudes and indifference from support agencies and services. It is almost invariably mothers who are held responsible for failing to

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87 Glenn Inquiry – The People's Blueprint: Transforming the way we deal with child abuse and family violence in New Zealand (November 2014) at 16.

88 Glenn Inquiry – The People's Blueprint: Transforming the way we deal with child abuse and family violence in New Zealand (November 2014) at 41.

89 Glenn Inquiry – The People's Blueprint: Transforming the way we deal with child abuse and family violence in New Zealand (November 2014) at 41.

90 Family Violence Death Review Committee *Fifth Report January 2014 to December 2015* (February 2016) at 42.

protect their children from abuse but who are then turned away from support services who are unwilling to acknowledge the terrible circumstances they are in.

184. Wāhine Māori experienced profound challenges, with family violence and sexual violence, underpinned by colonial ideologies, systemic racism, misogyny and the assimilationist policies of the Crown. These experiences were shaped by the intersections of gender, race, and class, as well as the ongoing impact of colonisation on Māori social structures and cultural values. Family violence and sexual violence therefore have to be seen as intimately related to "the violence of colonial invasion." This violence is explained by a research participant,

> *Cultural abuse, if they lose their land they lose their language and they're subjugated or institutionalised in some way by another group of people then they begin to lose their identity and sense of self-worth…I think that probably happened at the turn of the century with their great-grandparents.*[91]

185. According to the Family Violence Death Review Committee's Report, wāhine Māori are placed in a position whereby they capable of protecting their children from abuse even though wāhine Māori are known to be in extremely tough circumstances.[92] It was a key finding of the report that the most at risk of finding themselves entrapped by abusive partners are wāhine Māori and their children. Although this is the reality for many wāhine Māori, they still contribute their experiences, wants, needs, and beliefs to ensure that better initiatives are created with them in mind.

186. The Ministry for Women also highlighted some of the key elements wāhine Māori identified:[93]

    a) Education is important – wāhine Māori link education and women's safety from violence;

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[91] Key informant in the research by Balzer, Roma, Darrin Haimona, Maureen Henare, and Vernon Matchitt. 1997. p.14

[92] Family Violence Death Review Committee *Fifth Report January 2014 to December 2015* (February 2016) at 46.

[93] Ministry for Women, *Wāhine Māori, Wāhine Ora, Wāhine Kaha – preventing violence against Māori women* (February 2015).

b) Significance of mātauranga Māori in understanding the importance of wāhine – this is important not only for wāhine Māori but tāne Māori also;

c) The importance of pūrākau whereby in understanding the traditional role of wāhine Māori this can shape the contemporary Wester role; and

d) Re-educating and re-connecting tāne Māori to their role within the whānau and how through this disconnection is a risk for wāhine Māori.

187. These contributions are invaluable and should be implemented across each agency who come in contact with wāhine Māori – it is only through implementing the feedback which wāhine Māori have given that will be effective change to their lives. Furthermore, it is essential for the survival of wāhine Māori and tamariki Māori that their concerns and views are acted upon.

TENTH CAUSE OF ACTION: THE CROWN'S USE OF THE LEGAL SYSTEM AS A TOOL OF ASSIMILATION

Allegations

188. In breach of the principles of Te Tiriti o Waitangi the Crown has marginalised Māori women in the legal profession and has overlooked their potential to stand as leaders within the legal profession and to ensure the compliance of the New Zealand government with international human rights instruments which protect the status and dignity of women and children.

Particulars

189. Māori women have been marginalised in both their capacity to thrive as lawyers and in their capacity to thrive as wāhine Māori. This double discrimination and the institutional barriers within the profession have resulted in men dominating the practice.

190. For many years Māori women were noticeably underrepresented in the legal profession. Although some Māori women have flourished in their legal careers over

the past few decades, these accomplishments do not compare to the rapid elevation and career milestones enjoyed by men.[94]

191. The opportunities Māori women receive in terms of higher positions in the legal profession are few and far between.[95]

192. Currently in Aotearoa New Zealand:

a) Māori women make up 7.3 per cent of the legal profession;[96]

b) Eleven Māori women serve as judges across the District Court, the High Court and the Māori Land Court[97]; and

c) Māori women judges represent 4.8 per cent of the judiciary;[98] Justice Goddard was the first and is currently the only wāhine Māori to be appointed as Queen's Counsel.[99]

193. The Māori Law Society identified the significant issues Māori women are facing in the legal profession which negatively impact on their ability to reach their full potential.

194. Māori women identify the key issues affecting them in the legal profession:

a) Race barriers in the legal profession and a general failure within law firms to understand the importance of Māori culture and perspectives;

b) Adverse gender perceptions of women in law;

c) Inflexible working arrangements and a failure to accommodate motherhood;

d) A lack of self-confidence to act and/or be at the table; and

e) A lack of role models and role modelling for wāhine Māori; the counter-factual position being that wāhine Māori in senior roles are required to be all things to all people.

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94 Lady Deborah Chambers QC "Unconscious Bias is too kind" (2017) 1 NZWLJ 18 at 19.
95 Lady Deborah Chambers QC "Unconscious Bias is too kind" (2017) 1 NZWLJ 18 at 19.
96 New Zealand Law Society, *Snapshot of the Profession 2018* (February, 2018).
97 Māori Land Court, *Māori women judges in Aotearoa* (March, 2016).
98 Māori Land Court, *Māori women judges in Aotearoa* (March, 2016).
99 Māori Land Court, *Māori women judges in Aotearoa* (March, 2016).

195. Māori lawyers are experiencing high levels of stress compared to non-Māori. Māori lawyers have indicated that they more likely than average to feel they work unrealistic time pressures.[100]

196. There is a clear absence of tikanga Māori within the legal profession. This is exemplified in the small number of lawyers who spend over half of their time working in Treaty and Māori issues.[101]

197. Justice Goddard holds that there is a close correlation between the small number of Māori women partners in law firms and senior counsel and the pool of those considered eligible for appointment to the bench.[102]

198. In order to increase the low number of Māori women lawyers in the higher positions, Māori judges provide support in the form of mentoring and networking to Māori women lawyers.[103]

199. The establishment of Ngā Wāhine Rōia Mentoring Programme aims to pair Māori women lawyers with Māori women law students across Aotearoa to provide support and career advice.[104]

200. These wāhine Māori initiatives are a direct response to the negative and sexist ideologies that are entrenched in the legal profession.

Underrepresentation of women in high-level positions

201. The stripping away of mana wāhine from Māori women has enabled the Crown to co-opt men to enact patriarchal ideologies over Māori women professionals.

202. The legal profession has shown bias towards men by offering men promotions ahead of equally capable women, through failing to treat women equally and through confining women to entry-level incomes and denying them the opportunity to excel in their careers.

203. Statistics on women in the legal profession show that:[105]

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[100] New Zealand Law Society, *Workplace Environment Survey* (May 2018).
[101] New Zealand Law Society, *Lawyers In Practice Statistics: Treaty and Māori issues* (January 2011).
[102] Māori Land Court, *Māori women judges in Aotearoa* (March, 2016).
[103] Māori Land Court, *Māori women judges in Aotearoa* (March, 2016).
[104] Te Hunga Rōia Māori o Aotearoa: The Māori Law Society, *Ngā Wāhine Rōia Māori: Mentoring Programme*.
[105] New Zealand Law Society, *Snapshot of the Profession 2018* (February, 2018).

a) 50 per cent of the proportion of practicing lawyers are women;

b) The majority of law graduates are women;

c) Of the total number of Queen's Counsel appointments since 1907, 34 have been women;

d) 61.2 per cent of employers in law firms are women but only 38 per cent are directors and 27.5 per cent are partners;

e) 38.7 per cent of barristers are women; and

f) Although the number of women entering the profession is much higher than men, there is a higher proportion of men who have longer experience.

204. The gender pay gap is prominent in the legal profession where women make up less than 30 per cent of those who are partners or directors in law firms.[106]

205. This disparity is also proven through current research which indicates that women are paid 16 per cent less for making a contribution of the same value to their employer or are shown to be as productive.[107]

206. Women are more likely to take longer to reach partnership compared to men.[108] Furthermore, men are being promoted to partnerships at a much higher rate than women.[109] Māori women experience double discrimination, they are more likely to face resistance from men in holding leadership roles.

207. Research shows that during the first two decades of working life, the gender earnings gap widens significantly.[110] In relation to the legal profession, women make up a majority of this year group, 38 per cent compared to 20 per cent for males. It is once the years of experience begin to move past 20-30 years that the number of women begin to decrease.[111]

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[106] Lady Deborah Chambers QC "Unconscious Bias is too kind" (2017) 1 NZWLJ 18 at 20.
[107] See the research conducted by Dr Isabelle Sin at Motu Economic and Public Policy: Susan Edmunds "Reports says women paid less even when as productive" (29 August 2017) *Stuff* <www.stuff.co.nz>.
[108] Lady Deborah Chambers QC "Unconscious Bias is too kind" (2017) 1 NZWLJ 18 at 19.
[109] Lady Deborah Chambers QC "Unconscious Bias is too kind" (2017) 1 NZWLJ 18 at 19.
[110] Erling Barth, Sari Kerr and Claudia Olivetti *The Dynamics of Gender Earnings Differentials: Evidence from Established Data* (The National Bureau of Economic Research, February 2017).
[111] New Zealand Law Society, *Snapshot of the Profession 2018* (February, 2018).

208. Aspects of a patriarchal system are still prevalent today in the legal profession.

ELEVENTH CAUSE OF ACTION: THE EDUCATION SYSTEM IS FAILING TO SUPPORT THE NEXT GENERATION OF MĀORI

Allegations

209. In breach of the principles of Te Tiriti o Waitangi the Crown have failed to protect the next generation of Māori by exposing them to racism in schools and further subjecting them to racist attacks by other students and teaching staff.

210. This breach has direct implications on wāhine Māori as you cannot separate the child from the mother – where tamariki Māori are suffering from racist attacks, it is usually their mothers who are their primary support system.

Particulars

211. The Ministry of Education is the governments lead advisor on the New Zealand education system, shaping direction for sector agencies and providers.

212. The legislation that governs New Zealand's education system and legislative changes affecting schools, kura and early learning services are:

    a) Education Act 1989; and

    b) The Education (Update) Amendment Act 2017.

213. The Education Act 1989 sets up the Crown entities and the independent statutory bodies in the education sector. They are:

    a) Tertiary Education Commission (TEC);

    b) New Zealand Qualifications Authority (NZQA);

    c) Education Council;

    d) Careers New Zealand; and

    e) New Zealand Vice-Chancellors Committee (NZVCC).

214. The Education Act 1989, the New Zealand Disability Strategy and the United Nations (UN) Convention on the Rights of Persons with Disabilities, all guide the Special Education policy for tamariki with Special Education needs.

215. The Ministry of Education have committed to improving the success of Māori children in terms of rapidly changing how the education system performs.[112] The current strategy in place is *Ka Hikitia 2013-2017,* which has been extended to the end of 2018. The strategy seeks to revise the current education system by creating a learning framework tailored to Māori students. Its predecessor *Ka Hikitia 2008-2012* had the same objectives.

216. Although these strategies are in place, Māori students continue to underperform compared to non-Māori. Focus Three of the strategy seeks to ensure that all Māori have strong numeracy and language skills. In terms of literacy, Māori have the lowest percentage of achieving NCEA Level 1 across all ethnic groups, which is lower than Asian students.[113]

217. In regards to the first strategy, *Ka Hikitia 2008-2013*, Māori statistics were much worse.[114] Māori did not have the worse statistics in 2009, but by the end of 2013, Māori students dropped below the achievements of Pākehā, Pasifika and Asian students in obtaining NCEA Level 1 Literacy.[115]

218. In terms of numeracy, the percentage of Māori students obtaining NCEA Level 1 Numeracy, since the year 2009 to 2017, has consistently been lower than every other ethnic group.[116] The reasons behind the low achievements of Māori are due to a flawed education system which seeks to ensure non-Māori thrive, and Māori fail. Furthermore, where the education system does not value Māori culture, how can it value Māori children?

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[112] Ministry of Education, *Ka Hikitia – Accelerating Success 2013-2017* (2013).
[113] New Zealand Qualifications Authority, *Annual Report on NCEA and New Zealand Scholarship Data and Statistics (2017)*, (May 2018).
[114] New Zealand Qualifications Authority, *Annual Report on NCEA and New Zealand Scholarship Data and Statistics (2013)*, (May 2014).
[115] New Zealand Qualifications Authority, *Annual Report on NCEA and New Zealand Scholarship Data and Statistics (2013)*, (May 2014); New Zealand Qualifications Authority, *Annual Report on NCEA and New Zealand Scholarship Data and Statistics (2017)*, (May 2018).
[116] New Zealand Qualifications Authority, *Annual Report on NCEA and New Zealand Scholarship Data and Statistics (2013)*, (May 2014).

The New Zealand Curriculum principles

219. The eight principles of the New Zealand curriculum are:[117]

a) The high expectations principle – focuses on teacher expectations and student outcomes;

b) The Treaty of Waitangi principle – focuses on the principles of Te Tiriti o Waitangi and the bicultural foundations of Aotearoa;

c) The cultural diversity principle – focuses on affirming different cultural identities and incorporating cultural contexts into teaching and learning programmes;

d) The inclusion principle – focuses on a curriculum which is non-sexist, non-racist, and non-discriminatory;

e) The learning to learn principle – focuses on encouraging all students to reflect on their own learning processes and to learn how to learn;

f) The community engagement principle – focuses on connecting and engaging with a student's wider life, including their families, whānau and communities;

g) The coherence principle – focuses on making links within and across learning areas, provides for coherent transitions, and opening up pathways to further learning; and

h) The future focus principle – focuses on encouraging encourages students to look to the future by exploring such significant future-focused issues as sustainability, citizenship, enterprise, and globalisation.

220. These are the guiding principles for all teachers and schools. In regards to Māori children, there are clear indicators, in the form of statistics and student feedback, that these principles are not being applied to Māori. Many young Māori have indicated that they experience racism from their peers and their teachers.

[117] The Ministry of Education, *The New Zealand Curriculum Principles* <www.nzcurriculum.tki.org.nz/Principles>

Experiences of racism in schools

221. The Office of the Children's Commissioner and the Schools Trustees Association report titled *Education matters to me* engaged with nearly 1700 children and young people in order to ensure that these voices contribute to the National Education and Learning Priorities.[118] One of the key insights from the report was many young people, particularly those from ethnic minorities, confided that "people at school are racist towards me".

222. The study revealed that Māori children felt marginalised and discriminated not only by their peers but by their teachers also.[119] Furthermore, that they experience out right racism at school and are treated unequally because of their culture.[120] The report highlighted that in other reports they may have used the term 'discrimination' or 'bias', however the language used by Māori children to describe their experience was 'racism'.

223. One Māori student said:

> *Racism exists – we feel little and bad.*

224. Many rangatahi shared troubling experiences of their relationships with their teachers. Due to these negative experiences and being treated unequally to non-Māori, the report states that this creates barriers to access meaningful educational experiences.

225. A Māori secondary school student observed that teachers assume that due to them being Māori, they are 'dumb' and therefore, pay more attention to Pākehā because they believe in a Pākehā students potential.[121] Furthermore, some young Māori expressed that they have behavioural issues as a result of negative stereotyping.

226. A young Māori student expressed that:

> *Since I am Māori, and have an anger problem, I would get into fights easy because people would say racist things to me.*

227. This is an indication that Māori students are being subjected to racism from their peers and being let down by their teachers. Some students highlighted that the

[118] Children's Commissioner, *Education matters to me: Key insights* (January 2018).
[119] Children's Commissioner, *Education matters to me: Key insights* (January 2018).
[120] Children's Commissioner, *Education matters to me: Key insights* (January 2018).
[121] Children's Commissioner, *Education matters to me: Key insights* (January 2018).

relationship they seek with their teachers is one which is warm, friendly, caring, helpful and where they believe in that student.[122] The report highlights that many Māori students believe that good teachers are the difference between them achieving and failing.

228. Māori students are walking into the classroom where they are subjected to discrimination based on their race. The Children Commissioner's report, and the many other reports which reveal the same findings, highlight that schools are failing Māori students.

229. If you continue to treat someone like they are inferior and worthless, they soon begin to believe it. Māori children are experiencing intense levels of racism within an environment that is founded on principles which encourage the student to succeed – not only is this not being delivered, Māori are shown to be led down a path to failure.

BREACHES OF TE TIRITI O WAITANGI

230. The relevant Te Tiriti/the Treaty principles that have been breached by the Crown are:

    a) te tino rangatiratanga;

    b) mutual respect and guarantee of equal rights

    c) meaningful engagement and consultation;

    d) active protection of Tāonga Māori including the right to develop strategies for the delivery of services for Wāhine Māori and recognition of and meeting Wāhine Māori needs consistent with Tikanga Māori; and

    e) redress (the obligation on the Crown to remedy breaches of Te Tiriti/the Treaty).

231. The claimants maintain that Wāhine Māori generally have been and continue to be, denied the authority to make and enforce laws and regulations over their people or

[122] Children's Commissioner, *Education matters to me: Key insights* (January 2018).

their territories, including laws and regulations that promote the well-being of their people consistent with Tikanga Māori.

232. The claimants maintain that Māori generally were guaranteed the authority to do so by virtue of the Te Tiriti o Waitangi relationship with the Crown. That authority includes Wāhine Māori determining strategies for the delivery of services and recognition of and meeting the needs of Wāhine Māori.

233. This denial of authority to Wāhine Māori specifically by the Crown has breached the Te Tiriti o Waitangi guarantees.

234. The particular causes of action, which breach the principles of Te Tiriti/the Treaty and which give rise to the Claimant's grievances are that the Crown:

a) failed to engage in a satisfactory manner with the claimants;

b) failed to recognise and give effect to the claimants' tino rangatiratanga;

c) denial of the equal status of wāhine Māori and tāne Māori to other members of society;

d) the enforcement of British/western/colonial ideology at the expense of Tikanga to the deteriment of the status and dignity of wāhine Māori and their tamariki as guaranteed by Article IV of Te Tiriti/the Treaty;

e) the perpetuation of a system premised on racial hatred of wāhine Māori and a denial of their status and dignity which has made wāhine Māori vulnerable to discrimination and racism in all contexts of economic, social, cultural and spiritual well-being;

f) failed to actively protect the Claimant's tāonga under Article II of Te Tiriti/the Treaty; and

g) failed to actively protect the authority which Māori possess collectively and hapū and iwi specifically, to make and enforce laws and regulations over their people or their territories, including laws and regulations that promote the well-being of their peoples consistent with Tikanga Māori while developing sanctions for the perpetuation of behaviours of racial hatred and racial discrimination.

PREJUDICE TO THE CLAIMANTS

235. The breaches of Te Tiriti o Waitangi identified above have caused, are causing, and will continue to cause significant and irreversible prejudice to the claimant by the Crowns including but not limited to:

a) The perpetuation of a system of government that does not protect the interests of wāhine Māori as kaitiaki of tamariki; whānau and hapū and their tāonga including the maintenance of social institutions that value the status and dignity of wāhine Māori;

b) The severe breakdown across generations in the transmission of mātauranga that is specific to wāhine Māori and it impacts on sustaining Māori beliefs and systems of knowledge for the benefit and wellbeing of Māori generally;

c) Legislation which does not prevent the systemic conscious and unconscious discrimination against wāhine Māori; and

d) The denial of Tikanga Māori as a legitimate pathway to justice and restoration of Mana and Rangatiratanga for wāhine Māori.

e) The imposition of colonial gender norms and constructs that confined wāhine Māori to British ideologies of "women", erasing and suppressing tikanga Māori which upheld their authority, mana, and equal role in decision-making and leadership.

f) The restriction and exclusion of wāhine Māori from exercising tino rangatiratanga in governance structures, both Crown-imposed and Māori-led, limiting their ability to lead and influence decisions affecting their whānau and communities.

g) The intergenerational transmission of prejudice and deprivation experienced by wāhine Māori as primary caregivers, adversely affecting tamariki, mokopuna, and the overall wellbeing of whānau Māori.

h) The cumulative and internalised harm resulting from the loss of status and mana, leading to negative self-perceptions among wāhine Māori and systemic impacts across all dimensions of wellbeing.

RELIEF SOUGHT

236. The claimant seeks the following:

a) Findings of fact that show acts and omissions of the Crown as prejudicial to Māori and in breach of Te Tiriti o Waitangi and all that was guaranteed to Māori;

b) finding that the claim is well founded;

c) a finding that the Crown breached the principles of te Tiriti as alleged in this Statement of Claim;

d) a recommendation from the Tribunal that the Crown commit to:

i) Engaging in decolonisation, power-sharing and constitutional transformation;

ii) Using structural mechanisms to honour te Tiriti o Waitangi;

iii) Maintain efforts to redress historical racism;

iv) Strengthening the human rights/race relations office to set and monitor equity targets;

v) Utilising international human rights instruments to apply international pressure;

vi) Mobilising communities to engage in public education, informed dialogue and activism;

vii) Transforming organisations through system change approaches and as part of that, strengthening core cultural and political competencies; and

viii) Developing a comprehensive plan, working in partnership with Māori and other relevant groups, that identifies actions, builds ownership and measures that is designed to eliminate racial hatred and is aimed at reducing inequalities in social indicators amongst Māori women and their children with respect to health, employment, education and housing.

e) Specific government interventions are put in place to eradicate racial discrimination and racial hatred and to provide appropriate sanctions where misconduct of this kind arises; and

f) A finding that wāhine Māori are holders of mana and tino rangatiratanga protected under Article II of Te Tiriti o Waitangi, and that the Crown has failed to uphold these rights.

g) Recognition that the prejudice experienced by wāhine Māori has intergenerational consequences, contributing to the deprivation and marginalisation of tamariki, mokopuna and whānau Māori.

h) A recommendation that the Crown integrate tikanga Māori—including mātauranga and mana wāhine—into governance, law, and policy development as a legitimate and equal system of knowledge and justice.

i) The establishment of governance structures that guarantee wāhine Māori leadership and decision-making in the design, implementation, and evaluation of all policies affecting them and their whānau.

j) The establishment of a dedicated, independent statutory body with a mandate to monitor, report on, and ensure accountability for Crown obligations and performance in relation to wāhine Māori.

Data

k) Affirmation that constitutional transformation is necessary to ensure equity of data sovereignty for wāhine Māori.

l) Investment in increasing data infrastructure and capacities of wāhine Māori to enable wāhine Māori rangatiratanga over data.

m) A finding that data failings of the Crown (both in terms of a lack of data as well as the manner in which data collection occurs) in respect of wāhine Māori is a breach of Te Tiriti.Mechanisms which ensure that wāhine Māori can access data about ourselves and our whānau, iwi and hapū. There should be a clear link between access to and use of Māori data, and the fair and equitable sharing of benefits; and

n) Any other recommendations that the Tribunal sees fit to make.

Reparation and Reconstruction

o) Affirm that constitutional transformation under Te Tiriti o Waitangi is essential for a just future for all, including wāhine Māori, and acknowledge the sustained breaches and deep harm caused by the Crown over time.

p) Provide appropriate reparation to wāhine Māori for historic and ongoing Te Tiriti breaches, including recognition of intergenerational trauma and harm, and a commitment to restore mana wāhine.

q) Ensure long-term and sustained investment in wāhine Māori-led initiatives across key sectors—health, justice, education, Māori development, and the economy. This includes increased support for whānau-based organisations and targeted investment in areas where wāhine Māori are underrepresented.

r) Establish a dedicated wāhine Māori-led fund to support healing, resilience, leadership development, and the revitalisation of culture, identity, and tikanga. Resource Māori-led efforts to restore gender balance and uphold mana wāhine within tikanga frameworks.

s) Significantly improve Crown funding for existing wāhine Māori programmes and initiatives, and allow the Waitangi Tribunal to make any further recommendations it considers appropriate to achieve equity and justice.

AMENDMENTS TO THIS CLAIM

237. The claimant reserves the right to make any amendments to this claim they perceive necessary throughout this Kaupapa Inquiry.

DATED at Rotorua on this 8th day of May 2025

Annette Sykes Jack Potaka Maia Te Hira

Counsel for the Claimants