

**IN THE WAITANGI TRIBUNAL  
I TE ROOPU WHAKAMANA I TE TIRITI O WAITANGI**

**WAI 2750  
WAI 2715**

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

**AND**

**IN THE MATTER OF** The Kaupapa Inquiry into claims concerning  
Housing Policy and Services (Wai 2750)

**AND**

**IN THE MATTER OF** a claim by Rosaria Hotere for and on behalf of  
herself, her whānau and Te Uri o Hau (Wai 2715)

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**AMENDED STATEMENT OF CLAIM**

**Dated 12 March 2025**

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**RECEIVED**

Waitangi Tribunal

**12 Mar 25**

Ministry of Justice  
WELLINGTON



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**MAY IT PLEASE THE TRIBUNAL**

1. This amended statement of claim (ASOC) is filed on behalf of Rosaria Hotere for and on behalf of herself, her whānau and Te Uri o Hau (the Claimants). It amends and further particularises the first Wai 2715 statement of claim filed on 13 February 2018 (Wai 2715, #1.1.1).

**The Claim**

2. The Claimants are of Māori descent and have been prejudicially affected by the actions and omissions of the Crown, the particulars of which are set out in this ASOC.
3. The Claimants further claim that the actions and omissions referred to in this ASOC are inconsistent with the principles of te Tiriti o Waitangi.
4. To avoid doubt, although historical developments are referred to by way of context, this ASOC refers to grievances that arose after September 1992 and is therefore a contemporary claim.
5. Broadly, this claim relates to the failure of the Crown to:
  - a. provide an adequate standard of housing for Māori;
  - b. provide sufficient assistance to Māori to own their own home;
  - c. involve Māori in the design of housing policy and strategy;
  - d. to deliver state services, programmes and support enabling Māori access to adequate housing; and
  - e. rectify disparities in the provision of state housing.

**The Claimants**

6. Rosaria Hotere descends from Ngāpuhi and Te Aupōuri in Te Tai Tokerau and resides in Tāmaki Makaurau. She has participated in several kaupapa inquiries including Wai 2575 (Health Services and Outcomes), Wai 2700 (Mana Wāhine), Wai 3060 (Justice System) and Wai 2500 (Military Veterans), as well as Wai 1040 (Te Paparahi o Te Raki).
7. From the early 20th century, members of the Claimants' whānau, like many whānau, were compelled to move to cities in order to obtain basic housing, health services, education and employment. As a result, the Claimants substantially lost their connection with their ancestral lands, culture and communities. Many ended up in poor urban areas, mainly in Tāmaki Makaurau, in overcrowded homes on violent streets and substantially dependent on welfare benefits. The main drivers behind leaving their ancestral whenua were the government acquisition of Māori land, and a lack of suitable housing.

#### **Te Tiriti o Waitangi**

8. Without limiting te Tiriti o Waitangi, the Claimants say that the following are among the principles of te Tiriti which are relevant to this claim.

#### *Rangatiratanga*

9. An essential finding of the Waitangi Tribunal's Te Paparahi o Te Raki Stage One Report was that:<sup>1</sup>

...in February 1840 the rangatira who signed Te Tiriti did not cede their sovereignty. That is, they did not cede their authority to make and enforce law over their people or their territories.

10. The Claimants submit that as a base principle, this finding confirms their understanding that they have retained their rangatiratanga with respect to their customary rohe and that their rangatiratanga was not relinquished to the Crown upon signing te Tiriti in 1840.

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<sup>1</sup> Waitangi Tribunal *He Whakaputanga me Te Tiriti / The Declaration and the Treaty* (Wai 1040, 2014) at xxii.

*Property and Custom*

11. In line with this are the fundamental principles of protection and preservation of Māori property and taonga<sup>2</sup> and the preservation of Māori custom including an ongoing distinctive existence as a people, albeit adapting as time passed and the combined society developed.<sup>3</sup>
12. Then flowing from the above principles on property and custom are the principles that:
- a. Māori were and are to be protected not only in the possession of their property, but in their right to control such property in accordance with their own customs and having regard to their own cultural preferences;<sup>4</sup>
  - b. Tino rangatiratanga, being the full authority, status and prestige with regard to Māori possessions and interests, is to be protected and preserved;<sup>5</sup> and
  - c. Māori customary title is to be preserved.<sup>6</sup>

*Good government*

13. Te Tiriti also provides that Māori are entitled to the benefit of good government. Such good government should exhibit itself in at least the following ways:
- a. Equal treatment by the law and by all government agencies (except to the extent necessary to redress past injustices and the results of that in which event more favourable treatment is appropriate).<sup>7</sup>

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<sup>2</sup> *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513 (PC) at 517.

<sup>3</sup> *Taiaroa v Minister of Justice* HC Wellington, CP99/94, 29 August 1994 at 69.

<sup>4</sup> *Report of the Waitangi Tribunal on the Motunui-Waitara Claim* (Wai 6, 1983) [*Motunui-Waitara Report*] at 51.

<sup>5</sup> *Report of the Waitangi Tribunal on the Manukau Claim* (Wai 8, 1985) [*Manukau Report*] at 67.

<sup>6</sup> *Te Runanga o Te Ika Whenua Inc Soc v Attorney-General* [1994] 2 NZLR 20 (CA) [*Te Ika Whenua*] at 24.

<sup>7</sup> Labour Government Statement of Principles of Te Tiriti o Waitangi, 1989, Principle (C).

- b. Matters affecting Māori land should be determined by Māori. Māori should be permitted to maintain their own way of reaching agreements.<sup>8</sup>
- c. Conditions that would enable Māori, despite settlement, to not only survive but to progress because of it.<sup>9</sup>
- d. Māori would be and are now entitled to peace and law and order.<sup>10</sup>
- e. Protection of particular Māori interests.<sup>11</sup>
- f. A duty not to use any powers of compulsory acquisition of Māori land or resources without first consulting those Māori affected and without negotiating genuinely with them as to the purchase or, at least, paying proper compensation.<sup>12</sup>
- g. An inability to avoid the Crown's obligations by any delegation of the Crown's duties under te Tiriti.<sup>13</sup>

*Fiduciary duty*

- 14. The Crown owes a fiduciary duty of good faith to Māori<sup>14</sup> including an obligation not to use unfair means when dealing with Māori.

*Economic protection*

- 15. The Crown has a duty to protect, preserve and promote the economic position of Māori. This includes:
  - a. A duty to ensure that Māori were and are left with sufficient land and other resources for their maintenance, support and livelihood, and

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<sup>8</sup> Waitangi Tribunal *The Taranaki Report: Kaupapa Tuatahi* (Wai 143, 1996) at 281–282.

<sup>9</sup> *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim* (Wai 22, 1998) [*Muriwhenua Fishing Report*] at 194.

<sup>10</sup> *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (CA) at 715.

<sup>11</sup> *Manukau Report*, above n 5, at 69.

<sup>12</sup> Waitangi Tribunal *The Ngati Rangiteaorere Claim Report* (Wai 32, 1990) at 47–48; *Te Ika Whenua*, above n 6, at 24.

<sup>13</sup> *Manukau Report* at 73.

<sup>14</sup> *Te Runanga o Wharekauri Rekohu Inc v Attorney-General* [1993] 2 NZLR 301 at 305–306.

that each hapū maintained a sufficient endowment for its foreseen needs.<sup>15</sup>

- b. Such endowment is not just an endowment sufficient to survive, but sufficient to profit and prosper, and includes the facility to fully exploit such land and resources.<sup>16</sup>
- c. Māori have a right to develop and expand such resources using modern technologies and are not to be consigned to those technologies known at the time of te Tiriti.<sup>17</sup>

#### *Overarching principles*

- 16. An overarching principle of te Tiriti is that the Crown should deal with Māori honourably and in good faith, and should ensure the protection and prosperity of Māori as a people including their economic, physical, spiritual and cultural wellbeing.
- 17. Another overarching principle is that the Crown should remedy past breaches in all but very special circumstances.<sup>18</sup>

#### *Common law*

- 18. At common law the Claimants hold their land through customary title, or aboriginal title.<sup>19</sup> Their rights were guaranteed through the signing of te Tiriti. The Crown has long recognised those rights, as have the Courts of New Zealand, and this Tribunal.
- 19. By way of example, the Tribunal has found that:<sup>20</sup>

...the Māori interest in marine farming forms part of the bundle of Māori rights in the coastal marine area that represent a taonga protected by the Treaty of Waitangi.

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<sup>15</sup> *Report of the Waitangi Tribunal on The Orakei Claim* (Wai 9, 1987) at 206.

<sup>16</sup> *Muriwhenua Fishing Report*, above n 9, at 194.

<sup>17</sup> *Muriwhenua Fishing Report* at 234.

<sup>18</sup> *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (CA) at 664-665.

<sup>19</sup> *Ngati Apa v Attorney-General* [2003] 3 NZLR 643 (CA) at [55].

<sup>20</sup> *Waitangi Tribunal Ahu Moana: The Aquaculture and Marine Farming Report* (Wai 953, 2002)

20. The protected customary rights recognise and provide for customary activities, uses and practices. The bundle of rights the Tribunal referred to above survives the termination of customary title, and the Crown has a duty to observe these rights under te Tiriti.

*Other duties*

21. The Crown has duties to recognise and actively protect Māori rights and interests under te Tiriti and its principles. Crown duties in respect of Māori flow from the rights of active protection and citizenship guaranteed by te Tiriti.

22. Crown duties include the duty to act in good faith and to consult with Māori in relation to matters that affect them.

23. The Crown has a duty to recognise and actively protect Māori rights and interests under the Treaty and its principles.

24. Crown duties in respect of housing flow from the rights of active protection and citizenship guaranteed by the Treaty. These duties are to:

- a. ensure adequate access to an appropriate standard of housing;
- b. ensure equality in housing standards and policies; and
- c. ensure adequate housing assistance to enable claimants to protect and improve their housing conditions.

**General overview of the claim**

25. The Claimants have suffered from a lack of access to adequate housing. There is a chronic disparity in access to adequate housing as between Māori and non-Māori. The Crown's failure to remedy this disparity is an ongoing breach of the Treaty.

26. Māori make up approximately half of those on the housing register, approximately 37% of public housing tenants and are much more likely to experience severe housing deprivation than Pākehā. About 31% of Māori own their own home, compared to 51% of the general population.<sup>21</sup>

27. Māori feature low in the priority list to receive state housing assistance. There is a lack of support in applying for housing, explaining claimants' rights, and providing direction within the system. Claimant whānau have experienced homelessness to an increasing degree.

28. Ms Hotere has experienced a number of housing-related issues. These include:

- a. stairs in poor condition given her health needs;
- b. windows that do not close or lock, enabling burglaries and leading to illness;
- c. delays in fixing the windows; and
- d. not being able to lock her shed, leading to further burglaries.

29. The Claimants say that these are common issues for whānau throughout Aotearoa.

**First cause of action: Māori and state housing**

30. The Crown has recognised that Māori are “disproportionately represented in all areas of housing need and homelessness, driven by the ongoing impacts of dispossession of land, and subsequent displacement and disconnection from whānau, hapū and iwi.”<sup>22</sup>

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<sup>21</sup> Te Tūāpapa Kura Kāinga | Ministry of Housing and Urban Development *Government Policy Statement on Housing and Urban Development* [GPS HUD] (September 2021) at 30.

<sup>22</sup> Te Tūāpapa Kura Kāinga | Ministry of Housing and Urban Development *Aotearoa/New Zealand Homelessness Action Plan: Phase One 2020–2023* (February 2020) at 2.

31. It has also been recognised that “Māori are disproportionately represented on state housing waiting lists. They are more likely to live in housing of poor condition compared with the rest of the population. Māori are also less likely than non-Māori to own their own house.”<sup>23</sup>
32. Opportunities to gain homeownership through state-sponsored loans or purchasing their state house were denied for Māori for long periods of time, despite successive governments knowing that Māori were living in poor conditions.<sup>24</sup>
33. State houses have been sporadically built on Māori land in recent times; for example, in 2001 state houses were built on Māori land for the first time in a decade.<sup>25</sup> Today, as Arbury and Cram note, “there is no longer enough Māori land to house all Māori, should they wish to live on their whenua.”<sup>26</sup> This is critical because Māori land:<sup>27</sup>
- ...has significant cultural and social value, and the desire to live on the land is often described in terms of fostering well-being for the community and as a source of mana.
34. Arbury and Cram conclude that reports by the Office of the Auditor-General and the Productivity Commission “provided the impetus for the development of the 2014 Māori Housing Strategy, *He Whare Āhuru He Oranga Tāngata*”, but “the funding provided for the strategy’s implementation gave an early signal that Māori housing was a low priority for the Crown.”<sup>28</sup>
35. Māori in state houses have been negatively affected by Crown action including the reorganisation of the Housing Corporation to operate with

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<sup>23</sup> Controller and Auditor-General *Government planning and support for housing on Māori land – Ngā whakatakotoranga kaupapa me te tautoko a te Kāwanatanga ki te hanga whare i runga i te whenua Māori* (August 2011) at 23.

<sup>24</sup> Charles Waldegrave *Māori Home Ownership 1991–2021* (May 2023) (Wai 2750, #A13) at 23.

<sup>25</sup> Ella Arbury and Fiona Cram *Housing on Māori Land, c.1870-2021* (24 April 2023) (Wai 2750, #A12) at 282.

<sup>26</sup> Arbury and Cram at 400.

<sup>27</sup> Controller and Auditor-General at 23.

<sup>28</sup> Arbury and Cram at 355.

commercial imperatives, the reduction in benefit rates in 1991, and the introduction of market rates for state housing (the latter of which made state housing unaffordable for many existing tenants).<sup>29</sup>

36. From the late 1940s to the early 1970s, part of the Crown’s policy was to “pepper-pot” whānau Māori in state housing—that is, Māori were dispersed within majority non-Māori neighbourhoods. This led to dual outcomes of assimilating Māori into Pākehā lifestyles, and discouraging traditional styles of communal living.<sup>30</sup>

37. Assimilationist policies like this have led to downstream, intergenerational effects including loss of culture and identity. These losses persist to the present day and have made it harder for the Claimants and their whānau to express and pass down their Māoritanga.

#### **Second cause of action: Housing standards**

38. The history of Māori living in substandard housing spans more than a century and includes both state housing and private rental housing. Since at least the late 19th century, there has been a documented connection between substandard housing and Māori ill health, yet Crown assistance for Māori living in poverty has not been historically forthcoming.<sup>31</sup>

39. Instead, in the late 19th century, when the Crown became aware of inadequate housing leading to poor health outcomes for Māori, the Crown responded with public health education initiatives rather than providing support for building healthier homes.<sup>32</sup>

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<sup>29</sup> Elizabeth Rowe *The Private Rental Market and Māori: 1991 to 2021* (April 2023) (Wai 2750, #A11) [Rowe *Private Rental Market*] at 194.

<sup>30</sup> Timothy Gassin and Max Nichol *Māori Housing and Government Policy 1935-1990* (June 2023) (Wai 2750, #A14) at 117.

<sup>31</sup> Arbury and Cram at 33.

<sup>32</sup> Arbury and Cram at 37.

40. Poor housing standards are likely to cause significant harm to Māori, as it is well documented that Māori tend to experience worse health outcomes than non-Māori. These include:<sup>33</sup>
- a. lower life expectancy;
  - b. cancer and cancer-related mortality;
  - c. cardiovascular disease;
  - d. respiratory disease;
  - e. diabetes;
  - f. infectious disease;
  - g. infant health; and
  - h. mental health.
41. Even when the Crown implemented dedicated Māori housing programmes, these houses were initially constructed to a lower standard than state houses until the late 1940s.<sup>34</sup> Records of Māori ill health caused (or partly caused) by substandard housing continued through the following decades.<sup>35</sup>
42. To this day, whānau Māori are less likely to own their own home and more likely to rent, and therefore more likely to suffer from the lower standard of rental housing in New Zealand.<sup>36</sup> The government has identified that children and young people living in rental housing are “much more likely to live in poor quality housing, for instance in homes that have mould” and that Māori have

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<sup>33</sup> Ministry of Health “Ngā mana hauora tūtohu: Health status indicators” <health.govt.nz>

<sup>34</sup> Arbury and Cram, above n X at 130.

<sup>35</sup> Arbury and Cram at 162.

<sup>36</sup> Waldegrave, above n 24, at 105.

some of the highest rates of severe housing deprivation.<sup>37</sup> Kāinga Ora’s Māori Strategy puts it in stark terms: “Access to warm, dry, secure, affordable, and stable housing is now a privilege.”<sup>38</sup>

43. It was frequently the case that Māori had to leave their whānau, whenua and tūrangawaewae in order to enjoy better standards of housing in urban centres.<sup>39</sup> This is part of the reason why Ms Hotere has lived in Tāmaki Makaurau and various other parts of the motu, rather than her ancestral home in Te Tai Tokerau.
44. Simon Chapple observes that Māori migrating to urban areas post-World War II were “unskilled and poorly educated in terms of their new urban working environment” and had little incentive to upskill because unskilled jobs paid well relative to skilled jobs.<sup>40</sup> In the Claimants’ experience, this is no longer the case. Data from the 2023 Census indicates that in Te Tai Tokerau, Māori are considerably less likely than non-Māori to be employed as “professionals”, while the median personal income of Māori lags behind that of non-Māori at all age groups.<sup>41</sup>
45. Until the introduction of the Residential Tenancies Act 2016, there was no consistent observation or enforcement of quality standards for rental housing. The Crown did not mandate or incentivise quality, so there was essentially no penalty for failing to provide a warm and dry home. Unsurprisingly, it was those with limited financial resources who suffered poor housing conditions.<sup>42</sup>
46. The Healthy Homes standards became law in 2019, long after the Crown had been made aware of issues with the quality of rental housing. Prior to these standards, it was estimated that two-thirds of New Zealand housing stock

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<sup>37</sup> GPS HUD, above n 21, at 30.

<sup>38</sup> Kāinga Ora Māori Strategy 2021–2026: Prioritising and supporting iwi and rōpū Māori aspirations for housing at 8.

<sup>39</sup> Charles Waldegrave and Josh Reid *Social Housing and Māori, 1991 – 2021* (Wai 2750, #A16) at 6.

<sup>40</sup> Simon Chapple “Maori Socio-Economic Disparity”, *Political Science*, vol 52, no 2 (2000) at 113 (in Wai 2750, #A10 at 14).

<sup>41</sup> Statistics New Zealand “Place and ethnic group summaries: Northland Region” <tools.summaries.stats.govt.nz>

<sup>42</sup> Rowe *Private Rental Market*, above n 29, at 122.

lacked insulation, and many houses had inadequate heating.<sup>43</sup> Māori are likely to have suffered from the effects of this disproportionately due to being disproportionately likely to rent.

47. The housing quality issues which Ms Hotere has experienced (outlined at [28] above) are typical of what many Māori have had to face. Additionally, Department of Statistics data from the early 1980s recorded that Māori were more likely to report dampness, heating, cooling, sticking doors or windows, and/or pests, and that Māori accommodation was of lower quality than Pākehā accommodation irrespective of tenure type.<sup>44</sup> A 2019 report by Dr Bev James and Dr Kay Saville-Smith noted that “considerable urgent investment is needed to improve the quality of both rental and owner-occupied stock” in Te Tai Tokerau.<sup>45</sup>

### **Third cause of action: Overcrowding**

48. Whānau Māori have long faced overcrowding. This issue has its genesis in the large-scale loss of land Māori suffered in the latter half of the 19th century. Arbury and Cram observe that the New Zealand Settlements Act 1863 and its accompanying Compensation Court often left Māori with “no land, less land, or land that was inadequate for housebuilding.”<sup>46</sup> While hapū and iwi would provide shelter to their whanaunga in need, overcrowding and unhealthy housing conditions often predictably followed: there was simply less land to house the same number of people.<sup>47</sup> Overcrowding has persistently affected whānau Māori from then until the present day, and the Crown was in no sense blind to the issue.<sup>48</sup>

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<sup>43</sup> Rowe *Private Rental Market* at 221.

<sup>44</sup> Edward Macpherson Kohu Douglas *Fading Expectations: The Crisis in Māori Housing: A Report for the Board of Māori Affairs* (Department of Māori Affairs, Wellington, 1986) at 39, cited in Rowe *Private Rental Market* at 139.

<sup>45</sup> Bev James and Kay Saville-Smith *Māori housing need, stock, and regional population change in Te Tai Tokerau: Research Needs, Landscape and Future Proofing* (Te Puni Kōkiri, Ministry of Social Development and Housing New Zealand, May 2019) at 17.

<sup>46</sup> Arbury and Cram at 22.

<sup>47</sup> Arbury and Cram at 22.

<sup>48</sup> See generally Arbury and Cram.

49. In the modern context, overcrowding has been exacerbated by the implementation of the Accommodation Supplement in the early 1990s. Part of the calculus of the Accommodation Supplement involved determining the number of bedrooms needed to accommodate the ‘core family’, that is, the adult(s) and their children. Consequently, it left no room for alternative ways of living and did not recognise that in te ao Māori, whānau often prefer live together intergenerationally.<sup>49</sup> The Crown’s approach meant that Māori were, as Rowe puts it, “faced with the choice of either overcrowding or very high housing costs if they wished to maintain tikanga.”<sup>50</sup>
50. Overcrowding continues to persist in more recent times, particularly for Māori, who remain disproportionately affected by it: as of 2018, around 1 in 5 Māori experienced overcrowding, compared to around 1 in 9 of the New Zealand population. The percentage of Māori who experience overcrowding has remained relatively consistent over time.<sup>51</sup>
51. Overcrowding is a risk factor for a number of infectious diseases, including lower respiratory tract infections, meningococcal disease, gastroenteritis, *Haemophilus influenzae* disease, Hepatitis A, *Helicobacter pylori* infection and tuberculosis.<sup>52</sup>
52. In Te Tai Tokerau, 75 per cent of renters, and 43 per cent of all households, have been found to be in housing need. One of the criteria for this is living in a crowded household.<sup>53</sup> In Tāmaki Makaurau, where Ms Hotere has long resided, more than a quarter of the Māori population live in overcrowded homes.<sup>54</sup> Te Tūāpapa Kura Kāinga and the Ministry of Social Development have identified both Te Tai Tokerau and South Auckland as being regions of

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<sup>49</sup> Gassin and Nichol, above n 30, at 7.

<sup>50</sup> Rowe *Private Rental Market* at 63.

<sup>51</sup> Environmental Health Intelligence New Zealand [EHINZ] “Household crowding” <ehinz.ac.nz>

<sup>52</sup> EHINZ, above n 51. See also Waldegrave, above n 24, at 106.

<sup>53</sup> James and Saville-Smith, above n 45, at 2.

<sup>54</sup> Waldegrave at 107.

high need where overcrowding or otherwise unsuitable accommodation are common.<sup>55</sup>

#### **Fourth cause of action: Discrimination**

53. For decades, Māori have faced various forms of discrimination in housing, from both the Crown and from the private rental market. An early example of discriminatory entitlements from the Crown is that Māori housing loans under the Native Housing Act were less generous than loans available from the State Advances Corporation, for which Māori were ineligible until 1961.<sup>56</sup>

54. Elizabeth Rowe describes how discrimination in the housing system is “a common experience for Māori members of special needs groups, and it has persisted from the 1980s to the present day.”<sup>57</sup> The Crown had been warned of the impact of this discrimination prior to the housing reforms of the 1990s.<sup>58</sup>

55. The Crown has long been aware, too, of discrimination in the private rental market, which persists today.<sup>59</sup> Gassin and Nichol observe that it has been a problem since at least the 1940s and 1950s.<sup>60</sup> As Rowe puts it, discrimination against Māori is “outlawed on paper, but pervasive in reality”,<sup>61</sup> partly because of a lack of “vigorous detection mechanisms” or a programme of “systematic detection and prosecution”.<sup>62</sup> The Crown has a duty to ensure that Māori are not unfairly prejudiced when it comes to accessing housing.

#### **Fifth cause of action: Low rates of Māori homeownership**

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<sup>55</sup> Te Tūāpapa Kura Kāinga and Ministry of Social Development “Further Advice on the Reset and Redesign of the Emergency Housing System” (Briefing Paper, 12 August 2022, document HUD.008.0485) at [17].

<sup>56</sup> Waldegrave at 24–25.

<sup>57</sup> Elizabeth Rowe *Special housing needs and Māori, 1991 – 2021* (November 2024) (Wai 2750, #A15) [Rowe *Special housing needs*] at 65. “Special housing needs” groups are defined as including the elderly, ex-prisoners, single parent families, those with physical or other disability and those requiring emergency or transitional housing for reasons such as domestic abuse of homelessness.

<sup>58</sup> At 66.

<sup>59</sup> Rowe *Private Rental Market* at 227–233.

<sup>60</sup> Gassin and Nichol at 135.

<sup>61</sup> At 166.

<sup>62</sup> At 254.

56. As noted above, Māori rates of homeownership lag significantly behind those of the general population.<sup>63</sup> In the 1990s, declining rates of Māori homeownership were juxtaposed with higher birth rates for Māori, leading to intensified demand by Māori for housing.<sup>64</sup>
57. Māori homeownership rates have declined since peaking at 57% in 1991, after decades of post-war investment by the Crown.<sup>65</sup> Waldegrave identifies some key factors in favour of targeting and maintaining high rates of Māori homeownership: homeownership is associated with building whānau wealth; better physical and mental health; higher employment rates; and lower crime rates and welfare costs.<sup>66</sup>
58. Literature has identified that Māori have faced more barriers to realising homeownership aspirations, including “difficulties obtaining mortgage finance, discrimination, high bureaucratic costs, and high rural development costs.”<sup>67</sup>
59. Housing affordability is naturally a barrier to whānau Māori owning their own home: Rowe concludes that “[the] problem of affordability prevents so many Māori from having a house that is truly their home – a place centred on Māori values of wellbeing, on whanaungatanga and manaakitanga.”<sup>68</sup> According to 2023 Census data, median personal incomes for Māori lag behind those of the general population for those under the age of 65, with the starkest disparities existing for the 30–64 age group.<sup>69</sup>
60. In 2011, the Productivity Commission identified that Māori in urban communities can face significant disadvantages, “especially in areas like Auckland where house prices have increased much faster than incomes.”<sup>70</sup> It further noted that “significant numbers of Māori households have incomes

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<sup>63</sup> GPS HUD, above n 21, at 30.

<sup>64</sup> Arbury and Cram at 226.

<sup>65</sup> Waldegrave at 8.

<sup>66</sup> At 102.

<sup>67</sup> Arbury and Cram at 230.

<sup>68</sup> Rowe *Private Rental Market* at 267.

<sup>69</sup> Statistics New Zealand “Place and ethnic groups summaries: Māori” <tools.summaries.stats.govt.nz>.

<sup>70</sup> New Zealand Productivity Commission *Housing affordability inquiry* (2012) at 243.

so low that any likely price reductions will not sufficiently close the gap between prices and incomes”.<sup>71</sup>

61. Affordability is a nut that successive governments have tried and failed to crack. Often, governments have taken quite disparate approaches rather than seeking bipartisan consensus on policies that can endure changes of government.
62. In 2023, Māori in Te Tai Tokerau were less likely (49.8 per cent) than the general population (60.4 per cent) to own their home,<sup>72</sup> while in Tāmaki Makaurau the disparity was even greater: Māori were significantly less likely (33.3 per cent) to own the home they were living in than the general population (48.1 per cent).<sup>73</sup>
63. Māori homeownership dropped to a post-1980s nadir of just 25% in 2013—a staggering drop from just over two decades earlier.<sup>74</sup> Given the well-documented benefits of homeownership—both to the homeowner and to society—and the relatively high rates of homeownership that came before, this decline cannot be seen as anything but a failure on the part of the Crown to protect the ability of Māori to own their own home.

**Sixth cause of action: Lack of Māori involvement in designing housing policy and strategy**

64. It was not until the introduction of the Māori and Iwi Housing Innovation (MAIHI) Framework and MAIHI Ka Ora – the National Māori Housing strategy in the early 2020s that the Crown truly engaged in genuine co-design with Māori on housing policy and strategy. While the prior strategy (He Whare Āhuru He Oranga Tāngata) did involve significant consultation with Māori, it

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<sup>71</sup> At 244.

<sup>72</sup> Statistics New Zealand “Place and ethnic groups summaries: Northland Region” <tools.summaries.stats.govt.nz>.

<sup>73</sup> Statistics New Zealand “Place and ethnic groups summaries: Auckland Region” <tools.summaries.stats.govt.nz>.

<sup>74</sup> Waldegrave at 164.

stopped short of offering co-design. The MAIHI Ka Ora strategy itself acknowledges that:<sup>75</sup>

Previous strategies were not co-designed with Māori, they also failed to include accountability measures or measurable outcomes, so were void of cooperation and partnership between the Crown and Māori.

...

Previous ‘one size fits all’ approaches to Māori housing have not worked.

65. Prior to these strategies, Māori involvement in the design of housing policy and strategy was scant at best and non-existent at worst. Predictably, programmes did not generally attempt to assist Māori specifically, nor take account of Māori social organisation or tikanga.<sup>76</sup> Rowe describes, for example, how public service agencies were “severely constrained from undertaking bespoke consultation about the [Accommodation] Supplement, relying rather on ... earlier and more general consultations and their own research and analysis.”<sup>77</sup>

66. Similarly, Waldegrave details how “the discourse from 1991 had been constructed around individual choice, market rationality, neutrality across tenure, minimising government intervention and an accommodation subsidy that would be fair and efficient” and any consultation “could only occur within those parameters.”<sup>78</sup>

67. Waldegrave further details how a 1998 Te Puni Kōkiri report issued a scathing assessment of the Ministry of Housing’s service delivery to Māori, referring to a “lack of strategy for considering Māori housing issues in its core work, limited investigation, and inadequate planning, data collection, reporting and policy advice of Māori housing priorities” as well as the Ministry not having its own protocol or systems to consult with Māori.<sup>79</sup>

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<sup>75</sup> Te Tūāpapa Kura Kāinga | Ministry of Housing and Urban Development *MAIHI KA Ora: The National Māori Housing Strategy* (2021) at 15.

<sup>76</sup> See, for example, Rowe *Private Rental Market* at 266.

<sup>77</sup> Rowe *Private Rental Market* at 30; see also 249 and following.

<sup>78</sup> Waldegrave at 185–186; see also Waldegrave and Reid at 37.

<sup>79</sup> At 187; see also Waldegrave and Reid, above n 39, at 27–29.

68. The lack of Māori involvement extends further back into the 20th century. For example, Gassin and Nichol note instances in which Māori were not consulted or involved in housing policy decisions from the late 1940s.<sup>80</sup> Even where consultation did take place, it either did not lead to policy that would generate positive housing outcomes for Māori,<sup>81</sup> or tended to be confined to Te Puni Kōkiri.<sup>82</sup>

69. While the MAIHI Framework is an improvement on what has gone before, it is noteworthy that this, too, was found wanting by the Tribunal in respect of the “narrowness of [the Crown’s] consultation”.<sup>83</sup> The Claimants and their whānau, and indeed Māori at large, did not have a real opportunity to contribute to the design of the framework or the strategy because the Crown effectively confined its engagement to “the usual suspects”.<sup>84</sup>

#### **Seventh cause of action: Homelessness**

70. As stated above, Māori are disproportionately affected by homelessness. It is vital that the Crown engage with and embrace Māori solutions to homelessness as Māori are the predominant users of emergency housing, and Māori solutions naturally dignify and promote human rights.<sup>85</sup>

71. In view of the fact that this Tribunal has already reported on homelessness issues, this issue is not particularised in detail; it is raised in the hope of reminding the Crown to uphold its obligation to partner with Māori to address this important kaupapa.<sup>86</sup> This bears repeating because Māori have

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<sup>80</sup> Gassin and Nichol, above n 30, at 148, 149, 478, 494.

<sup>81</sup> Gassin and Nichol at 355.

<sup>82</sup> Rowe *Special housing needs* at 331.

<sup>83</sup> Waitangi Tribunal *Kāinga Kore: The Stage One Report of the Housing Policy and Services Kaupapa Inquiry on Māori Homelessness [Kāinga Kore]* (Wai 2750, 2024) at 149.

<sup>84</sup> To borrow the Tribunal’s phrasing from *Ko Aotearoa Tēnei: A Report into Claims concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua* (Wai 262, 2011), vol 2 at 580.

<sup>85</sup> Human Rights Commission *Homelessness and human rights: a review of the emergency housing system in Aotearoa New Zealand* (December 2022).

<sup>86</sup> *Kāinga Kore* at 148–149.

not always been included in the design of initiatives to combat homelessness.<sup>87</sup>

### **Prejudice suffered**

72. As a result of the Crown's acts and omissions, the Claimants have been and continue to be prejudicially affected by:

- a. insufficient access to state housing;
- b. negative health outcomes due to poor-quality housing and overcrowding;
- c. discrimination in the housing system;
- d. barriers to homeownership;
- e. loss of culture and identity from being disconnected from their whenua; and
- f. being left out of the design of housing policy and strategy, thus inhibiting them from exercising their tino rangatiratanga.

### **Relief sought**

73. The Claimants seek relief in the following terms, which may be further particularised in submissions following the presentation of evidence:

- a. a finding that the claim is well-founded;
- b. findings that the Crown has breached the principles of te Tiriti o Waitangi by its acts and omissions as set out in this ASOC;

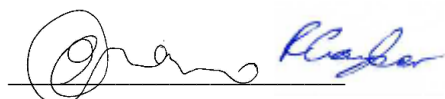
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<sup>87</sup> See, for example, Ministry of Social Development "18-month review of the Aotearoa Homelessness Action Plan (Aide-mémoire, 15 December 2021, document MSD.005.0194) at 2: "An evaluation of the [Intensive Case Managers] and Navigator services found that this service is working well but there is room for improvement. There was a missed opportunity to include Māori and Pasifika in the design of the initiatives."

- c. a recommendation that the Crown apologise to the Claimants and Māori for the prejudice they have suffered;
- d. a recommendation that the Crown partner with the Claimants and Māori as a matter of priority in the development of housing policy and strategy; and
- e. any other findings and recommendations as the Tribunal considers appropriate.

This Amended Statement of Claim is filed by **EVE RONGO** solicitor for the above named Claimants of the firm Oranganui Legal. The address for service on the named Claimants is at the offices of Oranganui Legal, 63 Awatea Avenue, Paraparaumu 5032 or posted to PO Box 809, Paraparaumu 5254 or emailed to the solicitor at [eve@oranganuilegal.com](mailto:eve@oranganuilegal.com).

**DATED** at Paraparaumu this 12th day of March 2025

A handwritten signature in blue ink, appearing to read 'Eve Rongo' followed by 'Richard Gayfer' in a cursive script.

**Eve Rongo / Richard Gayfer**

Claimant Counsel