

I TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI
IN THE WAITANGI TRIBUNAL

WAI 2700

Wai 1477

KEI RARO I TE MANA O
IN THE MATTER OF
ME

te ture o te Tiriti o Waitangi 1975
the Treaty of Waitangi Act 1975

AND

I TE TAKE O

te pakirehua Wai 2700 mō ngā kerēme e
pā ana ki te Mana o te Wahine

IN THE MATTER OF

the Mana Wāhine Kaupapa Inquiry (Wai
2700)

ME

AND

I TE TAKE O

tētahi kerēme nā Esme Warati Sherwin
me Alex Vincent Clifford, mōnā, mō
Emma Gibbs-Smith (kua mate) me tōnā
Gibbs-Smith whānau nō ngā iwi o Nga
Whānau o Waitangi Horotutu me
Taputaputa o Pahi, Ngāti Kawa, Ngāti
Rāhiri, and Ngare Raumati

IN THE MATTER OF

a claim by Esme Warati Sherwin and
Alex Vincent Clifford, on behalf of the
late Emma Gibbs-Smith, and the Gibbs-
Smith whānau as members of Nga
Whānau o Waitangi Horotutu me
Taputaputa o Pahi, Ngāti Kawa, Ngāti
Rāhiri, and Ngare Raumati

SIXTH AMENDED STATEMENT OF CLAIM OF WAI 1477

I tenei rā, I te 3 o Huitānguru 2026

Dated: 3 February 2026

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CONTENTS

The Parties	1
Rangatiratanga Pou	1
First Cause of Action: The Erosion of Tino Rangatiratanga of Wāhine Māori.....	1
Second Cause of Action: Crown Failure to Actively Protect the Kaitiaki Role of Wāhine Māori	11

THE CLAIMANTS SAY:

THE PARTIES

1. The Claimants, Esme Warati Sherwin and Alex Vincent Clifford, on behalf of the late Emma Gibbs-Smith, and the Gibbs-Smith whānau as members of Nga Whānau o Waitangi Horotutu me Taputaputa o Pahi, Ngāti Kawa, Ngāti Rāhiri, and Ngare Raumati, are Māori pursuant to section 6(1) of the Treaty of Waitangi Act 1975 (“**Claimants**”).
2. The Claimants are participating in the Wai 2700 Mana Wāhine Kaupapa Inquiry and wish to have the claims heard that set out in this Amended Statement of Claim in the Rangatiratanga Pou.
3. This Amended Statement of Claim is to replace previously filed Statements of Claim in this Inquiry to the extent that it amends, adds and particularises issues specific to the Rangatiratanga Pou. Where the previous Statement of Claim (Wai 1477, #1.1.1(e)) raised claim issues that are to be heard within the Whenua, Whai Rawa, Whanau and Whakapapa Pou, these issues will be further particularised in due course and remain extant and are not affected by this Amended Statement of Claim.
4. The Claimants reserve their right to further amend this claim.

RANGATIRATANGA POU

FIRST CAUSE OF ACTION: THE EROSION OF TINO RANGATIRATANGA OF WĀHINE MĀORI

Allegation

5. The Crown, through the introduction of western culture, Christianity and legislation and policy diminished the mana, status and rangatiratanga of wāhine Māori.

6. The Crown, in breach of tino rangatiratanga and active protection, eroded traditional Māori systems and practices removing the right of wāhine Māori to exercise rangatiratanga and governance over their peoples.
7. The Crown, in breach of tino rangatiratanga and active protection, enacted Crown policies that placed wāhine Māori beneath tane Māori in status, while further marginalizing them in relation to pākehā men and women.

Treaty Principles and Corresponding Crown Duties

The Principle of Tino Rangatiratanga

8. The Treaty principle of rangatiratanga involves a Crown guarantee for Māori to exercise authority and decision-making over their taonga and affairs to the fullest extent possible.¹ This must be in a context-specific manner² that aligns with tikanga.³ Rangatiratanga is the exercise of leadership in a manner that ensures that the iwi preserves and upholds its mana.⁴ The distinguishing feature of rangatiratanga is encapsulated in the notion of ‘taking care of one’s people’.⁵ In practical terms it means exercising paramount power, and authority in respect of the people and their resources, so that the people can prosper and enjoy social, economic and spiritual well-being.⁶ Importantly, rangatiratanga is not an inherently or exclusively male domain. Rather, wāhine Māori are also political, spiritual and cultural leaders in their communities, both traditionally⁷ and in contemporary times. The ability to exercise rangatiratanga over their own affairs includes authority

¹ Waitangi Tribunal, *Haumarū: The COVID-19 Priority Report* (Wai 2575, 2023), at 41.

² Waitangi Tribunal, *Haumarū: The COVID-19 Priority Report* (Wai 2575, 2023), at 41-42.

³ Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019), at 28.

⁴ Waitangi Tribunal, *Ngā Mātāpono: the Principles - The Interim Report of the Tomokia Ngā Tatau o Matangireia – the Constitutional Kaupapa Inquiry Panel on the Crown’s Treaty Principles Bill and Treaty Clause Review Policies (Pre-publication Version)*, (Wai 3300, 2024), at 19.

⁵ Waitangi Tribunal, *Ngā Mātāpono: the Principles - The Interim Report of the Tomokia Ngā Tatau o Matangireia – the Constitutional Kaupapa Inquiry Panel on the Crown’s Treaty Principles Bill and Treaty Clause Review Policies (Pre-publication Version)*, (Wai 3300, 2024) at 19.

⁶ Waitangi Tribunal, *Ngā Mātāpono: the Principles - The Interim Report of the Tomokia Ngā Tatau o Matangireia – the Constitutional Kaupapa Inquiry Panel on the Crown’s Treaty Principles Bill and Treaty Clause Review Policies (Pre-publication Version)*, (Wai 3300, 2024) at 19.

⁷ A Mikaere, *Māori Women: Caught in the Contradictions of a Colonised Reality* (Waikato Law Review, Vol 2, 1994), at 128.

over the balance of mana wāhine and mana tāne, and protection of the unique needs and perspectives of Māori women.⁸

9. Accordingly, the principle of rangatiratanga obligates the Crown to protect the leadership and power of wāhine distinct from the leadership and power of tāne,⁹ and to recognise that both wāhine and tāne are “*essential parts in the collective whole*”.¹⁰ Furthermore, the Crown is obliged to ensure that Māori retained authority over the balance of mana wāhine and mana tāne.¹¹

The Principle of Active Protection

10. By signing te Tiriti, the Crown guaranteed Māori that their existing rights and interests would be actively protected with the utmost good faith¹² and to the fullest extent practicable.¹³ This means the Crown cannot ignore, deny, or interfere with Māori communities’ tino rangatiratanga, including authority over and relationships with people, lands, and taonga.¹⁴ Active (rather than passive) protection ‘requires honourable conduct by, and fair processes from, the Crown, and full consultation with and, where appropriate, decision-making by those whose interests are to be protected.’¹⁵ The Treaty principle of active protection applies specifically to wāhine Māori as a non-kin-based Māori community, and mana wāhine as a Māori interest.¹⁶ Active protection extends to taonga and mana over them,¹⁷ made paramount by Article 2.¹⁸ Mana wāhine, as a taonga, requires active protection.

⁸ T Paul, *A Mana Wāhine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Victoria University of Wellington, 2014) at 35.

⁹ See A Mikaere, *Māori Women: Caught in the Contradictions of a Colonised Reality* (Waikato Law Review, Vol 2, 1994) at 131.

¹⁰ A Mikaere, *Māori Women: Caught in the Contradictions of a Colonised Reality* (Waikato Law Review, Vol 2, 1994) at 125.

¹¹ T Paul, *A Mana Wahine Critical Analysis of New Zealand Legislation Concerning Education: Implications for Addressing Māori Social Disadvantage* (Victoria University of Wellington, 2014) at 35. *New Zealand Māori Council v Attorney General* [1987] 1 NZLR 641 (CA) at 715.

¹² Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, (Wai 814, 2004), Vol 1, at 120.

¹³ Waitangi Tribunal, *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims* (Wai 898, 2023), Vol 1, at 211.

¹⁴ Waitangi Tribunal, *Ngā Mātāpono: the Principles - The Interim Report of the Tomokia Ngā Tatau o Matangireia – the Constitutional Kaupapa Inquiry Panel on the Crown’s Treaty Principles Bill and Treaty Clause Review Policies (Pre-publication Version)*, (Wai 3300, 2024), at 77.

¹⁵ Waitangi Tribunal, *Te Whānau o Waipareira Report* (Wai 414, 1998), at 16.

¹⁶ Waitangi Tribunal, *Kāinga Kore: The Stage One Report of the Housing Policy and Services Kaupapa Inquiry on Māori Homelessness* (Wai 2750, 2023), at 87.

¹⁷ See Waitangi Tribunal, *The Marine and Coastal Area (Takutai Moana) Act 2011 Inquiry Stage 2 Report* (Wai 2660, 2023), at 13.

11. Accordingly, the Crown is obliged to actively protect wāhine Māori and mana wāhine. In particular, the Crown was and is required to take “*especially vigorous action*” to protect vulnerable taonga, especially where the vulnerability is attributable to Crown Treaty breaches.¹⁹ The vulnerability experienced by wāhine Māori means that the Crown had heightened duties to protect wāhine Māori. Those duties continue today.

Particulars

Traditional Wāhine Māori Status and Roles

12. Prior to 1840, wāhine Māori held leadership roles and exercised rangatiratanga over their whenua, ngahere, awa, tāngata, taonga and other resources.
13. Mana and tapu guided traditional life, any activities carried out had a connection to maintaining and enhancing mana.²⁰
14. In traditional Māori society, descent from bilateral senior lines conferred senior status upon a person.²¹ This status was not confined to males.²²
15. Wāhine who had the appropriate whakapapa lineage were given the role of rangatira.²³ Their role was to ensure the well-being and welfare of the kāinga.²⁴
16. Wāhine rangatira were women of chiefly rank and power who possessed tapu and mana.²⁵

¹⁹ *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513 at 517.

²⁰ D Heke, *Atua Wahine, Mana Wahine A whakapapa expressed through the physical activity of Māori women in contemporary Aotearoa* (PhD Thesis, Auckland University 2021) at 48.

²¹ A Ballara, *Wahine Rangatira: Maori Women of Rank and Their Role in the Women's Kotahitanga Movement of the 1890s* (New Zealand Journal of History, Vol 27, Issue 2, 1993), at 130.

²² A Ballara, *Wahine Rangatira: Maori Women of Rank and Their Role in the Women's Kotahitanga Movement of the 1890s* (New Zealand Journal of History, Vol 27, Issue 2, 1993), at 130.

²³ M Gemmell, *A History of Marginalisation: Maori Women* (Thesis, Victoria University, Wellington, 2013), at 28.

²⁴ M Gemmell, *A History of Marginalisation: Maori Women* (Thesis, Victoria University, Wellington, 2013), at 28.

²⁵ A Ballara, *Wahine Rangatira: Maori Women of Rank and Their Role in the Women's Kotahitanga Movement of the 1890s* (New Zealand Journal of History, Vol 27, Issue 2, 1993), at 131.

17. These wāhine rangatira took part in debates and made decisions that bound their people.²⁶
18. Wāhine Māori also held rangatira roles through multiple different avenues within their iwi, hapu and whanau.
19. Wahine Māori were rangatira through karanga, which has deep roots in tikanga and is a strong example of the power of wāhine within te ao Māori.²⁷ Through the delivery of karanga wāhine Māori balanced tapu and noa and acted as the passage through which the spiritual meets reality.²⁸
20. Wāhine Māori were rangatira through the role they played in tribal warfare as instigators and peacemakers.²⁹ Wāhine would navigate “the complexities of inter-tribal relationships, issuing the ultimatum of war or alleviating discord and charting a course of peace”.³⁰
21. Wāhine Māori were rangatira through the transmission of knowledge. Wāhine would pass knowledge through waiata, whakataukī, pūrākau, oriori, art form and the written word.³¹

Te Wakaminenga and He Wakaputanga o te Rangatiratanga o Nu Tīreni

22. In 1834, a hui was convened which 750 Te Raki rangatira attended to discuss the future for ngā hapū Māori. A third of those present were wāhine Māori.³²

²⁶ A Ballara, *Wahine Rangatira: Maori Women of Rank and Their Role in the Women's Kotahitanga Movement of the 1890s* (New Zealand Journal of History, Vol 27, Issue 2, 1993), at 131.

²⁷ K Gabel, *Hine Tū, Hine Ora*, 8(2), (Yearbook of New Zealand Jurisprudence, 2005), at 79.

²⁸ P Ruwhiu, *Ka haere tonu te mana o nga wāhine Maori – Maori women as protectors of te ao Māori knowledge* (Massey University, 2009), at 21.

²⁹ P Ruwhiu, *Ka haere tonu te mana o nga wāhine māori: Maori women as protectors of te ao māori knowledge* (MSW Thesis, Massey University, 2009), at 19.

³⁰ N Murphy, *Te ahi tawhito, te ahi tipua, te ahi nā Mahuika: Re-igniting native women's ceremony* (Doctoral, The University of Waikato, 2019), at 120.

³¹ P Ruwhiu, *Ka haere tonu te mana o nga wāhine Maori – Maori women as protectors of te ao Māori knowledge* (Massey University, 2009), at 14.

³² M Henare, *He Whenua Rangatira: A Mana Māori History of the Early-Mid Nineteenth Century* (Research in Anthropology and Linguistics, Electronic Series – Number 8, 2021), at 54; R Wolfgramm, *Mana Wāhine Māori i Ngā Wā o Mua: The impacts of Crown legislation, policy and practices on the rangatiratanga, status and roles of wāhine Māori c.1840-1950* dated 18 October 2024, Wai 2700, #B9, at 141.

23. At this hui, the flag of 'Te Kara' was voted on and became a potent symbol of tribal mana and Māori sovereignty.³³
24. Thirty-four northern rangatira signed He Wakaputanga o te Rangatiratanga o Nu Tīreni in 1835.
25. By 1840, 52 rangatira joined the confederation of nga hapū Te Wakaminenga.³⁴
26. Although there is no record of wāhine signatories,³⁵ mana wāhine involved in political strategy would have been integral to the decision to join the confederation.

Wāhine Rangatira Exercising Authority over Taangata, Whenua me te ao Turoa

27. Wāhine rangatira exercised political authority at this time by their involvement in political strategy, military tactics and management of hapū affairs.³⁶

The Balance between Wāhine and Tāne

28. There was balance between wāhine and tāne and gender *per se* did not give tāne greater power or authority.³⁷
29. There was no hierarchy of sexes exemplified by the fact that personal pronouns (*ia*) and possession personal pronouns (*tana/tona*) were gender neutral.³⁸

³³ R Wolfgramm, *Mana Wāhine Māori i Ngā Wā ō Mua: The impacts of Crown legislation, policy and practices on the rangatiratanga, status and roles of wāhine Māori c.1840-1950* dated 18 October 2024, Wai 2700, #B9, at 141.

³⁴ C Orange, *The Treaty of Waitangi, Te Tiriti o Waitangi: An Illustrated History*, (Bridget Williams Books, Wellington, 2020), at 115-120.

³⁵ New Zealand History, *He Whakaputanga (Declaration of independence) signatories* dated n.d., accessed at <<https://nzhistory.govt.nz/page/he-whakaputanga-declaration-independence-database>>.

³⁶ A Mikaere, *Brief of Evidence of Ani Mikaere* dated 20 January 2021, Wai 2700, #A17, at [34-35].

³⁷ P Ruwhiu, *Ka haere tonu te mana o nga wāhine Māori: Māori women as protectors of te ao māori knowledge* (MSW Thesis, Massey University, 2009), at 19.

³⁸ A Mikaere, *Colonization and the Destruction of Gender Balance in Aotearoa* (Native Studies Review Vol 12, No. 1 (1999), at 3.

30. Wāhine Māori were not regarded as chattels or a possession.³⁹
31. Marriage did not entail a transferral of property from a father to a spouse. Wāhine remained a part of their whānau; their status unchanged.⁴⁰
32. Wāhine played an important role as keepers and transmitters of mātauranga: in doing so, they played a significant role in the survival of the history and identity of traditional tribal groupings.⁴¹
33. The significant role of wāhine in tribal leadership is evinced by the naming of hapū and whare tupuna after wāhine. Several hapū and whare tupuna are named after significant wāhine.

The Signing of te Tiriti o Waitangi

34. Eighteen wāhine rangatira have been identified as signing te Tiriti.⁴²
35. Those who signed te Tiriti held significant mana over whenua, ngahere, awa, tāngata, taonga and other resources.⁴³
36. The Crown actively denied *many* wāhine Māori the right to sign te Tiriti. The concept that wāhine were leaders was beyond the Crown's comprehension.⁴⁴
37. The daughter of the Ngāti Toa chief, Te Pehi, was not permitted to sign Te Tiriti because she was a woman.⁴⁵

³⁹ A Mikaere, *Colonization and the destruction of gender balance in Aotearoa* (Native Studies Review, Vol 12(1), 1999), at 3.

⁴⁰ A Mikaere, *Colonization and the destruction of gender balance in Aotearoa* (Native Studies Review, Vol 12(1), 1999), at 4.

⁴¹ A Mikaere, *Colonization and the destruction of gender balance in Aotearoa* (Native Studies Review, Vol 12(1), 1999), at 5.

⁴² R Wolfgramm, *Mana Wāhine Māori i Ngā Wā ō Mua: The impacts of Crown legislation, policy and practices on the rangatiratanga, status and roles of wāhine Māori c.1840-1950* dated 18 October 2024, Wai 2700, #B9, at 162.

⁴³ R Wolfgramm, *Mana Wāhine Māori i Ngā Wā ō Mua: The impacts of Crown legislation, policy and practices on the rangatiratanga, status and roles of wāhine Māori c.1840-1950* dated 18 October 2024, Wai 2700, #B9, at 165.

⁴⁴ A Mikaere, *Colonization and the destruction of gender balance in Aotearoa* (Native Studies Review, Vol 12(1), 1999), at 7.

⁴⁵ R Evans, *Brief of Evidence of Ripeka Evans* dated 22 January 2021, Wai 2700, #A21, at [35].

38. The colonial frame through which the colonising culture viewed Māori was one that looked to men as leaders and chiefs⁴⁶ was in direct contrast to the view in te ao Māori. Te Pehi's husband took offence to the Crown denial and refused to sign because this was an insult to the mana of his wife and himself.⁴⁷

The Reshaping and Retelling of Traditional Stories

39. When missionaries and early settlers arrived in Aotearoa New Zealand, they found a land of people with stories of the wonder of women.⁴⁸
40. Missionaries, settlers and the colonist Government brought with them cultural beliefs and understanding of the capacities, roles and status of women.⁴⁹
41. These beliefs led to the reshaping and retelling of traditional stories in line with western thought.⁵⁰
42. The re-telling of Māori stories led to a shift away from the power influence wāhine atua had in these Māori cosmology stories.⁵¹ Tanemahuta became prominent and Papatuanuku's role diminished.⁵²
43. The colonisation of Māori cosmology rendered the power of wāhine, so evident in Māori cosmology, secondary to the supreme creative power of a male being, Io.⁵³

⁴⁶ R Evans, *Brief of Evidence of Rīpeka Evans* dated 22 January 2021, Wai 2700, #A21, at [35].

⁴⁷ L Harris, *Brief of Evidence of Lee Harris* dated 21 January 2021, Wai 2700, #A23, at [15].

⁴⁸ A Mikaere, *Colonization and the destruction of gender balance in Aotearoa* (Native Studies Review, Vol 12 (1), 1999), at 7.

⁴⁹ A Mikaere, *Colonization and the destruction of gender balance in Aotearoa* (Native Studies Review, Vol 12 (1), 1999), at 7.

⁵⁰ A Mikaere, *Colonization and the destruction of gender balance in Aotearoa* (Native Studies Review, Vol 12 (1), 1999), at 7.

⁵¹ A Mikaere, *Colonisation and the Imposition of Patriarchy: A Ngati Raukawa Wahine Perspective* (Mana Wahine Reader A Collection of Writings, Hamilton, Vol 2, 2019), at 7.

⁵² A Mikaere, *Colonization and the destruction of gender balance in Aotearoa* (Native Studies Review, Vol 12 (1), 1999), at 7.

⁵³ A Mikaere, *Colonisation and the Imposition of Patriarchy: A Ngati Raukawa Wahine Perspective* (Mana Wahine Reader A Collection of Writings, Hamilton, Vol 2, 2019), at 13.

44. These teachings conflicted with Māori world views and was a key site of colonisation in eroding mana wāhine.⁵⁴
45. Through the assimilation agenda within the New Zealand education system, wāhine Māori were taught that men had the mana: patriarchal notions painted wāhine as inferior to men in a way that Te Ao Maori had not experienced.⁵⁵
46. Religion has played a significant part in the disestablishment of te ao Māori and has been detrimental to tikanga and the mana and authority of wāhine.
47. Wāhine Māori were increasingly pressured into fulfilling the role of housewife and mother within the context of the nuclear family model.⁵⁶
48. Wāhine Māori who held roles as rangatira were forced into these domestic roles which had huge consequences on their ability to be rangatira and leaders of their people.
49. The Crown's inability to see wāhine Māori as rangatira diminished wāhine Māori's identity and mana.

Breach

50. In breach of the te Tiriti principle of rangatiratanga the Crown failed to recognise and protect the rangatiratanga of wāhine Māori. The Crown restricted wāhine Māori's ability to be rangatira and 'take care of their peoples'. The Crown did not allow wāhine Māori to exercise paramount power over their people instead they diminished their power and forced wāhine Māori into roles more in line with the western view of the nuclear family.⁵⁷

⁵⁴ K Jenkins, *Women and Social policy* (The Report of the Royal Commission on Social Policy, Vol 3, 1998), at 161.

⁵⁵ Tina Latimer, *Brief of Evidence of Tina Latimer* dated 20 January 2021, Wai 2700, #A13 at [5].

⁵⁶ A Mikaere, *Colonisation and the Imposition of Patriarchy: A Ngati Raukawa Wahine Perspective* (Mana Wahine Reader A Collection of Writings, Hamilton, Vol 2, 2019), at 13.

⁵⁷ A Mikaere, *Colonisation and the Imposition of Patriarchy: A Ngati Raukawa Wahine Perspective* (Mana Wahine Reader A Collection of Writings, Hamilton, Vol2, 2019) at 13.

51. The Crown, in breach of the principle of active protection, failed to protect wāhine leadership and their right to govern their people, as they had done in traditional Māori society. The Crown did not protect the mana of wāhine with the utmost good faith. The Crown in bad faith diminished the status and role of wāhine Māori. The Crown did not act honourably and did not impose fair process. Instead, the Crown assimilated wāhine Māori into western systems diminishing the traditional roles they head as leaders and rangatira.

Prejudice

52. As a result of the above actions of the Crown, the Claimants have and continue to suffer the following prejudice:
- a. Harm and diminution to the role and status of wāhine rangatira status in traditional Māori society.
 - b. Loss of identity and connection to te ao Māori.
 - c. The imposition of western colonial ideology at the expense of tikanga.
 - d. The severance of traditional Māori practises.
 - e. The inability for wāhine Māori to fully exercise rangatiratanga over their lands and people; and
 - f. The ingraining of patriarchal norms which allowed wāhine Māori's status as rangatira to be diminished.

Relief

53. As a result of the foregoing breaches, the Claimants seek the following relief:
- a. A finding that this cause of action is well-founded;

- b. A sincere and public apology from the Crown to the Claimants for its actions in limiting the te Tiriti principles of tino rangatiratanga and active protection; and
- c. Such other findings and recommendations that the Tribunal consider appropriate in the circumstances.

SECOND CAUSE OF ACTION: CROWN FAILURE TO ACTIVELY PROTECT THE KAITIAKI ROLE OF WĀHINE MĀORI

Allegation

- 54. At 1840, wāhine Māori exercised kaitiaki roles over their lands, resources, and other taonga in accordance with the tikanga of their rohe. In breach of the Treaty/te Tiriti principles of rangatiratanga, active protection and equity, the Crown, through legislation, policies, and practices, usurped the kaitiaki role of wāhine Māori by establishing alternative resource management structures without the consent or input of wāhine Māori.
- 55. In breach of the Treaty principles of rangatiratanga, active protection and equity, the Crown has failed and continues to fail to recognise the kaitiaki role of wāhine Māori and to adequately support their involvement and representation in resource management spheres.

Treaty Principles and Corresponding Crown Duties

The Principle of Tino Rangatiratanga

- 56. The Claimants repeat paragraph [8].
- 57. Accordingly, the principle of rangatiratanga obligates the Crown to protect the leadership and power of wāhine distinct from the leadership and power of tāne,⁵⁸ and to recognise that both wāhine and tāne are “essential parts in

⁵⁸ A Mikaere, *Māori Women: Caught in the Contradictions of a Colonised Reality* (Waikato Law Review, Vol 2, 1994), at 131.

the collective whole”.⁵⁹ This includes within the environmental and resource management space.

The Principle of Active Protection

58. The Claimants repeat paragraph [10].
59. Accordingly, the Crown is obliged to actively protect wāhine Māori and mana wāhine. In particular, the Crown was not able to deny or interfere with the rangatiratanga of wāhine Māori, including their authority as kaitiaki over whenua me te ao tūroa.

The Principle of Equity

60. The Treaty principle of equity, guaranteed by article 3 of the Treaty,⁶⁰ imposes a Crown duty “to act fairly and with justice to all citizens.”⁶¹ The Crown has a duty to treat Maori equitably with settlers.⁶² The Tribunal has stated that article 3 “not only guarantees Māori from freedom of discrimination, but also obliges the Crown to positively promote equity.”⁶³ The Tribunal saw this principle was underlined by values of fairness, reasonableness and having a level playing field.⁶⁴ The principle of equity does not mean “a percentage or arithmetically calculated share” in a good, rather it means that allocation to Māori takes place “on the basis of need and purpose.”⁶⁵ This requires the Crown to both ensure that wāhine Māori do not suffer inequity, and to actively inform itself of any inequity,⁶⁶ regardless of the cause.⁶⁷ Conceptualising equity under the Treaty includes formal and

⁵⁹ A Mikaere, *Māori Women: Caught in the Contradictions of a Colonised Reality* (Waikato Law Review, Vol 2, 1994), at 125.

⁶⁰ Waitangi Tribunal, *Haumarū: The COVID-19 Priority Report* (Wai 2575, 2023), at 42.

⁶¹ Waitangi Tribunal, *He Pāharakeke, he Rito Whakakīkinga Whāruarua: Oranga Tamariki Urgent Inquiry* (Wai 2915, 2021), at 21.

⁶² Waitangi Tribunal, *Te Kahui Maunga: The National Park District Inquiry Report* (Wai 1130, 2013), Vol. 1, at 17

⁶³ Waitangi Tribunal, *Ngā Mātāpono: the Principles - The Interim Report of the Tomokia Ngā Tatau o Matangireia – the Constitutional Kaupapa Inquiry Panel on the Crown’s Treaty Principles Bill and Treaty Clause Review Policies (Pre-publication Version)*, (Wai 3300, 2024), at 78.

⁶⁴ Waitangi Tribunal, *Ngā Mātāpono: the Principles - The Interim Report of the Tomokia Ngā Tatau o Matangireia – the Constitutional Kaupapa Inquiry Panel on the Crown’s Treaty Principles Bill and Treaty Clause Review Policies (Pre-publication Version)*, (Wai 3300, 2024), at 114.

⁶⁵ Waitangi Tribunal, *The Radio Spectrum Management and Development Final Report* (Wai 776, 1999) at 13.

⁶⁶ Waitangi Tribunal, *Haumarū: The COVID-19 Priority Report* (Wai 2575, 2023), at 43.

⁶⁷ Waitangi Tribunal, *He Pāharakeke, he Rito Whakakīkinga Whāruarua: Oranga Tamariki Urgent Inquiry* (Wai 2915, 2021), at 21.

substantive equality of opportunity, equality of process, equality of outcomes, and equality of autonomy.⁶⁸ This principle requires the Crown to protect and affirm mana wāhine along with mana tāne.⁶⁹ It is vital that general equity for Māori is not conflated with equity for *wāhine* Māori, as this obscures that wāhine Māori are oppressed by distinct ideologies and institutions, differently to Māori generally.⁷⁰

61. Accordingly, the Crown is obliged to actively address racism both personal and institutional.⁷¹ This extends to the intersection of racism and sexism that wāhine Māori experience, which results in wāhine Māori being harmed not only for being Māori, but specifically for being *wāhine* Māori,⁷² as has been seen within the environmental and resource management space.

Particulars

Traditional Kaitiakitanga Roles and Responsibilities

62. Prior to 1840, the Claimants wāhine tīpuna were involved and respected in decision-making including in respect of land and natural resources.
63. Māori society embraces a worldview determined by whakapapa where people would reckon their kinship to each other by descent from a common ancestor.⁷³

⁶⁸ TJ Hearn, *The Economic Rehabilitation of Maori Military Veterans* dated 15 May 2018, Wai 2500, #A248, at 5-6.

⁶⁹ N Simmonds, “Never-Ending Beginnings: The Circularity of Mana Wāhine” in *Mana Wāhine Reader A Collection of Writings 1999–2019, Volume II* (Te Kotahi Research Institute, Hamilton, 2019) 155 at 157.

⁷⁰ N Simmonds, “Never-Ending Beginnings: The Circularity of Mana Wāhine” in *Mana Wāhine Reader A Collection of Writings 1999–2019, Volume II* (Te Kotahi Research Institute, Hamilton, 2019) 155 at 159.

⁷¹ Waitangi Tribunal, *Haumarū: The COVID-19 Priority Report* (Wai 2575, 2023), at 43.

⁷² L Pihama, *Tīhei mauri ora honouring our voices: Mana wahine as a kaupapa Māori theoretical framework* (University of Auckland, 2001), at 18; D Wilson, A Mikahere-Hall et al., *Using indigenous kaupapa Māori research methodology with constructivist grounded theory: generating a theoretical explanation of indigenous women’s realities* (International Journal of Social Research Methodology, Vol 25, Issue 3, 2021), at 390.

⁷³ Ballara, A, *Wahine Rangatira: Maori Women of Rank and Their Role in the Women’s Kotahitanga Movement of the 1890s*, (New Zealand Journal of History, Vol 27, Issue 2 1993), at 130.

64. Descent from bilateral senior lines conferring senior status upon a person was ‘not confined to males.’⁷⁴
65. There were wāhine of pre-eminent rank that ‘personified mana over land and people in their communities and descent groups’.⁷⁵
66. The fact that wāhine Māori asserted political influence from the earliest stages of European contact suggests that this was commonplace and was embedded in the culture and tikanga of Te Taitokerau.⁷⁶
67. Evidence shows that Māori women of mana had a ‘large share of power, status, control and obligations’⁷⁷ whereas in the Pākehā world, power, status control and obligations were “reserved exclusively for males.”⁷⁸
68. Mana was often passed down from wāhine tīpuna to male or female uri.⁷⁹
69. There is “unmistakable evidence that [Māori] women’s lives were richer and more varied”⁸⁰ than Colonial and Pākehā scholarship indicates.
70. In te ao Māori, women held and exercised kaitiaki and mana whenua over land.⁸¹

Post-Colonisation Changes to Recognition of Wāhine Māori as Kaitiaki

71. The significant changes that occurred during the post 1840 colonial period saw many officials “keen to render silent” the voices of Māori women.

⁷⁴ Ballara, A, *Wahine Rangatira: Maori Women of Rank and Their Role in the Women’s Kotahitanga Movement of the 1890s* (New Zealand Journal of History, Vol 27, Issue 2 1993), at 130.

⁷⁵ Ballara, A, *Wahine Rangatira: Maori Women of Rank and Their Role in the Women’s Kotahitanga Movement of the 1890s* (New Zealand Journal of History, Vol 27, Issue 2 1993), at 130 – 131.

⁷⁶ Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview* dated 16 November 2009 Wai 1040, #A37, at 527.

⁷⁷ Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview* dated 16 November 2009, Wai 1040, #A37.

⁷⁸ Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview* dated 16 November 2009, Wai 1040, #A37.

⁷⁹ Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview* dated 16 November 2009, Wai 1040, #A37, at 244.

⁸⁰ Binney, J, *Some Observations on the Status of Maori Women* (New Zealand Journal of History, Vol 38, Issue 2, 2004), at 234.

⁸¹ T Wolfgramm, *He Wāhine, he Ōhanga; he Ōhanga, he Wāhine: Through Wāhine, Economic Development; by Wāhine, our Economy: The Socio-economic Status and Wellbeing of Wāhine Māori from 1990 to 2020* dated 30 August 2024, Wai 2700, #B7 at 119.

72. The concept of women as rangatira and/or whaikōrero was beyond the comprehension of the Crown. It, and its agents could only conceive of dealing with men: “Māori men were the ones with whom the colonisers negotiated, traded and treated”.
73. There was palpable frustration amongst wāhine Māori “by the restrictions placed on them by the male dominated British society.”⁸²
74. As Colonial influence expanded, the potential for Māori men to begin ‘adopting the values’ of European males, with newly displayed attitudes of control over women grew.
75. Māori wāhine have been faced with an uphill battle for recognition since the ‘disenfranchisement [and] relegation to a lower status than their male counterparts’⁸³ that came with the colonial take-over of Aotearoa.

Diminishment of Wāhine Māori Kaitiakitanga Through Land Alienation

76. The opportunity to continue kaitiaki roles in respect to the natural environments was removed from wāhine Māori through the alienation of lands.
77. Wāhine Māori were not alone in suffering the negative effects of land alienation, but they suffered those effects more acutely than tāne Māori by not being offered a genuine legal/political forum within which to air their grievances.
78. The cultural imperative to safeguard land, culture, health, children, and whānau are deeply rooted in ancestral values and bonds of community solidarity. Wāhine Māori have long been steadfast kaitiaki of those principles, preserved across generations with unwavering commitment and resolve.⁸⁴

⁸² Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview* dated 16 November 2009, Wai 1040, #A37.

⁸³ Henare, Dr M et al, *He Whenua Rangatira: Northern Tribal Landscape Overview* dated 16 November 2009, Wai 1040, #A37, at 454

⁸⁴ Helena Rattray-Te Mana, *Ngā wero a te Mana Wāhine: Wāhine Māori justice and equity wellbeing, 1990-2020*, Wai 2700, #B8, at 214.

79. The historical colonial and patriarchal foundations of New Zealand's systems and institutions have deeply altered the role, position, and status of wāhine Māori.⁸⁵
80. The imposition of these systems, particularly those related to legislation and land tenure, led to the displacement of wāhine Māori from their traditional roles as owners and kaitiaki of their whenua.⁸⁶
81. The Claimants' tīpuna never defused their ahi kaa on their whenua.
82. The Claimants remain as some of the few traditional Māori occupiers and original owners of these lands.

Early Resource Management Law and Policy

83. The Claimants have had a keen interest in environmental issues, especially the Claimants late mother, Emma Gibbs-Smith.
84. The early twentieth century (1900-1950) marked an aggressive period of knowledge and practice suppression.⁸⁷
85. New legislation specifically targeted wāhine roles as knowledge holders and practitioners.⁸⁸ The 1904 Education Act and Midwives Registration Act restricted traditional birthing practices, while the 1907 Tōhunga Suppression Act criminalised traditional healing.⁸⁹
86. These restrictions had implications for the transmission of mātauranga wāhine and the maintenance of traditional relationships with whenua.⁹⁰

⁸⁵ Kylie Quince, 'Law and Gender: Beyond Patriarchy, Sistahs in Arms?' *Mana Wāhine and Feminism*, (New Zealand Women's Law Journal, Vol 6, 2020), at 10-11.

⁸⁶ T Wolfgramm, *He Wāhine, he Ōhanga; he Ōhanga, he Wāhine: Through Wāhine, Economic Development; by Wāhine, our Economy: The Socio-economic Status and Wellbeing of Wāhine Māori from 1990 to 2020* dated 30 August 2024, Wai 2700, #B7, at 202.

⁸⁷ N Simmonds, E Walker, K Waititi, P-M Tunui, S Wairoa-Harrison, *Ngā Uaua o Papatūānuku: The binding of wāhine ki te whenua me te ao tūroa* dated 30 April 2025, Wai 2700, #B12, at 95.

⁸⁸ N Simmonds, E Walker, K Waititi, P-M Tunui, S Wairoa-Harrison, *Ngā Uaua o Papatūānuku: The binding of wāhine ki te whenua me te ao tūroa* dated 30 April 2025, Wai 2700, #B12, at 95.

⁸⁹ N Simmonds, E Walker, K Waititi, P-M Tunui, S Wairoa-Harrison, *Ngā Uaua o Papatūānuku: The binding of wāhine ki te whenua me te ao tūroa* dated 30 April 2025, Wai 2700, #B12, at 95.

⁹⁰ N Simmonds, E Walker, K Waititi, P-M Tunui, S Wairoa-Harrison, *Ngā Uaua o Papatūānuku: The binding of wāhine ki te whenua me te ao tūroa* dated 30 April 2025, Wai 2700, #B12, at 95.

87. The post-war period (1950-2000) saw the emergence of new forms of environmental control that further severed wāhine relationships with taiao.⁹¹
88. The 1960s and 1970s brought increased limitations on traditional harvesting and hunting practices, while the creation of reserves often restricted access to taonga and significant sites.⁹²

Post-1991 Resource Management Law and Policy

89. Prior to 1991, the Claimants' participation in resource management issues was not accommodated by legislation or policy.
90. The Resource Management Act 1991 ("**RMA**") brought together in a single statute of most of the various pieces of statute law whereby the Crown exercised control and management over water and waterways.⁹³
91. A key difference between the RMA and the various statutes that it replaced is the provision made for tangata whenua involvement.⁹⁴
92. The Claimants hapū has been involved in resource management matters in their rohe, including the Claimants late mother, Emma Gibbs-Smith, who held the role of resource management consultant.⁹⁵
93. The RMA defines kaitiakitanga as 'the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Māori in relation to natural and physical resources'.⁹⁶
94. The RMA does not explicitly endorse or recognise wāhine Māori kaitiaki rights and/or status.

⁹¹ N Simmonds, E Walker, K Waititi, P-M Tunui, S Wairoa-Harrison, *Ngā Uaua o Papatūānuku: The binding of wāhine ki te whenua me te ao tūroa* dated 30 April 2025, Wai 2700, #B12, at 95.

⁹² N Simmonds, E Walker, K Waititi, P-M Tunui, S Wairoa-Harrison, *Ngā Uaua o Papatūānuku: The binding of wāhine ki te whenua me te ao tūroa* dated 30 April 2025, Wai 2700, #B12, at 95.

⁹³ Alexander, D, *Ownership and Control of Inland Waterways within Porirua ki Manawatū Inquiry* dated July 2020, Wai 2200, #A217, at 324.

⁹⁴ Alexander, D, *Ownership and Control of Inland Waterways within Porirua ki Manawatū Inquiry* dated July 2020, Wai 2200, #A217, at 324.

⁹⁵ E Gibbs-Smith, *Brief of Evidence of Emma Claudia Alice Gibbs-Smith* dated 23 September 2016, Wai 1040, #D63, at [42].

⁹⁶ Resource Management Act 1991, s 2(1).

95. Resource management planning does not take proper account of Māori perspectives.
96. Tangata whenua involvement in the RMA is not anywhere near a recognition of tino rangatiratanga (or full authority) for resources.⁹⁷
97. While the Local Government Act 2002 claims to “recognise and respect the Crown’s responsibility to take appropriate account of the principles of the Treaty of Waitangi,” the reality is that decision-making power remains firmly with Councils.⁹⁸
98. The Claimants late mother, Emma Gibbs-Smith, described the challenges she faced as a resource management consultant including a lack of acknowledgement of her input and advice.⁹⁹
99. Under the RMA, the Claimants have had limited participation in resource management in their rohe.
100. Under the RMA, the Claimants still have to fight to be involved in resource management planning as it is not prescribed that Local Authorities must deal with the relevant local hapū or iwi.
101. When land and resource management is not guided by the Claimants and other Māori perspectives, the natural resources in the Claimants rohe have been mismanaged.
102. Resource management planning does not recognise, acknowledge or support the role mana wāhine hold as kaitiaki. Particulars of the lack of recognition of mana wāhine in the context of kaitiakitanga and the Crown’s resource management in the Claimants rohe are as follows:

⁹⁷ Alexander, D, *Ownership and Control of Inland Waterways within Porirua ki Manawatū Inquiry* dated July 2020, Wai 2200, #A217, at 325.

⁹⁸ N Simmonds, E Walker, K Waititi, P-M Tunui, S Wairoa-Harrison, *Ngā Uaua o Papatūānuku: The binding of wāhine ki te whenua me te ao tūroa* dated 30 April 2025, Wai 2700, #B12, at 113.

⁹⁹ E Gibbs-Smith, *Brief of Evidence of Emma Claudia Alice Gibbs-Smith* dated 23 September 2016, Wai 1040, #D63, at [42].

- a. Most individuals and organisations involved in resource management are either male or led by men.
- b. Wāhine Māori are not recognised nor welcomed.
- c. Wāhine Māori struggle to be heard.
- d. Wāhine Māori are not supported; and
- e. Wāhine Māori face bullying, intimidation, and bias.

Breach

103. The Crown breached the Treaty/te Tiriti principles of rangatiratanga, active protection and equity, by usurping the kaitiaki role of wāhine Māori through its establishment of alternative resource management structures without the consent or input of wāhine Māori.
104. The Crown breached the Treaty/te Tiriti principles of rangatiratanga, active protection and equity, by failing to recognise the kaitiaki role of wāhine Māori and to adequately support their involvement and representation in resource management spheres.
105. The Crown breached the te Tiriti principle of equity by failing to provide for equal opportunities for wāhine participation within the resource management sphere.

Prejudice

106. As a result of the Crown's actions and omissions, the Claimants, as wāhine Māori have and continue to suffer the following prejudice:
 - a. a lack of recognition as kaitiaki in the resource management arena.
 - b. degradation of mana.
 - c. emotional harm and humiliation.

- d. mismanagement of the environment; and
- e. loss of connection to natural resources including waterways, ngahere, and whenua.

Relief

- 107. As a result of the foregoing breaches, the Claimants seek the following relief:
- 108. A finding that this cause of action is well-founded.
- 109. A recommendation that the Crown issue a sincere and public apology to the Claimants for:
 - a. Their inability to hold the kaitiaki (guardianship) status that many wāhine held over their tribal lands.
 - b. The lack of a genuine voice in consultation over decisions around land and the environment.
 - c. The enforcement of British/western/colonial ideology at the expense of tikanga; and
 - d. Their actions and omissions in not protecting the mana of wāhine Māori.
- 110. A recommendation that the Crown implement a policy that recognises kaitiaki status for the holder of this role, whether wāhine or tāne, and legislates a mandatory engagement process with hapū by local Authority's in respect of resource management matters.

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

Dated at **TĀMAKI MAKĀURAU** this **3rd** day of **Huitānguru 2025**



S J Roughton / T Wana
Counsel Acting

This Statement of Claim is filed by **STEPHANIE JOY ROUGHTON AND TAMMY WANA**, Solicitors for the Claimants, of the firm **TĀMAKI LEGAL LIMITED**. The address for service of the Claimants is at the office of Tāmaki Legal Ltd, Barristers and Solicitors, Level 3, 2 Osterley Way, Manukau, Auckland. Documents for service on the Claimants may be left at that address for service or may be:

- (a) Posted to the Solicitor at PO Box 75-517, Manurewa, Auckland 2243; or
- (b) Emailed to the solicitors at stephanie@tamakilegal.com and tammy@tamakilegal.com.