

IN THE WAITANGI TRIBUNAL

**WAI 2700
WAI 2864**

CONCERNING

the Treaty of Waitangi Act 1975

**AND
IN THE MATTER OF**

Kaupapa Inquiry into claims concerning mana wahine (Wai 2700)

**AND
IN THE MATTER OF**

A claim by Paula Davis, Llani Harding, Georgina Kerr and William Newton on behalf of Te Rūnanga o Ngā Toa Āwhina (the Rūnanga of the New Zealand Public Service Association)

FIRST AMENDED STATEMENT OF CLAIM

Dated this 8th day of November 2019



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MAY IT PLEASE THE TRIBUNAL:

Introduction

1. This statement of claim is brought by Paula Davis, Llani Harding, Georgina Kerr and William Newton on behalf of Te Rūnanga o Ngā Toa Āwhina (the Rūnanga of the New Zealand Public Service Association) (herein referred to as "the Claimants").
2. Te Rūnanga o Ngā Toa Āwhina ("Te Rūnanga") represents the Māori membership of The New Zealand Public Service Association ("PSA"). PSA is New Zealand's largest union representing more than 63,000 workers in central and local government, state-owned enterprises, health boards and community groups.
3. The Claimants are Māori and claim that they have been and remain prejudicially affected by the acts and omissions, policies and practices of the Crown which were enacted, promulgated, formulated, undertaken, done or omitted to be done by the Crown in breach of the principles of the Treaty of Waitangi that have had and continue to have a detrimental impact on the mana of wahine Māori as a result of inequities faced by wāhine Māori in employment.

Principles of the Treaty of Waitangi

4. The Claimants adopt the findings made in Stage 1 of Te Paparahi o Te Raki Inquiry ("the Wai 1040 Inquiry"), where the Tribunal states:¹

Our essential conclusion, therefore, is that the rangatira did not cede their sovereignty in February 1840; that is, they did not cede their authority to make and enforce law over their people and within their territories, rather, they agreed to share power and authority with the Governor. They and Hobson were to be equal, although of course they had different roles and different spheres of influence. The detail of how

¹ Waitangi Tribunal *He Whakaputanga me te Tiriti The Declaration and the Treaty: The Report on Stage 1 of the Paparahi o Te Raki Inquiry* (Wai 1040, 2014) at 527.

this relationship would work in practice, especially where the Māori and European populations intermingled, remained to be negotiated over time on a case-by-case basis. But the Rangatira did not surrender to the British the sole right to make and enforce law over Māori. It was up to the British, as the party drafting and explaining the treaty, to make absolutely clear that this was their intention. Hobson's silence on this crucial matter means that the Crown's own self-imposed condition of obtaining full and free Māori consent was not met.

Partnership

5. Accordingly, Te Tiriti o Waitangi envisaged a partnership where rangatiratanga would continue to subsist alongside kwanatanga, enabling both the Crown and Rangatira to exercise mana over their own people (and interests) in accordance with their own tikanga.
6. A further cornerstone of the principle of partnership is the principle of mutual benefit or mutual advantage. In the Mangonui Sewerage Report, the Tribunal notes:²

The basic concept was that a place could be made for two people of vastly different cultures, of mutual advantage, and where the rights, values and needs of neither would necessarily be subsumed...It is obvious however that to achieve the objective, compromises on both sides are required and a balance of interests must be maintained.

7. The underlying premise is that both partners signed the Treaty expecting to benefit from the arrangement. This principle requires that "the needs of both cultures must be provided for and compromise may be needed in some cases to achieve this objective".³

Active Protection

8. It is well-founded that the Crown's duty of active protection is central to the principles of the Treaty of Waitangi. The principle recognises that the

² Waitangi Tribunal *Report of the Waitangi Tribunal on the Mangonui Sewerage Claim* (Wai 17, 1988) at 4.

³ Waitangi Tribunal, *Ngāwhā Geothermal Resource Report* (Wai 304, 1993) at 137.

Crown is no longer at liberty to merely “smooth the pillow of the dying race” or to sit on its hands and turn a blind eye to serious levels of harm suffered by Māori in breach of the principles of the Treaty of Waitangi. The notion that the principle encompasses an obligation upon the Crown to take proactive steps to ensure that Māori interests and taonga are protected was established by the Tribunal as early 1985 in the Manukau Report where it stated:⁴

The Treaty of Waitangi obliges the Crown not only to recognise the Māori interests specified in the Treaty but actively to protect them. The possessory guarantees of the second article must be read in conjunction with the preamble (where the Crown is “anxious to protect” the tribes against envisaged exigencies of emigration) and the third article where a “royal protection” is conferred. It follows that the omission to provide that protection is as much a breach of the treaty as a positive act that removes those rights.

9. The duty of active protection is not limited to the protection of proprietary interests but extends to the protection of Māori themselves:⁵

The Tribunal’s conception of the Māori interests to be protected go beyond property and encompass tribal authority, Māori cultural practices and Māori themselves, as groups and individuals. The Tribunal has endorsed a holistic reading of the Treaty and presents the principle of protection as a theme fundamental to the entire document, which is explicitly referenced in the Preamble and Article III, and which is not confined to Article II matters.

10. From a tikanga Māori perspective, nothing could be more sacrosanct than the life and wellbeing of wāhine. The Privy Council further noted that the duty of active protection requires vigorous action where a taonga is threatened, especially where its vulnerability can be traced to earlier breaches of the Treaty:⁶

... if as is the case with the Māori language at the present time, a taonga is in a vulnerable state, this has to be taken into account by

⁴ Waitangi Tribunal *Report of the Waitangi Tribunal on the Manukau claim* (Wai 8, 1989) at 79.

⁵ Te Puni Kōkiri/Ministry of Māori Development *He tirohanga o kawa ki te Tiriti o Waitangi, the principles of the Treaty of Waitangi as expressed by the courts and the Waitangi Tribunal* Wellington 2001, at 95.

⁶ *New Zealand Māori Council v Attorney General* [1994] 1 NZLR 513 (PC) [Broadcasting Assets case] at 517.

the Crown in deciding the action it should take to fulfil its obligations. This may well require the Crown to take especially vigorous action for its protection. This may arise, for example, if the vulnerable state can be attributed to past breaches of the Crown of its obligations and may extend to the situation where those breaches are due to legislative action.

Participation and Equity

11. The obligations arising from partnership, and active protection give rise to the principle of participation and in particular, the principle that Māori are entitled to participate equitably alongside Pākehā from Crown policy and legislation. This requires the Crown to act fairly toward both Pākehā and Māori – the interests of settlers could not be prioritised to the disadvantage of Māori. Where Māori have been disadvantaged, the principle of participation and equity – in conjunction with the principles of partnership and active protection require that active measures be taken to restore the balance.

Crown Breaches of the Principles of the Treaty of Waitangi

12. In breach of the principles of partnership, protection and participation, the Crown has failed in its role as employer of wāhine Māori and as a procurer and funder of a significant number of employers of wāhine Māori, and in its role as regulator of all employers of wāhine Māori to take adequate steps to address inequities suffered by wāhine Māori in employment.
13. This breach is heightened by the fact that inequities in employment suffered by wāhine Māori can be traced back to additional Crown breaches of the principles of the Treaty, for example by implementing an education system that is entrenched with discrimination and unconscious bias which has systematically undermined mana wahine and failed wāhine Māori, including by failing to adequately prepare them for employment.

14. At an overt level the breaches include a procurement and funding system which openly discriminates against Māori service providers and leads to a predominantly Māori workforce being paid significantly less than their non- Māori counterparts.
15. This claim focuses on the Crown's acts and omissions which have a particularly egregious effect on wāhine Māori within employment.

Crown failure to adequately monitor, assess and address issues affecting wāhine Māori in employment

16. There has been an abject failure on the part of the Crown to adequately monitor and assess issues facing wāhine Māori in employment which impact their economic, social, cultural rights and holistic wellbeing.
17. Those statistics gathered with respect to inequities facing women in employment either depict the situation of wāhine Pākehā or subsume wāhine Māori in a depiction of "all women". In both instances, statistics fail to adequately monitor, reflect and respond to the even greater disparities suffered by wāhine Māori.
18. The Claimants have struggled to source Crown statistics to adequately support their claim and have had to commission their own research in this regard.
19. As such, statistics used throughout this claim will at times reflect women or Māori generally, unless otherwise stipulated.
20. The failure on the part of the Crown to collect data affecting wāhine Māori represents an inherently biased approach to the identification of issues and prioritisation of policy to address those issues.
21. In reviewing the Crown's performance with respect to the International Covenant on Economic, Social and Cultural Rights in March 2018 the United Nations Committee on Economic, Social and Cultural Rights adopted the observations set out below with respect to unconscious bias towards Māori on the part of the Crown:

10. The Committee is concerned about the entrenched unconscious bias towards Māori in education, health, justice and social services, negatively affecting their enjoyment of economic, social and cultural rights (art. 2).

11. The Committee recommends that the State party introduce a government-wide strategy to ensure that the nature and impact of unconscious bias is understood by governance bodies and employees at all levels, due to the significant detrimental impact unconscious bias has on Māori in all areas of life. The Committee also recommends that the State party ensure that this strategy takes on board public procurement procedures and is supported by comprehensive training and education as well as effective monitoring mechanisms. The Committee draws the State party's attention to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.

Particular Breach of Principles of the Treaty of Waitangi

22. In breach of the principles of partnership, good faith and active protection the Crown has and continues to fail to adequately monitor and assess issues facing wāhine Māori in employment.
23. In breach of the principle of participation, equity and redress the abject failure on the part of the Crown to adequately monitor and assess issues facing wāhine Māori in employment enables the Crown to ignore those issues and the obligation to take active steps to redress them in order to ensure wāhine Māori enjoy equitable participation in employment alongside Pākehā.
24. As a starting point for redress, the Claimants support and adopt the recommendations of the United Nations Committee on Economic, Social and Cultural Rights set out above.

Education, Unemployment and Standard of Living Disparities

25. Inequities presently suffered by wāhine Māori in employment can in many ways be attributed to the Crown's education system which has

systematically undermined mana wāhine and failed wāhine Māori, including by failing to adequately prepare them for employment. We refer to *The Wānanga Capital Establishment Report*, published by the Waitangi Tribunal in 1999 where it states, “It would not be difficult to argue that the seeds of Māori underachievement in the modern education system were sown by some of the past education policies ...”⁷

26. Between 1993-2007, Māori were more likely than any other ethnicity to leave school with no formal qualification, and a lower proportion of Māori students achieve NCEA qualifications than any other ethnic group. As a result, Māori students are still far more likely to leave school earlier than their non-Māori peers with fewer qualifications than other students.⁸
27. In 2006, nearly half of all Māori students who left school had gained no qualifications at any level. In 2008, 43% of all male students and 34% of all female students who left school in year 10 were Māori. Of those who left in year 11, Māori students made up 32.8%.⁹
28. The proportion of wāhine Māori who are not in education or training continues to exceed that of other genders and ethnicities. The statistics for 2015 show that wāhine Māori continue to be the group of young women most likely to leave school with NCEA Level 2 or its equivalent.¹⁰
29. Whilst the Crown is attempting to implement strategies to support Māori to gain qualifications and progress into higher paid vocations, wāhine Māori are not receiving any targeted attention.
30. This inequity represents the start of the standard of living discrepancies between the genders which is particularly acute for wāhine Māori. For example, the unemployment rate among Māori is about double the general rate and women are more likely to be unemployed. In June 2018, unemployment rates were 10.6% for Wāhine Māori, 8.2% for Māori men, 4.4% for total labour force.

⁷ Waitangi Tribunal *Wānanga Capital Establishment Report* (Wai 718, 1999) at 53.

⁸ Office of the Auditor General, *Education for Māori: context for our proposed audit work until 2017* 2012 at 20.

⁹ *Ibid* at 21.

¹⁰ Ministry of Education *18-year-olds with a minimum of NCEA Level 2 or equivalent* <http://www.educationcounts.govt.nz/statistics/indicators/data/education-and-learning-outcomes/114329/>

31. Women are also disproportionately engaged in multiple employment, and more likely to be engaged in part-time, casual, and low-paid employment which constitutes an obstacle to eliminating the gender wage gap, making them amongst the most vulnerable employees in New Zealand.
32. Despite an increase of women in the labour force and in non-traditional occupations following WWII, Māori and Pacifica women were being specifically channelled in to factory work rather than occupations that offered any contingency for personal development and economic stability. These roles were characterised by lower wages, poorer conditions, less security and fewer opportunities for advancement than those occupied by many Pākehā women, for example in nursing and teaching.¹¹
33. The economic recession of the late 1980's impacted heavily on sectors in which Māori were concentrated in, particularly manufacturing, and was a primary factor contributing to the rise of unemployment for Māori. From 1986 to 1991, Wāhine Māori's employment decreased 9.7 percent whereas non-Māori women's employment decreased by 1.7 percent. Despite the decline and continued vulnerability of manufacturing markets, Māori women (compared to non-Māori women) continue to be over represented as employees in this area. Their employment continues to be one of uncertainty.
34. As at June 2018 with an overall unemployment rate of 4.4%, 10.6% of all wāhine Māori over 15 were unemployed¹² compared with 3.6% of Pākehā women and 3.46% of Pākehā men. Wāhine Māori between 15 to 24 years of age, were particularly affected with 18.6% of them being unemployed and seeking work.¹³ Since 2007 the overall unemployment rate has run between 3.2 and 6.4 % but at between 6.9 and 16.4% for wāhine Māori with the gap between the overall unemployment rate and those of wāhine Māori widening during this period.

¹¹ Tania Pouwhare *Māori women and work the effects of family violence on Māori women's employment opportunities* National Collective of Independent Women's Refuges Inc Wellington 1999 at 12.

¹² Being those actively seeking work.

¹³ Statistics NZ, Infoshare employment status data.

35. Wāhine Māori also experience disproportionate under-employment. In 2017 8.5% of wāhine Māori in part-time employment were seeking more hours of work compared with 2.5% of men.¹⁴
36. Of wāhine Māori who are employed, a disproportionate number of them are “precariously employed” in that they are employed on casual or fixed term arrangements. For example, in a 2014 survey, 28.8% of Māori were precariously employed as compared with 14.6% of Europeans. Of those Māori precariously employed, 57.8% were Māori wāhine.¹⁵
37. Inequities faced by wāhine Māori in employment directly inhibit their ability to contribute to their whānau in accordance with tikanga Māori, and in the full range of roles - as kuia, kokara, whāea, tuakana, teina, tamahine and more.
38. That domestic responsibilities compete with women’s participation in the formal economy is well known and remains the dominant factor differentiating men and women’s engagement in the labour market.¹⁶
39. Such differences not only separate men and women but increasingly differentiate women from one another. Within the female population, employment is highly variable by ethnicity and age, and as has been set out in this claim, young Māori women are among the least engaged in paid work.
40. For wāhine Māori the stress and struggle associated with juggling discriminatory employment conditions and responsibilities to contribute to the whānau is often intensified by single-parent status, or in other cases by discriminatory employment conditions, and socio-economic factors also felt by other whānau members (such as partners, children and parents).

¹⁴ Human Rights Commission Tracking Equality at Work and Household Labour Force Survey Data 2017 <http://tracking-equality.hrc.co.nz>

¹⁵ Groot C. Van Ammen B. Master-Awatere N. Tassell-Matamua, *Precairity: uncertain, insecure and unequal lives in Aotearoa New Zealand* Massey University Press 2017.

¹⁶ Dale Warburton and Philip S Morrison “Domestic responsibilities and the employment of young Māori women” in *Kotuitui: New Zealand Journal of Social Sciences Online* 2008 Vol. 3: 149–167.

41. Domestic responsibilities, including childcare, are clearly much greater for single mothers and women who are single parents are much less likely to be in the labour force than women who do not have children.¹⁷
42. Additional responsibilities Māori face, for example in caring for elderly relatives may contribute to the ability of young Māori women to engagement in the labour force. Two-thirds of single and almost one-half of coupled older Māori people require assistance with household chores, or maintenance of their house, or care from extended family. A significant proportion of older Māori also rely on other family members to provide transport.¹⁸
43. In addition to employment conditions affecting the ability for wāhine to contribute to their whānau, whānau responsibilities affect the ability for wāhine Māori to progress in employment. Factors inhibiting mana wāhine and wāhine Māori leadership in employment are discussed separately within this claim.
44. Family violence also seriously inhibits the ability for wāhine Māori to search for, perform, and retain work in the labour market.¹⁹ This is particularly acute considering that New Zealand has the highest rate of family violence in the OECD and wāhine Māori feature at the sharpest end of that statistic.
45. A study on the impact of family violence on wāhine Māori and employment showed that most partners disapproved of women working whilst some were directly prevented (“forbidden”) from seeking paid or unpaid employment outside of the home.²⁰
46. All of the participants in the study found that maintaining employment was always difficult when their personal relationships were fraught with abuse and control and they themselves were constantly mentally and physically fatigued.²¹ Wāhine Māori living with family violence are often perpetually

¹⁷ Ibid at 155.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Tania Pouwhare above n 11 at 29.

²¹ Ibid at 31.

operating in crisis mode. As with other areas of their lives, work performance also suffers.²²

47. In reviewing the Crown's performance with respect to the International Covenant on Economic, Social and Cultural Rights in March 2018 the United Nations Committee on Economic, Social and Cultural Rights adopted the following observations on unemployment:

23. While noting the information on the decrease in the general unemployment rate in recent years and the statistics provided, the Committee expresses its concern that the number of underemployed people has doubled (estimated at 221,000). **It also notes with concern that the unemployment rate among Māori and Pasifika is about double the general rate, in spite of the efforts undertaken by the State party, and that women and persons with disabilities are more likely to be unemployed. Moreover, the Committee is concerned about the high numbers of youth, particularly among Māori, Pasifika, and persons with disabilities, who are not in employment, education or training (art. 6).**

24. The Committee recommends that the State party take targeted measures to address underemployment more effectively. **The Committee also recommends that the State party assess the effectiveness of measures taken to increase employment opportunities in general and for specific groups, notably Māori, Pasifika, women, persons with disabilities and youth. In doing so, the State party should work in partnership with the concerned groups to increase their participation in the labour market and create incentives for companies to employ persons with disabilities such as a decrease in social security employer contribution for a fixed time period. Moreover, the Committee encourages the State party to step up its efforts to address the increasing numbers of youth not engaged in education, employment or training.** The Committee draws the State party's attention to its general comment No. 18 (2005) on the right to work.

Particular Breaches of the Treaty of Waitangi

²² Ibid at 33.

48. In breach of the principles of partnership, good faith, protection, participation, equity and redress and through the establishment and maintenance of an education system which systematically undermines mana wahine and fails wāhine Māori, the Crown has failed to adequately prepare wāhine Māori for employment and the benefits of higher paid vocations.
49. As a starting point for redress, the Claimants support and adopt the recommendations of the United Nations Committee on Economic, Social and Cultural Rights set out above.

Vulnerability, unjust, unsafe and unhealthy work conditions

50. The acute vulnerabilities faced by wāhine Māori employees makes them particularly susceptible to unjust and unfavourable work conditions. This includes a willingness to accept low paid, insecure, unhealthy, unsafe work.
51. The aspect of this claim pertaining to the pay gap experienced by wāhine Māori is set out separately in the final section of this claim.
52. Types of discrimination experienced commonly ranged from over-policing of Māori employees to overtly racist statements about survey participants themselves or other Māori; from “micro-aggressions” through to bullying, and from threats of violence to actual physical violence.²³
53. By means of example, a Ministry for Social Development spokesperson says that in 2015, within Work and Income NZ – a sector where wāhine Māori feature strongly in the workforce, there were more than 4500 security incidents reported and more than 4000 in 2016.²⁴ This comes after two women lost their lives in a shooting incident in 2014.
54. In addition, in a recent letter to the Associate Minister of Transport, police officer Jon Armstrong says that the mental health of New Zealand police

²³ *Discrimination findings from New Zealand School Leaders Occupational Health and Wellbeing 2017 Survey* NZEI Te Rui Roa New Zealand Educational Institute 2017 at 3.

²⁴ Erin Speedy *Work and Income security guards fear another fatal shooting* Newshub 24 April 2017.

officers, including wāhine Māori police officers, is at an “all-time low” with officers suffering from depression and taking sick leave due to stress.²⁵

55. Police Minister Simon Nash confirmed that during his travels around the different police districts, stress and mental health were primary concerns amongst police officers, “I can be brutally honest with you ...What they talk to me about is how stressed they are, how family violence is impacting on them, how the mental health system is under-funded, and the pressure on them as officers.”²⁶
56. In addition, Māori workers report disproportionately high levels of harassment, bullying and discrimination in the workplace. A survey commissioned by NZEI Te Riu Roa in 2017 found that 27.1% of Māori and Pasifika school leaders (principals and deputy principals) reported incidents of discrimination at work on the basis of their ethnicity compared to 8.5-8.9% of non-Māori leaders experiencing tension or discrimination due to their ethnicity.²⁷
57. Types of discrimination experienced commonly ranged from over-policing of Māori employees to overtly racist statements about survey participants themselves or other Māori; from “micro-aggressions” through to bullying, and from threats of violence to actual physical violence.²⁸
58. In August 2018, Gisborne District Councillor Meredith Akuhata-Brown reported that two co-councillors commented during a meeting that not enough Māori were killed during early European encounters. Rather than receiving an apology for the statement made, it was Ms Akuhata-Brown herself who was forced to apologise to the Council after she quoted the statement which she heard in a local newspaper. Mrs Akuhata-Brown was subsequently placed under a code of conduct review from another colleague who felt that she held the council in disrepute.²⁹

²⁵ Laura Walters *Police understaffing and stress adding to high road toll* Stuff NZ 21 December 2017.

²⁶ Laura Walters *Police Minister says cops concerned about stress and workloand, not pay* Stuff NZ 20 March 2018

²⁷ *Discrimination findings from New Zealand School Leaders Occupational Health and Wellbeing 2017 Survey* above n 23 at p 3.

²⁸ Ibid.

²⁹ Andre Chumko *Racism row at Gisborne council: ‘Not enough Māori killed’ comment leads to rally* Stuff NZ 21 August 2018.

59. In addition to racial discrimination in the workplace, female employees also suffer disproportionately high levels of sexual harassment and gender discrimination which compounds the existing vulnerability of wāhine Māori. By means of example, a 2018 survey commissioned by the New Zealand Law Society found that nearly one third of female participants reported being sexually harassed during the course of their working life.³⁰
60. Despite improvements made in the Health and Safety at Work Act 2015, these predominantly focus on high risk industries such as construction and forestry and fail to meet the health and safety needs of many women workers especially in relation to chronic health conditions and mental illness.³¹
61. A report into the health and safety needs of women workers reports that New Zealand is poorly served by regulation, monitoring and research regarding gradual process injuries, occupational disease and psychosocial harm and that female-dominated industries tend to be poorly understood and regulated.³²
62. The reason is cited that New Zealand health and safety and accident compensation laws are still primarily designed for the 'accidents' that occurred in 20th century factories - mines and workshops - and not for the health consequences of poor job design, bullying or stress.³³
63. The work-related health problems most likely to affect women are the least likely to receive Accident Compensation Commission (ACC) insurance cover (or are completely excluded from cover) and the least likely to receive regulator attention. This results in a problem of data not being collected. This lack of statistical information renders many of the work-related health problems of women invisible to policy makers and

³⁰ *Commitment to tackle cultural crisis within legal profession* New Zealand Law Society 30 May 2018.

³¹ Submission of the New Zealand Council of Trade Unions Women's Council to the United Nations Committee on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), September 2017 at 10.

³² D Duncan *Regulating to better meet the needs of Women's Workers* Presentation to Labour and Employment Conference Wellington 2015.

³³ Submission of the New Zealand Council of Trade Unions Women's Council to the United Nations Committee on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) above n 31 at 11.

enforcement agencies and reinforces the perception that women's work is safer.³⁴

64. Where legislation does exist to protect workers from unjust working conditions, vulnerable workers such as wāhine Māori are less likely to enforce these rights for want of losing their jobs – in many cases there simply are no other employment alternatives.
65. It is further unjust to place the onus on vulnerable workers to carry the burden of policing the behaviour of exploitative employers through raising complaints and risking their livelihoods in the course of doing so, particularly when they are already living on the borderline. The burden of policing non-compliance should rightfully be met by the Crown as regulator of employers.
66. In reviewing the Crown's performance with respect to the International Covenant on Economic, Social and Cultural Rights in March 2018 the United Nations Committee on Economic, Social and Cultural Rights adopted the observations set out below on unjust working conditions. Although the issues raised by submissions to the Committee focused on migrant workers, they affect the most vulnerable of workers which include wāhine Māori:

27. The Committee is concerned about the working conditions of migrant workers, which are characterized by excessive working hours and non-payment or underpayment of wages. It is also concerned about the significant non-compliance by employers with employment laws, including in industries that employ migrant workers. Moreover, the Committee is concerned about the prevalence of workplace deaths and injuries, especially in the agriculture, forestry and construction sectors, engaging a higher proportion of Māori workers (art. 7).

28. The Committee urges the State party to:

(a) Adopt the measures to ensure that all migrant workers enjoy the same conditions as other workers as regards remuneration, limitation of working hours, and rest and leisure;

³⁴ Ibid.

(b) Take measures to raise awareness among migrant workers on existing complaint mechanisms and facilitate their access to legal assistance;

(c) Strengthen the capacity of the labour inspectorate to monitor the conditions of work, including at workplaces with migrant workers, with a view to fully enforcing employment standards, bringing exploitative employers to justice, and compensating victims;

(d) Effectively implement workplace health and safety legislation.

Particular Breach of Principles of the Treaty of Waitangi

67. In breach of the principles of partnership, good faith and active protection the Crown has failed to ensure that the most vulnerable of workers including wāhine Māori enjoy:

- a. just and fair working conditions and contracts for fair remuneration;
- b. limitation of working hours to allow for adequate rest and leisure;
- c. healthy, safe working conditions and environments;

68. The Crown has further failed to adequately legislate to protect against harm suffered by vulnerable workers including wāhine Māori such as chronic illness, fatigue and mental health related conditions.

69. Where legislation does exist to protect vulnerable workers the Crown systematically fails to effectively implement that legislation, by failing to adequately monitor and take measures to address non-compliance of employers.

70. As a starting point for redress, the Claimants support and adopt the recommendations of the United Nations Committee on Economic, Social and Cultural Rights set out above.

71. In particular the Claimants seek that:

- a. WorkSafe and ACC be directed to investigate and address gendered occupational employment issues in New Zealand workplaces; and
- b. Legislative and policy changes are enacted to ensure New Zealand's health and safety and accident compensation laws are able to meet the needs of women workers; and
- c. The health and safety regulator implement adequate regulation and guidance to manage the risks and effects of gender-based violence and harassment in the workplace.

Failure to provide culturally safe places of work that give appropriate status to tikanga Māori and mana wahine

72. Recently the claimants held a series of interviews with claimant members over three days to begin to determine the nature and extent of inequities being experienced by wahine Māori within the workplace.
73. A dominant theme arising from those interviews is the failure of workplaces to adopt policies which give adequate mana to tikanga Māori, and the undermining of mana wahine.
74. Whilst frameworks for incorporating the Māori language and Māori protocol into the workplace, such as in meetings are a good start, in some cases they were resented or rejected by staff to the extent that one interviewee noted, "In my workplace it's very hard to be Māori and to feel good about being Māori."
75. Furthermore, workplaces struggled to understand the status, relevance and application of tikanga within broader workplace protocol beyond a meeting setting or ceremonial rituals. An infamous, recent example of this is Oranga Tamariki's transgression of tikanga Māori in taking newborn babies from their mothers at birth which is and of itself is a breach of tapu whilst dually failing to involve the whānau in that decision making process which is an additional transgression of mana and interruption of sacred whakapapa.

76. Another pertinent example is the requirement of Corrections staff to handcuff wahine Māori detainees whilst giving birth. Not only are these examples an offence to tikanga Māori they are a direct abrogation of the mana of wahine in her most sacred state, the giving of birth. The practices may also be considered inhumane and a breach of New Zealand's international obligations under the Optional Protocol to the Convention Against Torture which maintains standards of care with respect to decent and humane treatment of people held in detention.
77. Moreover, policy which requires employees to carry out these offences to the tapu of tikanga and mana wahine represent a failure to provide for the cultural safety of employees in the workplace. Wahine Māori employees who purport to uphold tikanga Māori in the face of culturally indignant, practices and policies reported being perceived as confronting and "too difficult to work with". As one interviewee stated, "The mana of Māori women is seen as a threat. I've been told I'm too strong, I'm too assertive." Another interviewee recounted being told, "You've got that reputation for being a little bit gruff, a little bit strong, a little bit unapologetic". The interviewee recounted her mamae as she was "priding herself in [her] strength and this manager is trying to dismantle [her] strength."
78. Overwhelmingly, the unique strength that Māori women who maintain their tikanga bring to the workplace was not seen as a strength at all but rather as one interviewee described it, "a negative stigma that follows you all the way through your career" acting as a barrier to progression all the way. Many of the interviewees had tried for decades to progress in their workplaces, citing their strength as wahine Māori as the barrier to their progression. One 54 year old interviewee had worked in the same role for 34 years, watching others who she trained come in and progress above her. With reference to her mana as a strong wahine Māori she said, "they don't let people like me lead because they're afraid."
79. In addition, participants noted an inherent failure within the workplace to value cultural skills as remunerable. As one interviewee stated, "I think what we're wanting is...recognition of that value, that unseen currency that we [as wahine Māori] bring into a workspace...because it's a specific set of skills. It's a skill set. And it's not something that we have to go above and beyond to engage it's quite easy to bring that forward through our

words, through our actions, through our work, it just naturally comes through. I don't even know that it's something that can be taught.”

Particular Breach of Principles of the Treaty of Waitangi

80. In breach of the principles of partnership, good faith and active protection the Crown has failed to adequately protect tikanga Māori and the mana of wahine Māori within the workplace by:

- a. Failing to give adequate status to tikanga Māori as a taonga tuku iho to be valued and maintained at all times;
- b. Enacting and enabling policies and practices which are a direct affront to tikanga Māori and the mana of wahine Māori;
- c. Failing to adequately value cultural skillsets of employees;
- d. Failing to adequately recognize and value cultural skills as leadership skills; and
- e. Failing to adequately remunerate cultural skills.

81. As a starting point for redress, the Claimants seek:

- a. the implementation of frameworks for elevating tikanga to its proper place within the culture and practices of the workplace in accordance with the principle of rangatiratanga;
- b. the immediate cessation of practices which are abhorrent to the mana and tapu of wahine Māori;
- c. indepth and meaningful cultural competency training for staff and in particular those in positions of leadership;
- d. cultural experts to maintain and protect the implementation of tikanga across the organisation;
- e. recognition of cultural skills as leadership skills to be valued and remunerated accordingly.

Underfunding of Māori Service Providers

82. The Crown adopts an overtly discriminatory approach to funding of Māori service providers who are systematically granted comparatively less than their non- Māori counterparts.
83. By means of example, whereas mainstream early childhood education centres receive a 20-hour funding subsidy of up to \$12.01 per hour per full-time enrolment Māori early childhood education centres (kōhanga reo) receive only \$8.76 per full time equivalent, almost 30% less.
84. This is a difference which whānau are overwhelmingly unable to makeup leaving the predominantly female kōhanga reo staff obliged to work for minimum wages.
85. The racially discriminatory application of funding by the Crown is not limited to chronically underpaid industries such as care and education. Even the Māori Land Court receives the lowest funding of all judicial bodies and by legislative determination a judge of the Māori Land Court is entitled to the lowest salary of all judicial officers.³⁵
86. In addition, contracts of Māori social service providers are more likely to be renewed on annual basis while non-Māori's contracts are renewed each 5 years which gives rise to issues of social security for the predominantly wāhine Māori staff further adds to the vulnerability which they face in their work.
87. It also puts pressure on the staff to meet the demands of their roles as they are both under-resourced and spending a significant amount of time reapplying for funding contracts whilst dually required to meet the workload demands of the contracts themselves.
88. In reviewing the Crown's performance with respect to the International Covenant on Economic, Social and Cultural Rights in March 2018 the right to social security the United Nations Committee on Economic, Social and Cultural Rights and adopted the following observations:

Right to social security

³⁵ Judicial Salaries and Allowances (201/18) Determination 2017.

34. The Committee is concerned that previous reforms of the social security system have resulted in imposing sanctions on non-compliant beneficiaries, including those with dependent children, and in excessively focusing on getting beneficiaries into paid work. **The Committee is also concerned that, due to the nature of the activities or services being provided and the assessment of the level of risk involved, among other factors, contracts of Māori social service providers are more likely to be renewed on annual basis while non-Māori's contracts are renewed each 5 years (art. 9).**

35. The Committee recommends that the State party pursue its intention to reform the social security system including the Social Security Act (1964), in wide consultation with the social partners, the National Human Rights Commission, and civil society in order to ensure the realisation of the right to social security. In doing so, the State party should ensure that social security legislation and policy are based on the pursuance of the realization of the right to social security. In particular, the Committee recommends that the State party:

(a) Ensure that persons in need of social assistance effectively receive social security benefits that are adequate and allow the beneficiaries and their families to enjoy an adequate standard of living;

(b) Assess the effectiveness of the sanctions regime, bearing in mind the core content of the right to social security and the best interests of the child;

(c) Ensure equal work conditions, including concerning contract renewal, of all social services providers, and address any indirect disparity in that regard.

Particular breach of the Principles of the Treaty of Waitangi

89. The Crown has breached the principles of partnership, good faith, active protection, participation and equity by funding Māori service providers inequitably in comparison to their non-Māori counterparts.

90. This breach is further exacerbated by the Crown's failure to adequately disclose the extent of its discriminatory practice in order to give effect adequate redress.
91. As a starting point for redress, the Claimants support and adopt the recommendations of the United Nations Committee on Economic, Social and Cultural Rights set out above.

Underrepresentation of Wāhine Māori in Leadership

92. Wāhine Māori are severely under-represented in high-profile, well paid, decision-making roles within management, governance, and leadership at both national and local levels within the political, public, private and voluntary sectors.
93. This under-representation contributes not only to the wage-gap felt by wāhine Māori, but also to the ability to influence decision making and organisational culture to eliminate discrimination and unconscious bias experienced by wāhine Māori.
94. In 2014, only 14% of board members of the NZX top 100 companies (including overseas) were women³⁶, whilst in 2012, only 28% of private sector senior management positions were held by women and only 5% of NZ businesses were likely to be led by a woman.³⁷
95. Within the state sector, a 2015 study concluded that, whilst women make up the majority of public servants, disparities remain in terms of seniority, occupational segregation, pay and career progression opportunities.³⁸
96. While women predominate the public service workforce, they comprise only 38% of chief executives, based mainly in the smaller ministries.³⁹

³⁶ NZX New Zealand Stock Exchange Diversity Statistics.

https://www.nzx.com/regulation/diversity_statistics

³⁷ Grant Thornton *International Business Report 2012: Women in senior management: still not enough* 2012 <https://www.grantthornton.global/en/insights/articles/women-in-business-2012/>

³⁸ Washington S; Peak M; Fahey K. "Engendering diversity – women's employment" in *The public Service Policy Quarterly* 2015 11(1): 11-18.

³⁹ State Services Commission Media Statement: *More women senior leaders in State sector, while CE pay remains in check* 2015 <http://www.ssc.govt.nz/media-statement-state-sector-workforce>.

97. As at 30 June 2015, the percentage of women in senior management was 44.2%.⁴⁰
98. In 2013 and 2014, women held 41.7% of appointments on state sector boards and as Ministerial Appointees.⁴¹ Among directors of state sector statutory bodies, 41% are women.⁴²
99. Women are not yet approaching parity in local government. Following the 2013 elections, women were 22% of local government chairs and mayors. On city and district councils they were respectively 33% and 30% of councillors, but only 21% of the members of regional councils, which cover larger areas and are more remote from their constituents than the other councils. Women members were 37% of community boards⁴³ and 52% of school boards of trustees.⁴⁴
100. It must be stressed that these statistics represent women generally. The percentage of wāhine Māori within these positions is far less and cannot be stated with accuracy as the Crown has failed to collect this data.
101. A major reason for the overall lack of women in senior roles is the lack of legislation enforcing public and private sector efforts to attract competent women to senior positions. Employment equity legislation dealing with this was enacted in 1990, but was immediately repealed by the incoming government, and has not been reinstated. Policies are in place in the public sector, but it appears that many chief executives are not held to account in this respect. The private sector has no such incentive.
102. In reviewing the Crown's performance with respect to the International Covenant on Economic, Social and Cultural Rights in March 2018 and the issue of discrimination in the private sector and under representation of

⁴⁰ State Services Commission *Human resources capability in the New Zealand state sector* November 2015 <https://www.ssc.govt.nz/sites/all/files/HRCReport-2015.pdf>.

⁴¹ Ministry for Women 2012 *Gender Stocktake of State Sector Boards and Committees as at 20 December 2012*.

⁴² Human Rights Commission *Census of Women's Participation 2012*.

⁴³ *Female representation in parliament and local government*

http://www.stats.govt.nz/browse_for_stats/snapshots-of-nz/nz-social-indicators/Home/Trust%20and%20participation%20in%20government/female-rep-parl-local-govt.aspx

⁴⁴ NCWNZ. 2015. *Enabling women's potential: the social, economic and ethical imperative*. https://www.ncwnz.org.nz/wp-content/uploads/2015/11/EnablingWomensPotential_OnlineViewing-1.pdf

women in leadership the United Nations Committee on Economic, Social and Cultural Rights and adopted the following observations:

16. The Committee regrets that the State party has not yet adopted a national action plan on business and human rights and is concerned that **the regulatory framework for companies operating in the State party, and those domiciled under its jurisdiction acting abroad, does not fully ensure respect for economic, social and cultural rights**. Moreover, the Committee is concerned about the reported under-resourcing of the National Contact Point established under the OECD Guidelines for Multinational Enterprises (art. 2.1).

17. **The Committee recommends that the State party:**

(a) Expedite the adoption of a national plan of action on business and human rights to implement the Guiding Principles on Business and Human Rights;

(b) Strengthen the regulatory framework, including concerning legal liability, for companies operating in the State party, and those domiciled under its jurisdiction acting abroad, to ensure that their activities do not negatively affect the enjoyment of economic, social and cultural rights, and that victims can claim reparations through the State party's judicial and non-judicial mechanisms;

(c) Strengthen the capacity of the National Contact Point.

21. **The Committee notes the increase in women's representation in elected bodies but remains concerned that while women comprise the majority of civil servants (60.5%), only 38% of Chief Executives of public departments are women, and that in the private sector the representation of women in leadership roles and on boards remains much lower (art. 3).**

22. **The Committee recommends that the State party pursue its efforts to achieve gender parity in all elected bodies. It also recommends that the State party step up its measures to increase women's representation in leadership roles in the public sector, and to that end strengthen awareness-raising campaigns on the roles of women and men in the family and in society. The Committee encourages the State party to take**

targeted measures, such as quotas to promote gender equality in the private sector. The Committee draws the State party's attention to its general comment No. 16 on the equal right of men and women to the enjoyment of all economic, social and cultural rights.

Particular Breaches of the Principles of the Treaty of Waitangi

103. In breach of the principles of partnership, active protection, participation, equity and redress the Crown:

- a. as regulator and procurer of employers, has and continues to fail to influence employers to encourage diversity in their workplaces and to encourage women, including wāhine Māori into positions of leadership; and
- b. as employer has and continues to fail to encourage the participation of more ethnically diverse women in all spheres of the public service sector including by:
 - i. failing to put in place appropriate mentoring, training and support mechanisms for advancement of wahine Māori in the sector; and
 - ii. failing to put in place policy requiring the state sector to set tangible targets to address gender inequities; and
 - iii. failing to introduce Employment Equity legislation that requires the state sector to report annually to Parliament on its progress in increasing the number of women in senior positions;

104. As a starting point for redress, the Claimants support and adopt the recommendations of the United Nations Committee on Economic, Social and Cultural Rights set out above.

Wāhine Māori Pay Disparity

105. Over time, the pay received by wāhine Māori from wages and salaries has consistently been less than the average and in particular of Pākehā women and men.
106. The 2018 Household Labour Force Survey (HLFS) carried out by Statistics NZ show that at June 2018 indicated that the average weekly pay of wāhine Māori was 86.3% of Pākehā women and 60.0% of Pākehā men and 74.1% of the overall average. The figures also show that wāhine Māori have the lowest average weekly earnings of all groups formed by gender and ethnicity.⁴⁵
107. The 2018 Household Labour Force Survey also showed that at June 2018 the average hourly earnings for wāhine Māori were 85.5% of those earned by Pākehā women, 72.2% earned by Pākehā men and 81.8% of the overall average.
108. The Household Labour Force Surveys carried out from when the surveys began in 1997 show consistent similar gaps between average earnings of wāhine Māori and others over the 21 year survey periods.
109. This claim has set out a number of drivers for wāhine Māori being paid less than Pākehā women and men including:
 - a. The systematic failure of the education system (past and present) to prepare wāhine Māori for employment let alone higher paid vocations;
 - b. Crown policy which discriminates against wāhine Māori by encouraging them into occupations which are historically paid less such rather than occupations that offered any contingency for personal development and economic stability;
 - c. Crown policy which discriminates against occupations where wāhine Māori form a significant part of the workforce such as the comparative underfunding of Māori service providers and requirement that Māori service providers re-apply for funding contracts on an annual basis offering little to no job stability for workers in these services;

⁴⁵ With reported ethnic groups being Pākehā, Māori, Pacific and Asian

- d. Crown policy which fails to monitor, assess and address disparities faced by wāhine Māori including the abject failure to monitor and develop policy around addressing the wāhine Māori pay gap itself;
- e. The failure on the part of the Crown as an employer to incentivise wāhine Māori (as a specific targeting demographic as opposed to women or Māori generally) into leadership roles and higher paid vocations;
- f. Crown policy which fails to incentivise employers to engage more wāhine Māori in leadership positions; and
- g. Crown policy which fails to address particular issues faced by wāhine Māori in career progression including commitments to their whānau and greater communities; and
- h. Inherent bias and discrimination in the workplace.

Government Policy to address the pay gap Between Wāhine Māori and others

- 110. For some time now, the Government has been aware of the issue of Wāhine Māori being paid less than other groups but to date has done little to address the situation.
- 111. In 1988, the Minister of Women's Affairs published the report '*Māori Women in the Economy*'⁴⁶. This documented that Wāhine Māori did not enjoy equal outcomes in many respects including disproportionate unemployment and pay rates.
- 112. In 1990, the National Advisory Council on the Employment of Women published the report, '*Beyond the Barriers; the State, the Economy and Women's Employment 1984-1990*' which described the concentration of Wāhine Māori in low paid occupations and noted higher unemployment rates and lower wages for Wāhine Māori.

113. The abovementioned report recommended the enactment of an Employment Equity Act which was subsequently enacted as the Employment Equity Act 1990. This was, however, repealed after three months by the incoming National Government as part of its wider labour law reforms.
114. In April 1999, Te Puni Kokiri and the Minister for Women's Affairs published *'Māori Women in Focus; Tirohanga, Kia Marama'*, which laid out key facts about the situation of wāhine Māori and their families compared with non-Māori women. It found that, while in 1986 wāhine Māori received a similar median income to non-Māori women since then the median pay for wāhine Māori had fallen behind. It also found that during the same period the proportion of wāhine Māori out of the labour force had risen significantly. Following this report, the Minister of Women's Affairs, Georgina Te Heuheu, stated that the statistics issued a "challenge to mainstream agencies to recognise that the needs, experiences and interests of Māori women are different to those of non-Māori women".⁴⁷
115. In September 2001, the Ministry of Women's Affairs issued the report, *'Māori Women: Mapping Inequalities and Pointing Ways Forward'*. This report covered a broad range of issues for wāhine Māori; education, income, health, housing and criminal justice as well as employment. The outcomes for wāhine Māori were compared with those for Māori men and non-Māori men and women. In this regard, it noted disproportionately low rates of pay with high rates of unemployment for wāhine Māori which had been worsening since the 1990s.
116. As part of its public consultation document prepared for developing its policies on pay equity, the Labour Government produced in 2002 the publication, *'Mahi Orite Etu Tokeke'* which found that wāhine Māori on average earned 70.6% of the average hourly pay earned by Pākehā men and 85.7% earned by Pākehā women.
117. Ultimately, the Labour Government decided to attempt to address pay equity through efforts to achieve pay equity in the Public Service rather than in the general labour market. A Pay and Employment Unit was set up within the Department of Labour to oversee public sector pay policies.

⁴⁷ Ministry of Māori Development, *Newsletter* No.51, May 1999.

However, with the end of the Labour Government in 2009, this unit was disbanded before it could bring about any pay increases for women.

Pay Equity Settlements

118. The proceedings brought by Christine Bartlett⁴⁸ with regard to pay equity in the aged care sector under the Equal Pay Act led to a Government working group negotiating with the Unions a settlement of care and support workers historical pay equity claim which was legislated in the *Care and Support Workers' (Pay Equity) Settlement Act 2017* to apply the settlement to all employers of residential workers.
119. There are a significant number of wāhine Māori working in aged care and support who will benefit from this settlement. However, the *Bartlett* decision illustrates how women's rights to equal pay under the Equal Pay Act 1972 have historically not been enforced and there are other occupations in which significant numbers of Wāhine Māori work where equal pay rates have similarly not been enforced.

Prejudicial effects of Government policies deregulating markets

120. Over recent decades, the structural changes to the labour market resulting from changes in Government policy have disproportionately prejudiced wāhine Māori.
121. Prior to 1991, New Zealand operated under a 'Compulsory Arbitration' based industrial relations system involving National awards negotiated upon the basis of providing fair levels of wages that would be appropriate for the socioeconomic needs of society. Under this system, wāhine Māori were paid the same award-based wages that applied to everyone else working in the relevant occupation.
122. The *Employment Contracts Act 1991* ended the system of Compulsory Arbitration and occupational awards and instead brought in a legislative

⁴⁸ *Terra Nova Homes & Care Limited v Service and Food Workers' Union Nga Ringa Tota Incorporated and Bartlett* [2014] NZCA 516.

scheme under which employees either individually or collectively were required to directly negotiate the terms of their employment with employers. Under this deregulated labour market, the levels of collective agreements and Union membership decreased significantly.

123. Since the deregulation of the labour market in 1991 general wage increases have fallen below general increases in labour productivity. Over that period, the average real annual wage increase has been 0.8% per annum as compared with the real average GDP increase per hour of 1.2% per annum.⁴⁹
124. Also, since 1991 the bulk of the general wage increases have largely benefitted higher income employees.
125. The overall result of this has been that if the pay of lower and middle-class income earners in New Zealand had increased with levels of productivity since the 1980s their current pay should be about 25% higher than it is at present.⁵⁰ Over this relevant period Māori women have predominantly been in lower income brackets.
126. As such, the deregulation of the labour market by the Government since 1991 has directly led to wāhine Māori receiving pay increases that lag behind other groups and below improvements in productivity.
127. Over this period other Government policies aimed at deregulation of markets have also had a prejudicial effect on Wāhine Māori. This includes policies from the 1980s privatising industries previously operating by the Government, including Railways, Forestry Service, Ministry of Works and the Post Office. As a result, wāhine Māori, who previously had long term secure and relatively well-paid employment in such Government owned industries, after the privatisations, tended to be provided with less secure, well paid employment opportunities. Also, the removal of tariffs and other local industry support lead to significant reductions in manufacturing and other industries which had employed significant numbers of wāhine Māori.
128. Overall Government policies of deregulation over recent decades have increasingly required wāhine Māori to find gainful employment in the

⁴⁹ B Rosenberg "A brief history of labour's share of income in New Zealand 1939-2016" In G Anderson (Ed.) *Transforming Workplace Relations* Wellington Victoria University Press 2017.

⁵⁰ M Rashbrooke *Inequality: A New Zealand Crisis* (1st ed.), 719-819.

market place where they had relatively little bargaining power and were subject to the systemic prejudices against them because of their race and sex.

Pay gaps for Wāhine Māori in the Public Service

129. A significant proportion of wāhine Māori have traditionally worked for the Government or Government owned entities. However, in recent decades, the Government has failed to ensure that wāhine Māori in the Public Service receive pay and conditions on a par with others in the Public Service. This has not only prejudiced wāhine Māori working in the Public Service but also wāhine Māori in general in that the Government has failed to set a precedent and example for equal treatment of wāhine Māori in employment to be followed by private industries.
130. The Government Services Equal Pay Act 1960 removed lower female pay rates in the Public Service. However, little has been done to address the predominance of wāhine Māori in lower paid occupations in the Public Service or to ensure under the Equal Pay Act 1972 that they received equal pay to men for the skills, responsibilities, experience, effort and conditions of work that those occupations required.
131. Over recent decades the State Services Commission (“SSC”) has published regular reports and papers documenting inequality in the public service for women and ethnicity minorities. There has however been a lack of specific reporting on the situation relating wāhine Māori. Of the reporting provided however there have been regular indications that there is a predominance of wāhine Māori in lower paid occupation groups in the public service.
132. The 1988, *Te Ohu Whakatapu* Report indicated that over 75% of all women public servants were in some form of clerical work and there was only one Māori woman with a permanent appointment in the more senior grades of the Public Service.
133. The 1998 State Services Commission Report *Māori in the Public Service* which reported that wāhine Māori were mainly employed in “front line”

clerical positions. The reported salary bands showed a “glass ceiling” for Māori at about \$50,000.00 per annum.⁵¹

134. The 2000 SSC Report *‘Equal Opportunities: Progress in the Public Service’* reported that there was a 9% gap between the average earnings of wāhine Māori and Māori men and 19% compared with Pākehā men.⁵²
135. The 2001 *EEO Outcomes in the Public Service* reported that wāhine Māori were earning 81% of the average salaries of men.
136. The 2003 Report *EEO Progress in the Public Service with Specific Focus on Māori* reported that there was a predominance of Māori in the lower pay ranges of the Public Service and this had been worsened by particularly low levels of pay for wāhine Māori.
137. Despite the evidence of an ongoing problem with pay inequality for wāhine Māori within the public service there has been very little Government policy response.
138. The State Services Act 1988 required chief executives to be “good employers” and for Departments to have equal employment opportunity programmes and policies overseen by the State Services Commission. The Equal Opportunities Unit in the State Services Commission established programmes intended to ensure equal opportunities in wages and promotions for wāhine Māori among others. However, by the end of the Labour Government in 2009, this had not resulted in any pay increases for women.
139. In the mid-2000s, the Labour Government set up a Pay and Equity Unit in the Department of Labour to oversee Department pay reviews and develop a general neutral job evaluation tool. An extensive set of pay review gender neutral job evaluations and training tools was developed. However, in February 2009, with the incoming National Government, the Unit was disbanded and no significant pay increases for women eventuated.

⁵¹ State Services Commission *Māori in the Public Service: A Statistical Profile 1992-1998* Wellington December 1988.

⁵² State Services Commission *Equal Opportunities: Progress in the Public Service* 30 June 2000.

140. Overall, the Government has failed to take significant steps to address pay inequity for wāhine Māori in the Public Service and, in particular, to ensure the obligations under the State Services Act for the Government to be good employers in providing equal employment opportunities, programmes and policies.
141. At present wāhine Māori in the public service continue to be prejudiced by the continuing pattern of the both Māori and women being largely in lower paid occupation groups in the Public Service.
142. At 2017 wāhine Māori in the Public Service earned annual salaries that were on average 22.6% less than Pākehā men and 9.9% less than Pākehā women.
143. In reviewing the Crown's performance with respect to the International Covenant on Economic, Social and Cultural Rights in March 2018 and the gender wage gap the United Nations Committee on Economic, Social and Cultural Rights and adopted the following observations:

30. The Committee notes that New Zealand has the lowest gender wage gap among OECD countries. **It is however concerned that women are more likely to be engaged in part-time, casual, and low-paid employment, constituting an obstacle to eliminating the gender wage gap and affecting women's pension benefits when they retire. It is also concerned that women are disproportionately engaged in multiple employment. Moreover, the Committee remains concerned that the principle of equal pay for work of equal value is still to be incorporated in the State party's legislation (art. 7).**

31. The Committee recommends the State party to:

(a) Intensify its efforts to diversify women's work opportunities, including occupations that are traditionally male-dominated, and ensure that ethnic and disability perspectives are integrated in all such efforts;

(b) Adopt targeted measures to foster an environment conducive for realising equal employment opportunities for men and women, including by undertaking awareness-raising campaigns, adopting temporary special measures, and further promoting flexible work arrangements that helps parents in balancing family and work;

(c) Address effectively the causes for the high percentage of women engaged in multiple employment;

(d) Adopt measures to incorporate the principle of equal pay for work of equal value in the State party's legislation and develop a streamlined mechanism to implement it across occupations.

Particular Breaches of the Principles of the Treaty of Waitangi

144. In breach of the principles of partnership, active protection, participation, equity and redress the Crown has failed to adequately protect wāhine Māori from experiencing acutely high levels of inequity in employment including pay disparity through:

- a. The systematic failure of the education system (past and present) to prepare wāhine Māori for employment let alone higher paid vocations;
- b. Crown policy which discriminates against wāhine Māori by encouraging them into occupations which are historically paid less such rather than occupations that offered any contingency for personal development and economic stability;
- c. Crown policy which discriminates against occupations where wāhine Māori form a significant part of the workforce such as the comparative underfunding of Māori service providers and requirement that Māori service providers re-apply for funding contracts on an annual basis offering little to no job stability for workers in these services;
- d. Crown policy which fails to monitor, assess and address disparities faced by wāhine Māori including the abject failure to monitor and develop policy around addressing the wāhine Māori pay gap itself;
- e. The failure on the part of the Crown as an employer to incentivise wāhine Māori (as a specific targeting demographic as opposed to women or Māori generally) into leadership roles and higher paid vocations;

- f. Crown policy which fails to incentivise employers to engage more wāhine Māori in leadership positions; and
- g. Crown policy which fails to address particular issues faced by wāhine Māori in career progression including commitments to their whānau and greater communities; and
- h. Failing to eliminate inherent bias and discrimination in the workplace and in particular in the public sector.

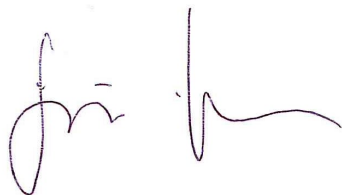
145. As a starting point for redress, the Claimants support and adopt the recommendations of the United Nations Committee on Economic, Social and Cultural Rights set out above.

Recommendations Sought

146. In these circumstances, the Claimant asks for the following findings:

- (a) That the Crown has and continues to breach its obligations of active protection towards wāhine Māori by failing to adequately protect wāhine Māori from inequities suffered in employment in the respect set out above;
- (b) That the government should engage in consultation with the claimants alongside other affected claimants in order to formulate more appropriate policies to meet their specific needs in this regard.

DATED this 21st day of September 2018



.....
T Te Whenua/Michael Sharp
Claimant Counsel

THIS STATEMENT OF CLAIM is filed by Tania Te Whenua, Solicitor for the Claimant. Documents for service on the Applicant may be:

- (a) Posted to their solicitor at PO Box 12094, ROTORUA 3045.
- (b) Emailed to counsel at tania@tewhenua.maori.nz; and michael@michaelsharp.co.nz.