BEFORE THE WAITANGI TRIBUNAL
TE ROOPU WHAKAMANA I TE TIRITI O WAITANGI **WAI 566**

IN THE MATTER	of claims under The Treaty of Waitangi to the Waitangi Tribunal by the descendents and rightful successors to the chiefs and people of Ngati Koata iwi
AND IN THE MATTER	of the Northern South Island District Inquiry under the Treaty of Waitangi Act 1975 - WAI 785
AND IN THE MATTER	of claims by Ngati Koata iwi of and in relation to various and numerous breaches of the Treaty of Waitangi by the Crown as Treaty partner to the disadvantage and prejudice of Ngati Koata iwi between Ngati Koata iwi and Her Majesty Queen Elizabeth II (hereafter referred to as "**the Crown**")

AMENDED STATEMENT OF CLAIM
10 NOVEMBER 2000

RUSSELL McVEAGH

J M Dawson
Phone 64 4 499 9555
Fax 64 4 499 9556
PO Box 10-214
DX SX11189
Wellington

1. INTRODUCTION

1.1 **WHEREAS** the Claimants, being the descendants from and rightful successors to the people of the iwi of Ngati Koata, have by notice of claim dated 22 December 1995 and signed on behalf of Ngati Koata by:

James Hemi Elkington

Josephine Mary Paul

Joseph Ruruku Hippolite

Rawenata Gieger

Priscilla Paul

Carl Elkington

Nohoroa Kotua

Louisa Walker

filed with the Waitangi Tribunal ("**the Tribunal**") on behalf of Ngati Koata iwi and through the Ngati Koata No Rangitoto Ki Te Tonga Trust, an incorporated society, a notice of claims under the Treaty of Waitangi Act 1975 ("**the Act**") against the Crown in respect of breaches of the Treaty of Waitangi ("**Treaty**").

1.2 The Claimants rely upon those claims and wish to further amend and particularise their claims against the Crown under the Treaty.

1.3 The Claimants expressly reserve the right to file further amendments and refinements to their claims in the course of the inquiry into the Northern South Island District.

2. NGATI KOATA

2.1 Ngati Koata rangatiratanga in Te Tau Ihu originates in a tuku whenua and tuku moana made by high ranking chief Tutepourangi.

2.2 The rohe of Ngati Koata includes that of the tuku, from land and waters east of Anatoto through to Te Matau, including the Croiselles, Whangamoa, Whakapuaka, Whakatu, the Waimea and Motueka and beyond.

(a) The claimants acknowledge the koorero of tupuna, which indicates the tuku went to Matau (Farewell Spit) in the west.

(b) The claimants also recognise that some historical records state the tuku went to Te Matau (Separation Point) in the west.

2.3 Ngati Koata developed and maintained rangatiratanga, relationships with other Te Tau Ihu iwi, and entitlements throughout Te Tau Ihu, according to Mäori law and custom.

2.4 Ngati Koata chiefs made certain tuku with other persons or groups at Whakapuaka and Motueka.

2.5 Ngati Koata tikanga did not operate on a system of iwi "boundaries". To discuss a Ngati Koata rohe predominantly in those terms is an affront to Ngati Koata tikanga.

2.6 Ngati Koata have customary and common law rights and title to land and waters and other taonga within Te Tau Ihu.

2.7 By the Treaty of Waitangi the Crown guarantees to Ngati Koata full and undisturbed possession and all their rights and taonga, laws and customs in Te Tau Ihu.

3. THE TREATY OF WAITANGI

3.1 By the Treaty the Crown:

(a) confirmed and guaranteed to Ngati Koata as a collective, group of families and individuals, the full exclusive and undisturbed authority and rangatiratanga for the protection and recognition of their customs and their lands, estates and fisheries - their taonga - and including their right to develop those systems and properties;

(b) promised Ngati Koata a "settled form of Civil Government" to "avert the evil consequences" to Mäori which must result from the "absence of necessary Laws and Institutions", to govern and control the inflow of tauiwi permitted in terms of the Treaty, to avoid adverse effects for Mäori, and to ensure the performance of the guarantees referred to above; and

(c) extended to Ngati Koata royal protection and imparted to them all the rights and privileges of British subjects.

3.2 By the Treaty, Ngati Koata:

(a) agreed with the Crown that others might enter Aotearoa and live and be supported there, subject to the full protection of Mäori in terms of the Treaty; and

(b) agreed to the exercise by the Crown of governance, inter alia subject to and for the purpose of the guarantee.

3.3 The full Mäori and English texts of the Treaty are appended as Schedule One.

4. THE PRINCIPLES OF THE TREATY OF WAITANGI

4.1 The Crown had and continues to have a duty to recognise and actively protect Mäori rights and interests specified in the Treaty. This duty includes:

(a) to ensure Ngati Koata always retained their resources for their sustenance, prosperity and development;

(b) to ensure Ngati Koata were, where appropriate, provided with the means to develop, exploit and manage such resources in a manner consistent with their own cultural preferences;

(c) to recognise and protect the laws, customs, cultural and spiritual heritage of Ngati Koata, including waahi tapu, taonga, language and culture;

(d) to ensure Ngati Koata exercise (to the fullest extent consistent with the Treaty) tino rangatiratanga, including the right to possess, manage and control all of their property, resources and social structures in accordance with Ngati Koata's own laws, cultural preferences and customs;

(e) to ensure that the impact upon Ngati Koata of government action and regulation is consistent with the Treaty and its principles, and actively to protect Mäori rangatiratanga, customs, laws and properties; and

(f) to ensure the impact upon Ngati Koata of government action was in accordance with the Treaty and recognised the above.

4.2 The principles of the Treaty include its terms.

5. THE CLAIM

5.1 Mäori substantially complied with their Treaty obligations by:

(a) Permitting and legitimating many other peoples to enter Aotearoa to share its benefits;

(b) Defending Aotearoa and its allies against common enemies;

(c) Agreeing to share resources for the sustenance of those who came; and

(d) Respecting the laws and governance of the Crown where consistent with the Treaty.

5.2 The Crown has consistently and repeatedly:

(a) Failed to recognise and protect rangatiratanga Mäori and Mäori laws, customs and property in terms of the Treaty and its principles;

(b) Exercised the authority and policy and law making capacity it developed using the resources of Mäori actively to attack the rangatiratanga, customs, laws and property of Mäori;

(c) Failed to comprehend and recognise the nature and extent of Ngati Koata custom and law, and customary use, occupation and enjoyment of lands and estates, fisheries and other benefits and failed to identify:

(i) the rangatiratanga of Ngati Koata; and

(ii) the extent of customary rights, whether of alienation, customary use, occupation and enjoyment or otherwise.

(d) Failed to adhere to the principles of the Treaty by not ensuring Ngati Koata retained rangatiratanga in respect of the said lands and estates, rivers, water, space, forests, minerals, fisheries, taonga and benefits, support, welfare and enjoyment of life;

(e) Failed to ensure that the agents taking part in land dealings received instructions regarding (and recognised the nature and extent of) Ngati Koata customary use, occupation and enjoyment of lands and estates, forests, fisheries and other benefits; and

(f) Failed to preserve continued rangatiratanga and use and occupation by Ngati Koata of their lands and estates, forests, fisheries and other resources and benefits according to Ngati Koata and Mäori laws and customs, by the introduction of policy and legislation, including, in particular, legislation establishing the Native Land Court which failed to ensure that the dealings by or on behalf of the Crown:

(i) Recognised those matters;

(ii) Were in accordance with Mäori custom and law;

(iii) Were understood by Mäori as to the consequences intended by the Crown;

(iv) Were conducted in accordance with the fiduciary obligations imposed on the Crown by the Treaty; and

(v) Did not leave Mäori bereft of their property.

5.3 On the contrary, Crown action and omission left Ngati Koata in a situation where their rangatiratanga was under constant attack and its object and means of sustenance (land and taonga Mäori) were grossly depleted, in grave breach of the solemn Treaty obligations by which the Crown acquired for others their right to legitimately settle in Aotearoa.

5.4 These actions, with the denial of rangatiratanga and the cultural, social and economic deprivation resulting from land and resource loss through earlier Crown breach, lead to and enabled loss of much of such land and resources as Mäori had not already lost by earlier actions by and omissions of the Crown and on its behalf, and lead to and enabled further repeated attacks on and refusal to recognise the rangatiratanga of Ngati Koata and their laws and customs.

5.5 In summary:

(a) the Claimants claim that they and their respective iwi or hapu are and are likely to be prejudicially affected by any or all of the acts or omissions of the Crown referred to in this amended statement of claim.

(b) Ngati Koata are now without significant lands and resources held in accordance with their laws and customs;

(c) Ngati Koata rangatiratanga, laws and customs including te reo, have not been recognised, but consistently disregarded in favour of those promulgated by the Crown.

(d) This prejudice of itself points to consistent breach by the Crown of the Treaty obligations to protect the rangatiratanga of Ngati Koata over land and resources, laws and customs.

6. FURTHER PARTICULARS OF TREATY BREACHES:

Preliminary

6.1 Ngati Koata provides these particulars under the following conditions:

(a) The particulars are to help illuminate the issues and assist with the Tribunal process, and to enable the Crown to respond with the same particularity. It is not and cannot be a complete statement of the grievance of Ngati Koata and does not detract from the need for the Crown to disclose all it knows, nor from the Tribunal's inquisitorial role.

(b) Such a complete statement should not in any event be necessary. It has been generally acknowledged that the whole of New Zealand was "owned" by Mäori in 1840 according to their laws and customs. The Crown in the Treaty assured Mäori of rangatiratanga, including lands and waters and resources over which, and laws and customs by which, it might be exercised. As pleaded above, the almost complete takeover of Ngati Koata lands and resources and the almost total failure or refusal to recognise their substantial authority and sovereignty inherent in the term "te tino rangatiratanga" speaks for itself as indicating a breach of the guarantee that those things would not happen. The Crown is asked to plead whether such authority is recognised. The Crown now claims, probably incorrectly, almost complete "sovereignty" through the executive and Parliament. To the extent that it does so, and has done so, however, continuing in breach is the more egregious, as is the failure to acknowledge it without the necessity for these hearings.

(c) The Crown seeks to treat these hearings as preliminary to "negotiation". The hearing and recommendations are not seen by the claimant as affected by that perception. Such negotiations take place (or not) at the instance of the Crown in circumstances where the Crown identifies unilaterally the basis of the negotiation and how far it will or will not go. The Crown, it is understood, has for example declined to negotiate about "resources", and constitutional issues, and has placed a notional cap or equivalent on compensation, as well as limiting the Tribunal's own jurisdiction. The Tribunal is seen as a forum in which questions of remedy directed to the Treaty can and should be examined without being affected or tailored by Crown

policy from time to time about negotiation. The right to particular claims in this regard is reserved.

(d) Matters of compulsory resumption have not been raised in this pleading, and the right to do so is also reserved. It is understood that further opportunity will be provided to consider matters of remedy if the claim proves well founded.

Introduction

6.2 The following parts of this statement of claim identify Crown conduct and breach from a time soon after the signing of the Treaty. Each breach led to consequences which caused and aggravated losses arising from further breaches relating to successively diminishing land and resources over which Ngati Koata was kaitiaki.

6.3 These breaches and their consequences (and others not expressly mentioned) are a continuum with a compounding effect, not to be viewed in isolation from each other or from the wider picture of Crown conduct.

6.4 Ngati Koata claim the Crown has failed to fulfil its Treaty promises and guarantees of full exclusive and undisturbed possession, ownership, mana, manawhenua and rangatiratanga of and over:

(a) Land;

(b) Rivers and waters;

(c) Flora and fauna;

(d) Fisheries;

(e) Forests;

(f) Minerals;

(g) Coastal foreshore and seabed;

(h) Kaimoana; and

(i) Waahi tapu.

7. THE CROWN AND THE NEW ZEALAND COMPANY TRANSACTION - SPAIN COMMISSION

7.1 From 1839, New Zealand Company ("**Company**") purported land transactions in the top of the South Island resulted in European settler claims to ownership of land. During these transactions, Company officials dealt only with Ngati Toa, ignoring the manawhenua of resident Ngati Koata.

7.2 On 25 October 1839, the Company obtained at Porirua 12 signatures to a deed purporting to purchase all Ngati Toa lands. Te Whetu was the only Ngati Koata chief to sign. No signatures were sought from Ngati Koata, HOWEVER Te Whetu, who happened to be on the area signed.

7.3 Mäori expected to develop relationships with settlers and traders and to receive respect for their rangatiratanga, laws and customs.

7.4 The Company's original claim to millions of acres at Nelson was based on these deeds.

7.5 The "transaction" was fraudulent, contrary to principle, wrong and ineffective in English terms (except to give rise to settler expectations contrary to those of Mäori). It had no meaning for Mäori beyond that specified above.

7.6 Following the signing of the Treaty, the Crown established a Commission to inquire into "claims" by European settlers to land allegedly purchased from Mäori.

7.7 The Crown recognised the injustice of upholding the purported transaction in any sense as a purported alienation of any land or property. However, the Secretary of State instructed the Commission to:

> execute the Law rather with a view to prevent future injustice than with the expectation of being able to redress satisfactorily past wrongs.
>
> *Vernon Smith to Martin, 24 March 1841, cited in Phillipson 1 pp70-71.*

7.8 The substantial lands to be identified by the Spain Commission at Nelson and Waimea were ultimately lost by this failure of protection.

7.9 Ngati Koata land claimed by the Company was investigated by Commissioner William Spain.

(a) At the Nelson hearing, Spain relied on European evidence:

(i) No purported deeds of purchase were presented;

(ii) No maps or records of boundaries were presented; and

(iii) No minutes of the "negotiations" which took place were presented.

(b) The hearings were adjourned, Spain deciding without consultation that further evidence would not be taken.

(c) Compensation negotiations commenced.

(i) Aboriginal Protector George Clarke "negotiated" with Mäori;

(ii) Prior to negotiations, a limit of £800 had been set; and

(iii) Clarke acted in a land purchase capacity, rather than in the capacity of protecting Mäori interests.

(d) The concept and quantum of compensation negotiations for what had already been done was presented as a *fait accompli* to Ngati Koata and other Mäori present. Notwithstanding growing

misgivings about the nature of the transaction, the illusion of continuing mutual benefit and relationship in relation to the land was maintained. The bargaining power of Ngati Koata was undermined.

(e) In 1844, the chiefs then signed deeds alleged to relinquish all claims to the land Spain would award to the Company.

(f) Spain used the fact that:

(i) settlers were present and resident in Te Tau Ihu pursuant to the defective deed;

(ii) Crown interests; and

(iii) the settlers' ability to settle and cultivate land,

to overcome the Treaty obligation to protect Ngati Koata rangatiratanga and laws.

(g) The Spain Commission's final report was the basis of an award of land to the Company by the Crown. Spain's interpretation was that:

(i) Ngati Toa had no interest in Nelson province, but accepted the 1841 and 1842 negotiations which "legitimised" the Ngati Toa transaction.

(ii) The "presents" given to Ngati Koata and other iwi during the 1841 and 1842 negotiations were "payments".

(iii) the focus of the enquiry should be whether the "presents" were paid and received. He found that they had, and so there was an agreement to sell. The actual events of the "negotiation" process and Mäori understandings were disregarded.

(h) The Crown's conduct, decision and actions caused 151,100 acres of Te Tau Ihu to pass out of Ngati Koata and Mäori control.

(i) The rangatiratanga Ngati Koata wrongly disregarded in this way includes that relating to the resources and lands at Whakatu (Nelson) and the rich Waimea Plains. Ngati Koata had never consented to any alienation of this land and interests.

7.10 **Ngati Koata alleges:**

(a) **The Crown failed to direct the Spain inquiry to inquire into land transactions in a manner which redressed the wrongs committed by the Company against Ngati Koata.**

(b) **The Crown failed to consider Ngati Koata tikanga which included the importance of "presents" to evidence a tuku whenua, and the understanding that the settlers would settle alongside Ngati Koata and share the use and**

resources of the region respecting Ngati Koata tikanga and rangatiratanga.

(c) **The Crown failed to consider that any transactions should have been governed by the principles and values of tikanga Mäori and tikanga Ngati Koata, and act accordingly.**

(d) **The Crown failed to ensure that Spain had been presented with all relevant Ngati Koata evidence as to the nature of the purported transactions of the Company before commencing settlement negotiations.**

(e) **The Crown treated the alleged transactions as a fait accompli, justifying removing Ngati Koata land when it was or should have been clear there had been no "sale" in Mäori or European terms.**

(f) **The Crown failed to ensure that Ngati Koata would be adequately compensated (for Mäori agreement in Mäori terms to settlement) by setting an unrealistically low cap on the level of compensation.**

(g) **The Crown failed to ensure that the Aboriginal Protector acted in the capacity of protecting Ngati Koata interests.**

8. NATIVE LAND PURCHASE ORDINANCE 1846

8.1 The Native Land Purchase Ordinance 1846 reasserted pre-emption by declaring land transactions other than between Mäori and the Crown invalid.

8.2 The Crown's exclusive right of pre-emption allowed Mäori land to be bought for low prices and resold at a profit to the Crown. It precluded or diminished Mäori freedom to allow settlement according to their laws and customs, (for example arrangements in the nature of leases) and in a way which respected their rangatiratanga.

8.3 This profit financed further British emigration to New Zealand, without consideration of the increasing pressure to Mäori and to the guarantees given of protection to rangatiratanga Mäori, land, resources, law and custom would bring.

8.4 **Ngati Koata alleges:**

(a) **The Crown failed to allow Ngati Koata rangatiratanga over their lands and estates by declaring all land transactions not with the Crown invalid.**

(b) **The Crown failed to adequately compensate Ngati Koata for the lands purportedly acquired under this policy (in terms of Ngati Koata understandings of such transactions or of the alienation intended by the Crown).**

(c) **The Crown failed to disclose to, or plan with Mäori for the consequences of, the intended influx.**

9. PARTICULARS OF TREATY BREACHES:

1856 WAIPOUNAMU PURCHASE:

9.1 1856 DEED

(a) From 1853 to 1856 by a series of transactions collectively known as the Waipounamu purchase the Crown in execution of a deliberate policy purported to alienate, with the exception of some reserves, all land then remaining in the hands of Te Tau Ihu iwi.

(b) The Deed signed by some Ngati Koata was advanced as and was a fait accompli, as the Crown had already purported to purchase the same lands from Ngati Toa chiefs in 1853 (a transaction equally flawed). The special rights of various iwi were not properly enquired into, and the deed was pursued to execute government land acquisition policy, not with regard to the interests of Mäori.

(c) Ngati Koata in any event had a different conception of the transaction - viewing it not as a permanent and exclusive alienation of the kind contemplated by the Grant. They were assured and had a reasonable expectation that they would derive future benefits.

(d) The low price of £100 covering the entirety of the lands was part of a deliberate Crown policy to pay the lowest possible price for land owned by Mäori and was inadequate on the above basis.

(e) The islands of Otuhaeroa, Moukirikiri and Motuanauru at the mouth of the Croiselles Harbour. These islands were included as part of the 1856 Deed, and passed into Crown ownership following that acquisition.

(i) In 1980, the Minister of Lands declared these islands scenic reserves under the administration of the Marlborough Sounds Maritime Park Board, even though Ngati Koata still used them as mahinga kai and they were places of historical and customary interest.

(ii) This decision was made without adequate consultation with Ngati Koata.

(iii) The Department of Conservation now manages these islands, and Ngati Koata is denied access to them. Ngati Koata's ability as an iwi to maintain access and control over resources has been denied.

(f) The Crown has at no point had regard to their significance for Ngati Koata.

(g) The Crown did not consider and plan with Mäori as part of this process their protection of their rangatiratanga and resources in anticipation of the settlement permitted by the Treaty.

(h) Ngati Koata has wrongfully been denied rangatiratanga, access to and participation in the said lands and the benefits a Treaty based relationship would have provided.

9.2 **Ngati Koata alleges:**

(a) **The Crown failed to take into account the economic, social and cultural value of the land taken by the 1856 Deed.**

(b) **The Crown failed to give effect to Ngati Koata tikanga by imposing the Pakeha concept of permanent sale of the lands under the 1856 Deed and accompanying transaction.**

(c) **The Crown failed to adequately determine the iwi with who to undertake discussions about the alienation of land, diminishing the rangatiratanga and mana of Ngati Koata.**

(d) **The Crown failed to sufficiently compensate Ngati Koata for the land taken under the 1856 Deed.**

(e) **The Crown failed to consult Ngati Koata before declaring the islands at the entrance to the Croiselles as scenic reserves and thus further denying rangatiratanga and access to traditional mahinga kai on the islands at the entrance to the Croiselles.**

(f) **The Crown failed to ensure that Ngati Koata continued to have access to traditional mahinga kai on the islands at the entrance to the Croiselles.**

(g) **The Crown failed to consider, or ignored, or engineered the disastrous effect the wholesale loss of those lands, on the terms understood by the Crown, would have generally on Ngati Koata's ability to sustain settlement and to retain their other lands.**

9.3 **INADEQUATE RESERVES**

(a) The 1856 Deed signed by Ngati Koata specified that five reserves would be made for Ngati Koata:

> ....First the lake at Kaiaua and a small piece of land adjoining, bounded on one side by a bridge at the Pakiaka, and on the other side by Puketeraki; second, the land that was surveyed by Mr Brunner at Okiwi; third, Whangarae, also surveyed by Mr Brunner; fourth twenty (20) acres at Onetea, and one hundred (100) acres at Whangamoa. These are all the reserves for us.
>
> *[Deed of Sale by the Ngati Koata tribe, 5 March, 1856, Mackay, I, pp. 316-317.]*

(b) The Crown assessment of the adequacy of these reserves by Mr Brunner, the Crown surveyor, was that these reserves would be sufficient for the needs of Ngati Koata.

(c) Reserves were set aside for Mäori within these areas. This reserves policy was restrictive, ensuring Mäori did not interfere

with settlement objectives, rather than being designed to ensure the Treaty protection of Mäori.

(d) In addition to the five reserves specified, Ngati Koata also retained Rangitoto. Rangitoto was not defined as a "reserve".

(e) Reserves left to Nelson and Marlborough iwi by the 1856 Deed were made without consideration of iwi relationships or the relationship of the iwi to their whenua, or in a way which recognised rangatiratanga.

(f) The reserves were inadequate for either development or subsistence, located in unsuitable areas and of poor quality.

(i) As early as 1861 Crown officials recorded that the inadequate land base of Nelson and Marlborough iwi left them out of the developing economy.

(ii) Economic activities that had been previously engaged in were given up because of lack of land.

(iii) The Crown acknowledged by 1865 that the reserves were "very useless".

(g) Boundaries and sizes of reserves were not accurately defined.

(h) Ownership was unclear, without provision of the secure title needed in the new environment.

(i) The reserves were unevenly distributed amongst iwi.

(j) The reserves granted as part of the 1856 Deed were resurveyed prior to the 1892 Mäori Land Court Hearings. It was acknowledged that the size of reserves had been wrongly identified:

Name of reserve	Original Area	Recalculated Area
Kaiaua	20a 0r 00p	422a 0r 00p
Okiwi	400a 0r 00p	3295a 2r 32p
Whangarae	600a 0r 00p	4022a 0r 00p
Onetea	20a 0r 00p	96a 0r 00p
Whangamoa	100a 0r 00p	101a 0r 00p
Total	**1140a 0r 00p**	**7936a 2r 32p**

(k) The policy of making reserves, and its development and execution, left no (or a greatly reduced) place for the exercise of rangatiratanga or for the application and development of Mäori law and custom. In time, rangatiratanga was removed almost completely from the alienated lands.

(l) The unavailability of the extensive Ngati Koata lands made it difficult later to retain such lands as they were left with.

9.4 **Ngati Koata alleges:**

(a) **The Crown failed to take into account the economic, social and cultural value to Mäori of the land reserved in the 1856 transaction, to protect Ngati Koata rangatiratanga, customs, laws and possessions.**

(b) **The Crown, having removed most of Ngati Koata's land by the process already identified, failed to ensure that Ngati Koata were given adequate reserves by 1856 Deed, and in 1892 left Ngati Koata with insufficient land for their present and future needs and development, and the proper exercise of rangatiratanga.**

(c) **The Crown failed to ensure that the impact of these inadequate reserves did not cause undue hardship to Ngati Koata.**

(d) **The Crown failed to take appropriate action consistent with the Treaty of Waitangi to remedy the effects of the 1856 Deed which alienated land in Te Tau Ihu.**

SPECIFIC BREACHES OVER LANDS RESERVED FROM 1856 TRANSACTION

9.5 KAIAUA / LAKE OTARAWAO

(a) Lake Kaiaua was an important mahinga kai for Ngati Koata. It was reserved from the Crown purchase because it was an important source of eels.

(b) This was known as the Kaiaua Reserve, having 20 acres in the 1856 Deed.

(c) The Kaiaua Reserve was granted by the Crown to Maka Tarapiko in 1866, including the top of the hill. According to this grant the reserve was 422 acres in two separate blocks: the lake was section 13, at 17 acres and the surrounding land leading up the hill was section 12, at 405 acres. The Crown grant was dated 19 July 1866 but not signed by Mackay until 1871.

(d) The details of the alienation of Kaiaua are uncertain. Legal ownership of the block was transferred to Reubena Askew in 1885 - but to date, no deed of sale has been found. Askew made an application to the Registrar, under the Land Transfer Act, to have a title to the block issued to herself.

(i) This sort of application can be made in circumstances where no documentation existed recording a change of ownership.

(ii) If the applicant could prove they had been in occupation of the land and paying rates for a "certain number of years" then their ownership of the land would be recognised.

(e) Askew's application stated that Raniera Te Patete, on behalf of himself and Maka Tarapiko, had sold the land to Thomas Askew for 100 pounds on 8 August 1871. Tarapiko was dead at the time Patete signed the deed of sale, and Askew's application stated that Patete signed in accordance with a prior agreement between Tarapiko and Thomas Askew.

(f) It was probable that Tarapiko only intended disposing of the surrounding land to Askew, not the Lake, as it was used as a food source. If the deed had subsequently been lost, Lake Kaiaua may have been included in the grant (if it was) carelessly or merely because the Askews were in occupation of the surrounding land.

(g) A Native Land Court inquiry on 28 March 1922 found that Rewi Maaka had succeeded Maka Tarapiko and had title to the land. The 1922 inquiry also ascertained that Rewi Maaka had sold the land at Kaiaua to William Stewart. Stewart subsequently transferred the land to Pike, who had a certificate of title confirming ownership.

(h) Currently, Jeremy Foley has a license pursuant to the Freshwater Fish Farming Regulations 1983 to maintain a farm for eels at all sides of the lake, except for the seaward side. In 1992 he was granted a 14 year licence for eel farming and thereby claims the lakebed and the eels on his property.

(i) Ngati Koata used the lake seasonally and when in the area, but the land registration system did not recognise that Ngati Koata were continuing to exercise ownership and customary rights.

(j) Ngati Koata continued to use the lake as a mahinga kai, until a fish farming licence was issued over the lake in 1992. Access is now denied.

(k) As a result of this the Crown conduct Ngati Koata's interest in the land, lake and food source at Kaiaua have been lost, and must be restored.

9.6 **Ngati Koata alleges:**

(a) **The Crown failed to ensure that Ngati Koata were given adequate reserves at Kaiaua.**

(b) **The Crown failed to take into account the economic, social and cultural value of Lake Kaiaua to Ngati Koata in its treatment of such reserves as were made.**

(c) **The Crown failed to give effect to Ngati Koata tikanga by making a grant disregarding the significance of Lake Kaiaua being used and occupied by Ngati Koata katoa. There was no place for "individualisation of the title" to this taonga.**

(d) **The Crown policy administered by the Native Land Court of partitioning of land followed by individualisation of title**

allowed for the relatively simple disposal of reserve land at Lake Kaiaua.

(e) **The Native Land Court decision was contrary to the Treaty.**

(f) **The Crown failed to take appropriate action consistent with the Treaty to remedy the situation caused by the Native Land Court.**

(g) **The Crown failed to ensure complete documentary records of the alienation of Lake Kaiaua from Ngati Koata were maintained, and to protect Ngati Koata from loss of their ancestral entitlements by such transactions and any fraud relating thereto.**

(h) **The Crown failed to ensure that Ngati Koata continued to exercise rangatiratanga and to have access to traditional mahinga kai at Lake Kaiaua. It must be returned.**

SPECIFIC BREACHES OVER LANDS RESERVED FROM 1856 TRANSACTION

9.7 **OKIWI**

(a) Okiwi 1, 2 and 3 blocks were leased to Robert Gilmer for 21 years from September 1899.

(b) Immediately following the passage of legislation allowing alienation (to which reference is later made) the land was lost.

(c) Between December 1909 and October 1910, part of Okiwi 1 was sold to Thomas Field. Partitioning ensued, with Field being awarded 592 acres 2 roods and 12 perches, as Okiwi 1B.

(d) Most of Okiwi 1A was alienated shortly afterwards. Today only 7 acres 1 rood of Okiwi 1A is still Mäori freehold land.

(e) Okiwi 2 was purchased between 1909 and 1910 in nine separate transactions.

(f) Okiwi 3 was partitioned into 3A and 3B on 7 January 1905.

(g) Between December 1909 and October 1910, Okiwi 3A and 3B were alienated in seven deeds.

9.8 **Ngati Koata alleges:**

(a) **The Crown failed to ensure that Ngati Koata were given adequate reserves at Okiwi.**

(b) **The Crown failed to take into account the economic, social and cultural value of Okiwi to Ngati Koata.**

(c) **The Crown failed to give effect to Ngati Koata tikanga by disregarding the concept of Okiwi being used and occupied**

by Ngati Koata katoa. There was no place for "individualisation of title" to this taonga.

(d) **The Crown policy and legislation (administered by the Native Land Court) of partitioning of land followed by individualisation of title allowed for the relatively simple disposal of reserve land at Okiwi.**

(e) **The Native Land Court decision was contrary to the Treaty.**

(f) **The Crown failed to take appropriate action consistent with the Treaty to remedy the alienation of land at Okiwi caused or permitted by the Native Land Court. It must be returned.**

SPECIFIC BREACHES OVER LANDS RESERVED FROM 1856 TRANSACTION

9.9 **WHANGARAE**

(a) By way of orders dated 30 November 1892, (NMB3, p144) the Native Land Court determined the owners of Whangarae 1, 2, 3 and 4. Whangarae 4 was an urupa.

(b) On 15 April 1899, Whangarae 1 was partitioned into 1A, 1B and 1C.

(c) On 9 April 1901, Whangarae 2 was partitioned into 2A, 2B and 2C.

(d) On 21 October 1910, Whangarae 3 was partitioned into 9 blocks.

(e) In 1932 a total of nearly 13 acres was taken under the Public Works Act from Whangarae 1A, 1B and 1C for roading, and 13 acres 3 roods 23 perches from Whangarae 2B.

(f) The Native Land Court determined that no compensation was payable, under policy provisions allowing up to five percent of Mäori land to be used for roading without payment.

(g) On 21 March 1956, Whangarae 4 and Whangarae 3E were set apart for the "common use and benefit of the members of the Ngati Koata tribe". (Gazette notice no 19, 156, p441).

(h) In 1974, a large part of the Whangarae 1C was alienated to the Crown.

(i) This alienation is the subject of a separate claim (Wai 184) to the Tribunal.

(ii) The Crown wished to purchase the block for scenic purposes, noting "it appeared to be the key block as it has the most beach frontage and consequently the highest valuation." (Commissioner of Crown Lands (Nelson) to Director General of Lands (Head Office), 8 May 1972).

(iii) Crown acts policy and legislation had fragmented or eliminated the iwi interest in and control of the land, and was intended to do so.

(iv) At the owners meeting, the majority agreed to the sale. Those owners who agreed to the alienation of land did not live in the area, had never seen the land.

(v) Ngaroimata Waaka was opposed to the alienation, and took steps to seek a partition of the block to retain her interest to the land. Ngaroimata did not agree to the alienation because:

(aa) The land had been handed down to her by her family;

(bb) She had used the land for her enjoyment;

(cc) Her immediate family used and enjoyed the land with her and wanted to carry on doing so for generations to come.

(vi) The majority decision of the owners was confirmed by the Mäori Land Court before the partition could be completed.

(aa) Mrs Waaka was advised she needed to employ a solicitor and a surveyor to prepare an subdivision and obtain local authority consent.

(bb) If these had not been prepared then the partition would not take place.

(vii) The entire 308 acre block became Crown land, at a purchase price of $11,965. The block was declared a reserve for scenic purposes as part of the Okiwi Bay Scenic Reserve on 30 September 1976. It is controlled and managed by the Marlborough Sounds Maritime Park.

9.10 **Ngati Koata alleges:**

(a) **The Crown failed to ensure that Ngati Koata were given adequate reserves at Whangarae.**

(b) **The Crown failed to take into account the economic, social and cultural value of Whangarae to Ngati Koata.**

(c) **The Crown policy of allowing Mäori land to be taken for roading at Whangarae under the Public Works Act without compensation denied Ngati Koata their reserve land at Whangarae.**

(d) **The Crown policy administered by the Native Land Court of allowing land to be taken under the Public Works Act**

without compensation denied Ngati Koata their reserve land at Whangarae.

(e) **The Crown failed to take appropriate action consistent with the Treaty to remedy the lack of compensation for land taken under the Public Works Act at Whangarae authorised by the Native Land Court.**

(f) **The Crown failed to give effect to Ngati Koata tikanga by disregarding the concept of Whangarae being used and occupied by Ngati Koata katoa, with no place for "individualisation of title".**

(g) **The Crown policy administered by the Native Land Court of partitioning of land followed by individualisation of title allowed for the relatively simple disposal of reserve land at Whangarae.**

(h) **The Crown failed to take appropriate action consistent with the Treaty to remedy the land alienation at Whangarae caused by the Native Land Court. It must be returned.**

SPECIFIC BREACHES OVER LANDS RESERVED FROM 1856 TRANSACTION:

9.11 **ONETEA**

(a) In the early 1860s, Te Whetu purchased land at Onetea, section 13, square 91 from the Nelson Provincial Government for £25, because the reserved land was of such a poor quality.

(b) In 1897, Te Whetu (now living in Waitara, Taranaki) sold the 76 acres he had purchased to Alfred Allport for £100 pounds. This transaction was confirmed by Mackay on 18 March 1893, but not settled until 1897.

(c) In 1903 John Hippolite protested to the Chief Surveyor that an urupa within this block had been wrongfully included in the 1897 transaction with Allport.

(i) Hippolite claimed Te Whetu had gifted half an acre containing the urupa to local Mäori.

(ii) The 1897 Deed did not mention the exclusion of the urupa.

(d) In 1917 T and J Hippolite purchased 3 acres from Allport's section, including the urupa, for £3.15. The three acres remains in Mäori ownership today.

9.12 **Ngati Koata alleges:**

(a) **The Crown failed to ensure that Ngati Koata were given adequate reserves at Onetea.**

(b) **The Crown failed to take into account the economic, social and cultural value of Onetea to Ngati Koata.**

(c) **The Crown failed to give effect to Ngati Koata tikanga by disregarding the concept of Onetea being used and occupied by Ngati Koata katoa, with no place for "individualisation of title".**

(d) **The Crown policy and legislation administered by the Native Land Court of partitioning of land followed by individualisation of title allowed for the relatively simple disposal of reserve land at Onetea.**

(e) **The Crown failed to take appropriate action consistent with the Treaty to remedy the land alienation at Onetea caused by the Native Land Court.**

(f) **Ngati Koata were forced to repurchase their own reserves to retain urupa.**

SPECIFIC BREACHES OVER LANDS RESERVED FROM 1856 TRANSACTION

9.13 **WHANGAMOA**

(a) The Whangamoa Block (also known as Te Mapou) was first partitioned on 30 November 1892 (NMB3, p149) into 2 blocks. Whangamoa 2 passed into European hands and became European land.

(b) Whangamoa 1 was then partitioned on 4 July 1916. Whangamoa 1B was awarded to Henry Wastney and became European land.

(c) Wastney purchased Whangamoa 1A on 4 July 1916.

(d) 2 acres and one road was partitioned off on 4 July 1916, and declared owned by 3 Mäori owners. This is all the land at Whangamoa remaining in Mäori ownership today.

9.14 **Ngati Koata alleges:**

(a) **The Crown failed to ensure that Ngati Koata were given adequate reserves at Whangamoa.**

(b) **The Crown failed to take into account the economic, social and cultural value of Whangamoa to Ngati Koata.**

(c) **The Crown failed to give effect to Ngati Koata tikanga by disregarding the concept of Whangamoa being used and occupied by Ngati Koata katoa, with no place for "individualisation of title".**

(d) **The Crown policy and legislation administered by the Native Land Court of partitioning of land followed by individualisation of title allowed for the relatively simple**

disposal of reserve land at Whangamoa. The Native Land Court's action was in breach of the Treaty.

(e) **The Crown failed to take appropriate action consistent with the Treaty to remedy the land alienation at Whangamoa caused or permitted by the Native Land Court.**

SPECIFIC BREACHES OVER LANDS RESERVED FROM 1856 TRANSACTION:

9.15 **RANGITOTO**

(a) Rangitoto was not alienated by the 1856 Deed because its importance to Ngati Koata was recognised.

(b) In 1883, the Native Land Court determined that a certificate of title be issued for Rangitoto and the surrounding islands in unequal shares to 79 Ngati Koata.

(c) Legislation establishing the Court and its operations did and were intended to fragment and eliminate the tribal interest and make the land accessible for purchasers.

(d) Once certificates of title had been provided, it became simpler for leases to be made over the land at Rangitoto. It was commonly recognised by Europeans and the Crown that obtaining a lease over land was the first step in obtaining ownership over that land.

(i) On 29 May 1893, 9000 acres was leased to Robert Woodman;

(ii) On 29 May 1893, 9000 acres was leased to Robert Acheson;

(iii) On 29 May 1893, 7000 acres was leased to Thomas Dwan; and

(iv) On 29 May 1893, 9000 acres was leased to James Ross.

(e) Despite being reserved from disposal, in 1895 Rangitoto was partitioned by the Native Land Court into eleven blocks allocated to particular "owners".

(f) The Native Land Court placed a restriction on Rangitoto making all blocks inalienable except by 21 year lease. However:

(i) Section 52 of the Native Land Court Act 1894 allowed the Native Land Court to remove the alienation restrictions if one third of the owners agreed the restrictions should be removed.

(ii) The Native Land Act 1909 removed the restrictions on alienation applying to Mäori Land Blocks, allowing numbers of owners to carry more weight than value of

land holdings when voting for a proposed sale. Sales were then confirmed by the Native Land Court.

(g) Between 1895 and 1997 the 11 Rangitoto blocks were gradually partitioned to allow for alienation.

(h) By 1997, approximately 35,620 acres of the original 41,923 acres had been alienated from Mäori ownership of the land alienated, a substantial portion is in Crown hands as reserve.

(i) Both the massive alienations which occurred in the early 1900s and the later losses were made possible by the changes to the legislation.

(j) Pressure for sale leading to permanent alienation was greatly enhanced by the inadequacy of the other lands and resources remaining for Ngati Koata.

9.16 **Ngati Koata alleges:**

(a) **The Crown failed to ensure that Ngati Koata were given adequate protection of their land at Rangitoto.**

(b) **The Crown failed to take into account the economic, social and cultural value of Rangitoto to Ngati Koata.**

(c) **The Crown policy administered by the Native Land Court of partitioning of land followed by individualisation of title allowed for the relatively simple disposal of land at Rangitoto.**

(d) **The Crown failed to give effect to Ngati Koata tikanga by disregarding the concept of Rangitoto being use and occupied by Ngati Koata katoa. There was no place for "individualisation of title" allowing permanent alienation.**

(e) **The Crown failed to take appropriate action consistent with the Treaty to remedy the land alienation at Rangitoto caused by the Native Land Court. The land there must be returned to Ngati Koata and the rangatiratanga of the iwi recognised.**

SPECIFIC BREACHES OVER LANDS RESERVED FROM 1856 TRANSACTION

9.17 **RANGITOTO: RESERVES**

(a) During the 1895 partition of Rangitoto, seven small areas were set apart as specific reserves for the benefit of all the owners.

(b) These reserves were:

Name	Purpose	Area
Ohana (Ohaua)	Kainga	20a 0r 00p
Te Puna	Fishery Easement	4a 0r 00p

Omona	Urupa	0a 1r 00p
Lake Moawhitu	Fishery Easement	34a 0r 00p
Horea	Urupa	0a 2r 00p
Otarawao	Urupa and Papakainga	5a 0r 00p
Pawakaiwawe	Urupa	0a 1r 00p
Total		**64a 0r 00p**

(c) In or around 1919, the portion of Rangitoto 5B3 surrounding Moawhitu Reserve was sold to Percy Mills even though the reserve was intended to be inalienable.

(d) The lake there was of special importance to Ngati Koata for fishing.

(i) The Moawhitu Reserve is located on the shore of Greville Harbour.

(ii) This lake at Greville Harbour was a traditional place for gathering eel by Ngati Koata.

(iii) Drainage and land reclamations from about 1940 have reduced the size of the lake.

(iv) The easement granted is now of no use because it is no longer adjacent to the lagoon. Access to the mahinga kai now dependent on the property owner (and has been denied). The easement no longer serves the purpose for which it was created.

(v) In 1982 the easement was declared Mäori Freehold Land.

(vi) The Crown has been aware of the inadequate easement since at least the early 1970s, but has done nothing to remedy the breach and loss of mahinga kai.

9.18 **Ngati Koata alleges:**

(a) **The Crown failed to ensure that adequate reserves were set aside for Ngati Koata at Rangitoto.**

(b) **The Crown failed to take into account the economic, social and cultural value of Rangitoto to Ngati Koata.**

(c) **The Crown policy administered by the Native Land Court of partitioning of land followed by individualisation of title allowed for the relatively simple disposal of land at Rangitoto.**

(d) **The Crown failed to give effect to Ngati Koata tikanga by disregarding the concept of Rangitoto being use and occupied by Ngati Koata katoa. There was no place for "individualisation of title".**

(e) **The Crown failed to take appropriate action consistent with the Treaty to remedy the land alienation at Rangitoto caused by the Native Land Court.**

(f) **The Crown failed to ensure that Ngati Koata continued to have access to traditional mahinga kai at Lake Moawhitu.**

(g) **The Crown failed to ensure that such reserves as were made were protected and maintained, and in particular permitted or failed to prevent the drainage/reclamation of Moawhitu, rendering it unavailable to Ngati Koata for fishing and the access reserved for it, useless.**

(h) **The Crown has permitted (or has failed to prevent) others using the remnants of the Lake for fishing to the exclusion of Ngati Koata.**

SPECIFIC BREACHES OVER LANDS RESERVED FROM 1856 TRANSACTION

9.19 **RANGITOTO: SURROUNDING ISLANDS**

(a) The smaller islands surrounding Rangitoto were also reserved from the 1856 transaction. When Rangitoto was partitioned in 1895, the following islands were also awarded to some of the owners:

(i) Whakaterepapanui

(ii) Puangiangi

(iii) Tinui

(iv) Kurupongi (Trios Islands)

(v) Moutiti

(vi) Hautai

(vii) Puna-a-tawheke

(viii) Araiawa

(ix) Rahuinui

(x) Taporarere

(xi) Te Horo

(xii) Anatakapu

(xiii) Te Kurukuru

(xiv) Kaitaore

(b) To prove their ownership, Ngati Koata in 1986 was required to obtain a survey of each of the 42 islands surrounding Rangitoto not included in the 1895 partition.

(c) JA Elkington tried to obtain finance to purchase Puangiangi for farming.

(i) A mortgage on his wife's land was refused because of the complicated series of interests on the title to the block (imposed by statute) meant it would take longer than the required two month period to arrange finance.

(ii) The island became European land in 1929.

(d) Whakaterepapanui was alienated in August 1927.

(i) The Native Land Court declined to partition off the 6 and a half acres belonging to Pakake, who had objected to the alienation of land.

(ii) In 1977 the Pakeha owner sold Whakaterepapanui to the Crown, who declared the island a recreational reserve in 1985. The island was not offered back to Ngati Koata.

(e) The Crown declared Kurupongi a wildlife sanctuary in 1957. Ngati Koata retained ownership.

9.20 **Ngati Koata alleges:**

(a) **The Crown failed to ensure that adequate reserves were set aside for Ngati Koata on the islands surrounding Rangitoto.**

(b) **The Crown failed to take into account the economic, social and cultural value of the islands surrounding Rangitoto to Ngati Koata.**

(c) **The Crown failed to give effect to Ngati Koata tikanga by disregarding the concept of the islands surrounding Rangitoto being used and occupied by Ngati Koata katoa, with no place for "individualisation of title".**

(d) **The Crown policy administered by the Native Land Court of partitioning of land followed by individualisation of title allowed for the relatively simple disposal of Puangiangi.**

(e) **The Crown failed to take appropriate action consistent with the Treaty to remedy the land alienation at Puangiangi caused by the Native Land Court.**

(f) **The Crown failed to ensure that Pakake's interests at Whakaterepapanui as an individual were not protected in law against the interests of the majority who wanted to sell the land.**

(g) **The Crown failed to ensure that Ngati Koata continued to have access to traditional mahinga kai at Puangiangi and Whakaterepapanui.**

SPECIFIC BREACHES OVER LANDS RESERVED FROM 1856 TRANSACTION

9.21 **RANGITOTO: SURROUNDING ISLANDS: TAKAPOUREWA**

(a) In February 1891, Takapourewa was taken under the Public Works Act for a lighthouse, after being gazetted as native land required for public work.

(i) The entire island was taken, rather than just the five acres at the tip required for the lighthouse.

(ii) In 1895 the Native Land Court determined compensation to Ngati Koata of 130 pounds.

(b) Takapourewa is important to Ngati Koata as kaitiaki, because of its natural resources and for its spiritual significance as a place for the training of tohunga.

(c) The island became a reserve administered by the Department of Conservation following withdrawal of a Tribunal Claim to the island.

(d) Takapourewa was an economic base of Ngati Koata, used for mutton birding. This mutton birding mahinga kai is now denied.

(e) Some species of birds that used to live on Takapourewa and were a taonga to Ngati Koata are now extinct following the actions of various lighthouse keepers.

9.22 **Ngati Koata alleges:**

(a) **The Crown failed to recognise and protect Ngati Koata rangatiratanga in respect of Takapourewa, to ensure that it remained in the care and control of Ngati Koata, and that its ownership was not taken.**

(b) **The Crown failed to take into account the economic, social and cultural value of Takapourewa to Ngati Koata when it was taken for a lighthouse.**

(c) **The Crown failed to ensure that the Native Land Court adequately compensated Ngati Koata for taking Takapourewa.**

(d) **The Crown failed to take appropriate action consistent with the Treaty to remedy the confiscation of Takapourewa.**

(e) **The Crown failed to ensure that Ngati Koata continued to have access to traditional mahinga kai at Takapourewa.**

(f) **The Crown failed to ensure that the Stephens Island robin was adequately protected when Takapourewa was taken, leading to its extinction.**

(g) **Aspects of current arrangements require resolution between the Crown and Ngati Koata.**

PARTICULARS OF TREATY BREACHES:

10. INVESTIGATION INTO TITLE OF WHAKAPUAKA

10.1 Whakapuaka is an area of spiritual and cultural significance to Ngati Koata, and a traditional urupa site. It formed part of the tuku of land made to Ngati Koata by Tutepourangi in or about 1824.

10.2 In or about 1836, Ngati Koata made a particular tuku of part of this land for Wi Katene, the son of a Ngati Tama ariki.

10.3 In 1883, a Native Land Court hearing was held to determine title to Whakapuaka.

(a) The whole land at Whakapuaka (over 17,000 acres) was awarded to Huria Matenga, daughter of Wi Katene.

(b) Hers was the only name recorded on the certificate of title for the block, registered in 1895 under the Land Transfer Act.

(c) Upon her death (and without issue) under her will, ownership of Whakapuaka passed in 1909 to her husband Hemi Matenga, who had no blood relationship to either Ngati Koata or Wi Katene.

(d) Ngati Koata people were evicted and their dwellings destroyed as a result of these decisions.

(e) Between 1896 and 1948 there were 23 petitions to Parliament on the subject of Whakapuaka. Ngati Koata's rights to the land at Whakapuaka have not been recognised.

10.4 As a result of Crown conduct including the Native Land Court legislation, the Court process and decision, the operation of laws of succession and the subsequent failure to take account of Ngati Koata's rangatiratanga, Ngati Koata lost interests in and access to the land at Whakapuaka held according to Mäori custom and law.

10.5 **Ngati Koata alleges:**

(a) **The means by which the property passed first to Huria Matenga and later to Hemi Matenga had no regard to Ngati Koata rangatiratanga, laws and customs relating to the tuku in question. The Crown failed to protect Ngati Koata's interests and remedy that failure.**

(b) **The Crown failed to take appropriate action consistent with the Treaty to remedy the failure of the Native Land Court to take into account the economic, social and cultural value of**

Whakapuaka to Ngati Koata when determining the claim to title to land at Whakapuaka.

(c) **The Crown policy and legislation administered by the Native Land Court of individualisation of title allowed for title to Whakapuaka to be given to someone outside of Ngati Koata.**

(d) **The Crown failed to give effect to Ngati Koata tikanga by disregarding the concept of Whakapuaka being used and occupied by Ngati Koata katoa and other Te Tau Ihu iwi, with no place for "individualisation of title".**

(e) **The Crown failed to take appropriate action consistent with the Treaty to remedy the failure of the Native Land Court to have proper regard to the significance of tuku whenua to Ngati Koata tikanga in determining the claim to title to land at Whakapuaka.**

(f) **The Crown failed to take appropriate action consistent with the Treaty to remedy the land alienation at Whakapuaka caused by the Native Land Court.**

PARTICULARS OF TREATY BREACHES:

11. THE NELSON TENTHS FUND

11.1 The Nelson Tenths Fund was created out of the Company lands. Those benefits were awarded by the Spain Commission to provide benefits for Nelson Mäori. The benefits remained under the control of the Crown or its agents, often used in substitution for those Europeans received automatically as a matter of citizenship. The Tenths Trust Fund was used by the Crown to provide:

(a) a social welfare fund for Nelson Mäori to maintain living standards;

(b) provide payments for economic disasters as they arose; and

(c) as a substitute for government funding for Mäori expenditure on roads, schools and medical needs.

11.2 In 1882 the Native Reserves Act transferred the administration of the Nelson Tenths to the Public Trustee, and gave the Native Land Court the power to determine who were the rightful owners of the Company reserves.

11.3 The owners of the Nelson Tenths Reserves were determined by Judge Mackay in the Native Land Court in November 1892, with Ngati Koata represented by Ihaka Tekateka.

(a) The final decision severely prejudiced Ngati Koata:

(i) The full evidence of only one iwi was heard. Due to time constraints, Mackay limited the Ngati Koata evidence to only one witness.

(ii) The importance of the tuku of land to Ngati Koata by Tutepourangi was not considered.

(iii) The intricacies of Tutepourangi's tuku and the relationships it cemented were not understood by Mackay.

(iv) There was an emphasis on occupation and conquest of the Nelson District to establish rights to the land.

(b) The final award of the Court recognised iwi in areas they had never occupied and gave land to people in accordance with population base instead of areas of occupation and resource use.

(c) Judge Mackay divided the Nelson settlement into districts awarded by Spain, nominating the iwi in occupation at the time of the Company purchase.

(d) The result was:

District	Area	Iwi
Nelson	11,000 acres	*Ngati Koata* Ngati Tama
Waimea	38,000 acres	*Ngati Koata* Ngati Tama Ngati Rarua Ngati Awa
Moutere and Motueka	57,000 acres	Ngati Rarua Ngati Awa
Massacre Bay	45,000 acres	Ngati Rarua Ngati Tama Ngati Awa

(e) Once occupation had been decided, individual owners of the blocks were to be identified:

(i) Not all families were included in this allocation.

(ii) No legal remedies were available to those left out of the allocation.

(f) The final allocation of the proceeds of the rents from the Nelson Tenths funds was:

Iwi	Area Allotted	Share of Funds	Percentage
Ngati Koata	20,000 acres	20/151	13.24%
Ngati Tama	40,000 acres	40/151	26.49%
Ngati Rarua	69,000 acres	69/151	45.70%
Ngati Awa	22,000 acres	22/151	14.57%

	151,000 acres	**151 shares**	**100.00%**

(g) Following this allocation, competition for land use and ownership of the reserves developed between and within iwi. Relationships between iwi broke down and social dislocation within iwi occurred as competition for the limited reserve land increased detribalisation.

(h) Crown administration of reserves emphasised subdivision and individualisation of title, with a corresponding weakening of traditional land tenure concepts of collectivism.

(i) The fragmentation of Maori land and Te Tau Ihu as a consequence of the native land legislation has led to the formation of incorporations, including the Whakatu Incorporation, to hold the undivided fragmented shares of iwi members.

(j) This (although intended in part to restrict further land loss) has led further to the alienation of iwi from their ancestral land and curtailed the exercise of rangatiratanga in respect of it.

11.4 **Ngati Koata allege:**

(a) **The Crown failed to respect and give due weight to Ngati Koata tikanga and custom by only allowing one Ngati Koata witness to speak, instead of recognising the tikanga and custom of allowing the free koorero of several Ngati Koata speakers.**

(b) **The Crown failed to respect and give due weight to Ngati Koata tikanga and custom by not considering the significance and impact of Tutepourangi's tuku.**

(c) **The Crown failed to respect and give due weight to the mana of Ngati Koata by not considering the significance and impact of Tutepourangi's tuku.**

(d) **The Crown failed to respect Ngati Koata tikanga which does not recognise "ownership" of land, but rather kaitiakitanga over resources by creating a policy administered by the Native Land Court to determine "ownership" of land.**

(e) **The Crown failed to give effect to Ngati Koata tikanga by disregarding the concept of the Nelson Reserves Land being used and occupied by Ngati Koata katoa, with no place for "individualisation of title".**

(f) **The Crown failed to take appropriate action consistent with the Treaty to remedy the problems of recognising iwi in areas they had never occupied and giving land to people in accordance with population base instead of areas of occupation caused by the Native Land Court.**

(g) **The Crown failed to properly identify the individual owners of the Nelson Tenths Reserves, leaving some Ngati Koata without access to the Nelson Reserves Fund**

(h) **The Crown failed to provide legal remedies to those left out of the allocation.**

(i) **From the perspective of Ngati Koata, the lands held by Whakatu and other incorporations remains alienated from Ngati Koata. This is a direct consequence of the Crown native land policies and legislation to fragment and commodify the ancestral land of Ngati Koata.**

PARTICULARS OF TREATY BREACHES:

12. FAILURE TO PROVIDE ADEQUATE STANDARDS OF LIVING

12.1 Ngati Koata Mäori could not sustain themselves or their community after their resources were almost totally removed over the preceding few decades.

12.2 The population of Mäori declined. By 1880, the Mäori population of Nelson had almost halved:

(a) Death rates were high, often from illness or as a result of insufficient food.

(b) Outward migration was continual, due to loss of land and resources, and to inadequate reserves which could provide neither income or an economic base.

12.3 Living standards declined.

(a) A standard of living for Mäori during the 1870s could only be maintained (if at all) by subsidies from the Tenths Trust Fund.

(b) The effect of natural and man made disasters (floods, crop failure, sheep embargo, economic depression) on those living at subsistence levels brought both economic and social distress to Ngati Koata. The only relief was from the Tenths Trust Fund.

12.4 There was a failure to provide resident medical help and other health requirements.

(a) The resident Ngati Koata medical expert was forbidden to "practice" even though she was acceptable to local Mäori and Pakeha.

(b) No full time alternative health practitioner was provided.

12.5 There was a failure to provide safe drinking water.

(a) This lead to poor health, illness and death.

(b) Various Crown officials had identified the poor quality of the water as being a major contributing factor to a number of the health problems in the Croisilles, French Pass and Rangitoto.

(c) Following a typhoid outbreak at Whangarae, Ngati Koata applied to the Minister of Native Affairs for assistance in securing good drinking water for the village, following years of discussions with the Health Department.

(d) Dr Pomare confirmed the situation, and recommended a reservoir.

(e) The unsafe drinking water had not improved by 1911, as Ngati Koata were unable to meet the costs the government required them to pay.

(f) The problem was not rectified until 1914, following further meetings with the District Health officers.

12.6 There was a failure to provide adequate resources to the Nelson Hostel / Mäori House.

(a) The Nelson Hostel was provided in the 19th century as part of the Tenths Fund, and administered by the Mäori Trustee.

(b) It was mainly used by Ngati Koata from Rangitoto and elsewhere.

(c) The Mäori Trustee drew on the Tenths Fund to maintain and run the hostel.

(d) The Mäori Trustee abrogated responsibility for running the hostel to the Health Department, who saw the hostel as a health risk and closed it down by 1949.

12.7 There was a failure to provide adequate care for the aged.

(a) The attitude of the Old Age Pension Department was if Mäori were in need of a pension:

> they would, as promptly as their white brethren present themselves at the various Money Order Offices and draw their due instalments.
>
> *Registrar, Old Age Pensions Department to Deputy Registrar, 1 September 1902, SS W1844 Box 16 190/N4, [2666]*

(b) The Department regarded the calculation of the native land as "almost impossible" and therefore believed "natives may be drawing pensions they do not require."

(c) Pensions were denied because Mäori owned land, despite the land being in joint ownership and without economic value.

12.8 **Ngati Koata alleges:**

(a) The Crown failed to ensure that the healthcare needs of Ngati Koata were adequately provided for, resulting in illness and death.

(b) The Crown failed to ensure that safe drinking water supplies were available to Ngati Koata.

(c) The Crown failed to ensure that a health practitioner was available to Ngati Koata when the local Ngati Koata medical expert was forbidden to practise.

(d) The Crown failed to acknowledge Ngati Koata rangatiratanga by denying the Ngati Koata medical expert to provide healthcare and rongoa according to tikanga.

(e) The Crown failed to make sufficient funds available from the Nelson Tenths Reserves Fund for the efficient and safe operation of the Mäori House in Nelson.

(f) The Crown failed to make sufficient funds available from the Nelson Tenths Reserves Fund for the efficient and safe operation of the Mäori House in Nelson, resulting in poor health of those resident there.

(g) The Crown failed to provide appropriate support from other resources.

(h) The failure of the Crown to ensure that Ngati Koata were provided with adequate reserves following the 1856 Deed was the catalyst for many of the problems faced by Ngati Koata:

(i) The Reserves provided were inadequate for Ngati Koata to sustain themselves.

(ii) This forced them to sell their land to try to get money to meet their immediate needs.

(iii) Because the nature of the reserve lands sold were so poor, they could not get adequate money from their sale.

(iv) Once the money from the sale of the land had been used up to meet immediate, subsistence needs, Ngati Koata were forced to seek refuge at the Mäori House.

(v) Because so many Ngati Koata were in this position, the Mäori House became overcrowded and serious illnesses, such as tuberculosis ensued.

(i) The Crown failed to ensure that Ngati Koata of old age pension age were treated on an equal basis to Pakeha of old age pension age.

(j) **These Crown failures at a time of desperation for Mäori as a result of the loss of their lands exacerbated and aggravated the consequences of these losses.**

PARTICULARS OF TREATY BREACHES

13. CROWN REFUSAL TO RECOGNISE TE TAU IHU CUSTOM AND LAW

13.1 Ngati Koata occupied and lived in Te Tau Ihu with other Te Tau Ihu iwi progressively according to a system of Mäori laws and customs which, after allowing for the disruptions of the times, by and large secured peace and governed and cemented relationships among them, and enabled them to travel, exercise rangatiratanga, secure interests and use resources at various levels throughout Te Tau Ihu.

13.2 The Crown (by the breaches referred to and otherwise) failed and refused to recognise or understand the laws and customs by which Mäori governed their own relationships and resource and relationships with others.

13.3 As a result of those Crown actions and failures:

(a) Mäori customs and laws were rarely if ever recognised and employed in dealings with between Crown and Mäori and between Mäori and Pakeha citizens, to the grave disadvantage of Mäori (and the community).

(b) Mäori customs and laws lost substantial force and effect within the Mäori community over time, leading to fragmentation within and amongst iwi.

(c) Ngati Koata's entitlement (and those of other iwi) throughout Te Tau Ihu under Mäori law and customs were lost sight of or denied.

13.4 **Ngati Koata alleges**

(a) **The ability and right of Mäori of Te Tau Ihu and the Crown:**

(i) **to develop the Mäori system of custom and law (improving the good, discarding the bad and introducing the new); and**

(ii) **to employ Mäori custom and law in the development of the nation, as the Treaty requires,**

has been denied and compromised.

(b) **This breach is amongst the most serious, and has caused the most serious losses for Ngati Koata, Mäori and the nation. Its rectification in the context of Te Tau Ihu is one of the urgent necessities of the proceeding.**

PARTICULARS OF TREATY BREACHES:

14. FAILURE TO PROVIDE ADEQUATE EDUCATIONAL OPPORTUNITIES

14.1 The school on Rangitoto was closed down, with no alternative provided on the island.

14.2 Mäori language in schools was not provided or encouraged, and people could be strapped for speaking the language in the classroom.

14.3 Today, the government allocates "Mäori factor" spending to Boards of Trustees, who may determine how this is spent within the school without Mäori involvement in the decision.

14.4 The Crown has failed to take adequate steps to protect te reo and has not wholeheartedly dedicated itself publicly to doing so to a degree commensurate with its past failures.

14.5 **Ngati Koata alleges:**

(a) **The Crown failed to provide adequate opportunities for education of Ngati Koata on Rangitoto**

(b) **The Crown failed to provide for the maintenance of te reo in schools by actively discouraging pupils from speaking te reo.**

(c) **The introduction of the Native Schools Act 1867, the Education Act 1877 and subsequent legislation has failed to promote te reo as equal in the education system.**

(d) **The Crown is failing to ensure that Mäori factor funding provided to schools today is being used appropriately and for the designated purpose.**

PARTICULARS OF TREATY BREACHES:

15. FAILURE TO RECOGNISE RANGATIRATANGA OVER RESERVES FOR FISHERIES

15.1 The Government has issued paua licences in respect of traditional fishing grounds of Ngati Koata in breach of the obligation to recognise and protect Ngati Koata rangatiratanga in those places.

(a) In 1986 Ngati Koata traditional fisheries were recognised by the Mäori Land Court by the creation of reserves.

(b) The Crown has never formally gazetted these reserves.

(c) This allows commercial fishers to continue fishing in Ngati Koata reserves.

(d) From 1992 to 1999, the Crown has been taking money from commercial fishers as cost recovery levies.

(e) On an estimate of 1,000 tonnes of paua, the Crown has extracted more than $700,000 from a Ngati Koata resource, and has allowed and caused others to extract a great deal more.

15.2 Ngati Koata for six generations have been transplanting paua to replenish and maintain stock. The Crown has issued quota to commercial divers which enables them to take from Ngati Koata stock, and has failed to protect that interest.

15.3 **Ngati Koata alleges:**

(a) **The Crown has failed to recognise the rangatiratanga of Ngati Koata by issuing permits and licences which allow Pakeha to gather kaimoana from Ngati Koata mahinga kai.**

(b) **The Crown has failed to consult with Ngati Koata before issuing permits and licences which allow Pakeha to gather kaimoana from Ngati Koata mahinga kai.**

(c) **The Crown has failed to recognise the rangatiratanga of Ngati Koata by not allowing Ngati Koata to manage their fisheries quota by themselves for the benefit of Ngati Koata iwi.**

16. PARTICULARS OF TREATY BREACHES:

OTHER PURPORTED INTERFERENCE WITH NGATI KOATA RANGATIRATANGA

16.1 Ngati Koata has rangatiratanga and customary ownership and authority in respect of rivers, coastal areas, sea and seabed and other waters of Te Tau Ihu, and their use and navigation. It has responsibility as kaitiaki for the use and regulation of these resources for the benefit of Mäori and all New Zealanders. Recognition of rangatiratanga is required for the exercise of that responsibility.

16.2 Ngati Koata has never relinquished or consented to the abrogation of its customary rights and interests in respect of the rivers, coastal areas, sea, seabed and other waters within its rohe.

16.3 Ngati Koata exercise of rangatiratanga and the application of custom and laws to the coast and waters along the rohe have been subject to action by the Crown purporting to interfere with the exercise by Ngati Koata of its rangatiratanga and interests including:

(a) Legislation, including the Marine Farming Act 1971, and policies and decisions made pursuant thereto in respect of aquaculture and mussel farming have seriously impacted and continue to impact on Ngati Koata's coast and the waters adjacent to it.

(b) Legislation, policy and decisions by which the Crown authorises activities and decisions in relation to Ngati Koata waters and land resources without recognising and giving any or sufficient

effect to Ngati Koata rangatiratanga, including: the Resource Management Act 1991 (and its predecessors), the Wildlife Act 1953, the Conservation Act 1987, the Conservation (Law Reform) Act 1990, the National Parks Act 1980, the Fisheries Acts 1983 and 1996 and the Fisheries Quota Operations Validation Act 1997.

(c) Other enactments, including the Harbours Act 1950 and its predecessors, and policies and actions made pursuant thereto , have adversely affected continue to adversely affect the exercise by Ngati Koata of its rangatiratanga and its customary rights and interests relating to the coast and seabed.

16.4 The Crown by legislation and policy has further purported to place aspects of the governance in respect of the Ngati Koata taonga and resources in the hands of Crown delegates such as regional and local authorities and has perpetrated the breach by an insistence on majority rules without any or sufficient protection for Mäori (who have become by Crown action, a minority). Such legislation includes the Resource Management legislation, the Local Government Act 1974, the Hazardous Substances and New Organisms Act 1996 and the Environmental Risk Management Authority and its methodology.

16.5 This has led to decisions being made about research into and the genetic modification of Ngati Koata taonga such as Tuatara and for the collection of and research into plant material for which Ngati Koata is kaitiaki, without Ngati Koata having a decisive voice.

16.6 Approximately two thirds of the land on Rangitoto has been given reserve status, purportedly denying Ngati Koata kaitiakitanga and rangatiratanga - necessary for its exercise.

17. RELIEF

17.1 The claimants ask that the Tribunal:

(a) Inquire into prejudice to Ngati Koata arising from breaches of the Treaty by the Crown including those alleged in this amended Statement of Claim.

(b) Make findings as to breach and prejudice, in the terms alleged and generally, and as the Tribunal further determines.

(c) Make recommendations for the recognition by the Crown of rangatiratanga of Ngati Koata consistent with the Treaty including:

(i) the restoration to Ngati Koata of their tino rangatiratanga and full customary entitlements in the Te Tau Ihu;

(ii) recognition of the laws and customs of Ngati Koata for the purposes of the conduct of their affairs, their relations with other iwi, and generally in relation to matters touching upon te iwi o Ngati Koata;

(iii) as to the means by which such recognition must be effected to accord with the Treaty guarantee of the rangatiratanga of Ngati Koata;

(iv) the full and effective recognition of rangatiratanga of Ngati Koata in accordance with their laws and customs of their ancestral lands, waters and taonga including lands, waters, mountains, forests, wahi tapu and otherwise whether or not such taonga are perceived now as being in their ownership or possession;

(v) the return to Ngati Koata of all ancestral lands, forests and resources wrongfully acquired to be held by Ngati Koata consistently with Mäori law and custom and the Treaty of Waitangi;

(vi) the wholehearted support and provision of resources for the full protection and recognition of Mäori language and culture as an essential part of New Zealand and Te Tau Ihu; and the repair of all inequities in education, by the application and autonomous control by Mäori of those resources;

(vii) the restoration to Ngati Koata of their exclusive rangatiratanga in respect of their taonga and the guarantee of a decisive voice in other matters affecting them;

(viii) the establishment (be legislation if necessary) of a form and process by which Ngati Koata and the Crown may then resolve as equals under the Treaty the means by which and the extent to which their respective obligations under the Treaty will be given effect;

(ix) the restoration by other means of the social cultural and economic base of Ngati Koata in a full and substantial manner;

(x) the acknowledgement by the Crown of breaches identified by the Tribunal and an apology independently of any proposed settlement or other inducement; and

(xi) compensation for the loss to date of customary use, occupation and enjoyment of lands, waters and other benefits as a result of breach of the Treaty since its execution down to the present.

(xii) The recognition of a decision for Ngati Koata kaitiakitanga and rangatiratanga in relation to taonga and the repeal and replacement of legislation purporting to affect the same.