

IN THE MATTER OF                      the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF                      the Military Veterans Kaupapa Inquiry

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**CROWN MEMORANDUM REGARDING ELIGIBILITY OF NEW AND  
AMENDED CLAIMS SEEKING PARTICIPATION IN WAI 2500**

**7 October 2016**

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## MAY IT PLEASE THE TRIBUNAL:

1. On 1 September 2016 the Tribunal set a final filing date for new and amended claims seeking to participate in the Military Veterans Kaupapa Inquiry and directed counsel to file submissions relating to the Tribunal's ability to inquire into these claims.<sup>1</sup> Twenty-one claims were filed. On 27 September 2016 the Tribunal granted the Crown an extension to file its response to these applications by 7 October 2016.<sup>2</sup>
2. These submissions respond to the claims filed<sup>3</sup> and also address outstanding issues relating to three claims previously filed.<sup>4</sup> In order, the Crown addresses:
  - 2.1 the new historical claim filed by Tanya Peterson;
  - 2.2 seventeen applications purporting to amend claims;
  - 2.3 three claims raising settlement issues; and
  - 2.4 outstanding issues regarding three claims previously filed.

### Claim of Tanya Peterson

3. This new claim was filed twice, by unrepresented claimant Tanya Peterson on 22 September 2016 and by Kath Peebles providing MP support on 23 September 2016. The claim concerns alleged misappropriation and fraud by the Crown regarding the land ballot scheme and veterans' entitlements, and the marginalisation of the claimant's grandfather, William Peterson, who served in both World Wars.
4. The Crown submits that the Tribunal does not have jurisdiction to inquire into this new claim as it concerns events prior to 1992 and is therefore clearly historical has been filed approximately 8 years after the deadline for filing historical Treaty claims.<sup>5</sup> The claim is therefore time-barred.
5. The Crown acknowledges the claimant is unrepresented and suggests she may wish to present evidence on behalf of a claimant already participating in Wai 2500 so that her story may be heard.

<sup>1</sup> Wai 2500, #2.5.44 (1 September 2016) at [3].

<sup>2</sup> Wai 2500, #2.5.45 (27 September 2016).

<sup>3</sup> Except for Wai 2569 and Wai 2571, filed by Bennion Law, addressed in Wai 2500, #3.1.507 (4 October 2016).

<sup>4</sup> Wai 2250, Wai 2076, and Wai 2494.

<sup>5</sup> Treaty of Waitangi Act 1975, ss 2 and 6AA.

### Claims raising amendment issues

6. In memorandum-directions dated 1 April 2016 the Tribunal made a decision regarding the interpretation of s 6AA of the Treaty of Waitangi Act 1975.<sup>6</sup> Section 6AA limits the Tribunal's jurisdiction in relation to historical Treaty claims<sup>7</sup> submitted after 1 September 2008:

#### 6AA Limitation of Tribunal's jurisdiction in relation to historical Treaty claims

- (1) Despite section 6(1), after 1 September 2008 no Maori may—
    - (a) submit a claim to the Tribunal that is, or includes, a historical Treaty claim; or
    - (b) amend a claim already submitted to the Tribunal that is not, or does not include, a historical Treaty claim by including a historical Treaty claim.
  - (2) However, subsection (1) does not prevent a historical Treaty claim submitted to the Tribunal on or before 1 September 2008 from being amended in any way after 1 September 2008.
  - (3) The Tribunal does not have jurisdiction (including, but not limited to, the jurisdiction to inquire or further inquire into, or to make any finding or recommendation) in respect of a historical Treaty claim that is—
    - (a) submitted contrary to subsection (1)(a); or
    - (b) included in a claim contrary to subsection (1)(b).
7. Contrary to the Crown's submissions that the power to amend under section 6AA is qualified so as to not frustrate Parliament's purpose in imposing the section 6AA timebar for historical claims, the Tribunal found that s 6AA permits the addition of a new historical cause of action to an existing historical claim by way of amendment of that existing claim with no qualification as to the subject matter of that amendment vis-à-vis the original claim.<sup>8</sup> To quote the Tribunal:<sup>9</sup>

The plain meaning of the provision in s 6AA(2) that claimants may amend a pre-deadline historical claim 'in any way' is that no restrictions as to grounds of action are placed on the ability of claimants to amend their historical claims so as to add new historical grievances.


<sup>6</sup> Wai 2500, #2.5.29 (1 April 2016) at [9]–[17].

<sup>7</sup> A historical Treaty claim means a claim made under section 6(1) that arises from or relates to an enactment referred to in section 6(1)(a) or (b) enacted, or to a policy or practice adopted or an act done or omitted by or on behalf of the Crown, before 21 September 1992: Treaty of Waitangi Act 1975, s 2.

<sup>8</sup> Wai 2500, #2.5.29 at [11]–[14]; #2.5.32 at [16].

<sup>9</sup> Wai 2500, #2.5.29 at [13].

8. The Crown acknowledges that the Tribunal has the power to make decisions regarding its jurisdiction but continues to hold a different view of what s 6AA allows. Briefly, the Crown's position is that:<sup>10</sup>

- A statement of claim is not a “claim” in terms of s 6(1) of the Act, but rather a statement containing one or more historical and/or contemporary claims of the claimant.
- Subsection 6AA(2) permits the amendment of a historical Treaty claim “in any way”. This allows the amendment of a statement of claim where one or more of the historical claims contained therein is or are amended, and such may be amended “in any way”.
- Subsection 6AA(2) does not permit the amendment of a statement of claim by the addition of a new historical claim unrelated to pre-existing historical claims. 
- This interpretation is consistent with the purpose of the Treaty of Waitangi Act Amendment Act 2006, being to introduce a deadline for the submission of new historical claims to ensure finality as to the scope of historical claims and to ensure timely settlement of such claims.

9. Counsel submit that seventeen of the recently filed claims raise exactly this issue in that they are effectively adding new claims to an existing Wai number notwithstanding that those new claims relate to entirely different subject matter than the existing claims filed and administratively grouped under their Wai numbers. The large number of claims seeking to be “amended” in this way gives weight to the Crown's earlier submission that interpreting section 6AA as being unqualified risks doing violence to the purpose and clear intent of Parliament in enacting section 6AA – to bring some finality to the lodging of new historical claims. This frustrates the purpose of the Treaty of Waitangi Amendment Act 2006 and risks further compromising the finality of historical Treaty settlements.
10. The Crown respectfully invites the Tribunal to reconsider its interpretation of s 6AA accordingly.

<sup>10</sup> See further Wai 2500, #3.1.369 (15 April 2016); and #3.1.313 (9 March 2016) at [17]–[19].

11. In addition to this general submission, the Crown's specific submissions on the seventeen claims are set out below. The Crown raises further eligibility issues (beyond the unqualified amendment issue) in respect of only two of the claims.

*Wai 1192*

12. This amended statement of claim was filed by Mark McGhie on 29 September 2016. Issues include service in the 28 (Māori) Battalion; physical and mental injury suffered during World War II; inadequate rehabilitation and support; PTSD/shell shock; and inequality of rehabilitation opportunities.
13. Original and prior statements of claim for Wai 1192 concerned the alienation of Ngāti Maringi land and its possible inclusion in the Central North Island inquiry.
14. The Crown submits that the new allegations are entirely historical and are not sufficiently connected to pre-existing allegations to constitute an amendment in terms of s 6AA. The Crown's view is that the Tribunal therefore does not have jurisdiction to inquire into these issues. The Crown raises no other eligibility issues in relation to this claim.

*Wai 874*

15. This amended statement of claim was filed by Robyn Zwaan on 22 September 2016. Issues relate to the Crown's treatment of soldiers from Ngāriki Kaiputahi during World War I, World War II, the Boer War, the Korean War and the Vietnam War and include such matters as conscription, the practice of tikanga, Agent Orange and PTSD.
16. Original and prior statements of claim for Wai 874 concern the return of Mangatu State Forest and Mangatu No 1 Block.
17. The Crown submits that the new allegations are entirely historical and are not sufficiently connected to pre-existing allegations to constitute an amendment in terms of s 6AA. The Crown's view is that the Tribunal therefore does not have jurisdiction to inquire into these issues. The Crown raises no other eligibility issues in relation to this claim.

*Wai 1092*

18. This amended statement of claim was filed by Robyn Zwaan on 22 September 2016. Issues relate to the Crown's treatment of soldiers from Nga Uri o Te Upokorehe during World War I, World War II, the Boer War, the Korean War

and the Vietnam War and include such matters as conscription, the practice of tikanga, and soldier settlement.

19. The original statement of claim for Wai 1092 concerns the invasion and raupatu of Upokorehe lands; Ohiwa harbour; the operation of the Native Land Court; Crown purchases; and various other matters.
20. The Crown submits that the new allegations are entirely historical and are not sufficiently connected to pre-existing allegations to constitute an amendment in terms of s 6AA. The Crown's view is that the Tribunal therefore does not have jurisdiction to inquire into these issues. The Crown raises no other eligibility issues in relation to this claim.

*Wai 144*

21. This amended statement of claim was filed by Robyn Zwaan on 22 September 2016. Issues relate to the Crown's treatment of soldiers from Ngāti Ruapani during World War II and the Vietnam War and include such matters as conscription; the practice of tikanga; soldier settlement; and Agent Orange.
22. Original and prior statements of claim for Wai 144 raise a wide range of Ngāti Ruapani historical Treaty grievances including claims involving invasion and raupatu; and issues concerning Lake Waikaremoana.
23. The Crown submits that the new allegations are entirely historical and are not sufficiently connected to pre-existing allegations to constitute an amendment in terms of s 6AA. The Crown's view is that the Tribunal therefore does not have jurisdiction to inquire into these issues. The Crown raises no other eligibility issues in relation to this claim.

*Wai 1968*

24. This amended statement of claim was filed by Tamaki Legal on 23 September 2016. Claimant counsel advise the claim is actively participating in the Te Paparahi o Te Raki (Wai 1040) inquiry. The claim is brought on behalf of the claimants' tūpuna Private Kahiti Koha and Private Tame Taipari who fought in World War I. Issues include soldier settlement; the Crown's failure to rehabilitate; racism in the ranks; and the expendability of Māori soldiers.
25. The original statement of claim for Wai 1968 concerns the alienation of land in the Northland inquiry district through the Native Land Court; the desecration of wāhi tapu and kōiwi sites; and various other matters.

26. The Crown submits that the new allegations are entirely historical and are not sufficiently connected to pre-existing allegations to constitute an amendment in terms of s 6AA. The Crown's view is that the Tribunal therefore does not have jurisdiction to inquire into these issues.
27. The Crown raises further eligibility issues regarding this claim below.

*Wai 2206*

28. This amended statement of claim was filed by Tamaki Legal on 23 September 2016. Claimant counsel advise the claim is actively participating in the Te Paparahi o Te Raki (Wai 1040) inquiry. The claim relates to Paikea Henare Toka ("Lieutenant Toka"), who served in the 28 (Māori Battalion) during World War II and Tame Hone Haku ("Private Haku"), who served in the Pioneer Battalion in World War I. Issues include systemic racism; Crown failure to rehabilitate; soldier settlement; failure to actively protect tikanga; and failure to provide sufficient medical treatment.
29. Original and prior statements of claim for Wai 2206 concern the Crown's failure to actively protect the interests and tino rangatiratanga of Nga Wahapu O Mahurangi – Ngati Whatua/Ngapuhi in respect of their whenua and forests, flora and fauna, kainga including marae, urupa and wahi tapu, rivers, stream, lakes and other sources of water, foreshore and seabed, reefs and islands.
30. The Crown submits that the new allegations are entirely historical and are not sufficiently connected to the previous allegations to constitute an amendment in terms of s 6AA. The Crown's view is that the Tribunal therefore does not have jurisdiction to inquire into these issues. The Crown raises no other eligibility issues in relation to this claim.

*Wai 2072*

31. This amended statement of claim was filed by Tamaki Legal on 23 September 2016. Claimant counsel advise the claim is actively participating in the Te Paparahi o Te Raki (Wai 1040) inquiry. Issues include systemic racism; Crown failure to rehabilitate; exposure to toxic chemicals; enlistment of minors; soldier settlement; failure to actively protect tikanga and Māori; failure to provide sufficient medical treatment.
32. Original and prior statements of claim for Wai 2072 concern Wai 262 matters and grievances centred upon the Te Paparahi o Te Raki (Wai 1040) inquiry district.

33. The Crown submits that the new allegations are entirely historical and are not sufficiently connected to the previous allegations to constitute an amendment in terms of s 6AA. The Crown's view is that the Tribunal therefore does not have jurisdiction to inquire into these issues. The Crown raises no other eligibility issues in relation to this claim.

*Wai 919*

34. This amended statement of claim was filed by Maureen Malcolm and Jason Pou on 23 September 2016 for the claimants Ngāi Tupango. Issues include that the Crown's actions undermined the claimant's mana and rangatiratanga; the unequal treatment of Māori veterans compared to Pākehā veterans; failure to adequately rehabilitate Ngāi Tupango veterans; failure to provide sufficient assistance, support and care to Ngāi Tupango veterans and their whanau on return from active service; failure to provide for veterans' and whanau health and wellbeing; soldier settlement; landlessness; and generational loss of leadership, knowledge, culture, Te Reo and tikanga.
35. Original and prior statements of claim for Wai 919 assert a broad range of Ngāi Tupango historical grievances including the Northern Wars; the operation of the Native Land Court; and the Crown's failure to actively protect wahi tapu and taonga.
36. The Crown submits that the new allegations are entirely historical and are not sufficiently connected to the previous allegations to constitute an amendment in terms of s 6AA. The Crown's view is that the Tribunal therefore does not have jurisdiction to inquire into these issues. The Crown raises no other eligibility issues in relation to this claim.

*Wai 1314*

37. This amended statement of claim was filed by Afeaki Chambers on 23 September 2016 for the claimants Kyle Hoani and Atareiria Heihei on behalf of Ngāi Tawake. Claimant counsel advise the claim is actively participating in the Te Paparahi o Te Raki (Wai 1040) inquiry. Issues include the Crown's failure to support the claimants during World War II and the Vietnam War; the unequal treatment of Māori veterans compared to Pākehā veterans; failure to provide adequate healthcare and rehabilitation; failure to provide sufficient support and care to Ngāi Tawake veterans; failure to mitigate the economic impact of the war on Ngāi Tawake.

38. The original statement of claim for Wai 1314 asserts a broad range of Ngāi Tawake historical grievances regarding their lands, forests, waterways and resources.
39. The Crown submits that the new allegations are entirely historical and are not sufficiently connected to the previous allegations to constitute an amendment in terms of s 6AA. The Crown's view is that the Tribunal therefore does not have jurisdiction to inquire into these issues. The Crown raises no other eligibility issues in relation to this claim.

*Wai 1954*

40. This amended statement of claim was filed by Afeaki Chambers on 23 September 2016. For the purposes of this claim the claimants are said to be Te Uru o Hikihiki of Ngatiwai. Veterans' issues relate to the service of Mohi Hoani in Japan as a member of J-Force and the alleged lack of Crown support after his service ended.
41. Original and prior statements of claim for Wai 1954 concern the operation of the Native Land Court and the fragmentation of land ownership; and various grievances centred upon the Te Paparahi ō Te Raki (Wai 1040) inquiry district.
42. The Crown submits that the new allegations are entirely historical and are not sufficiently connected to the previous allegations to constitute an amendment in terms of s 6AA. The Crown's view is that the Tribunal therefore does not have jurisdiction to inquire into these issues. The Crown raises no other eligibility issues in relation to this claim.

*Wai 1528*

43. This amended statement of claim was filed by Afeaki Chambers on 23 September 2016 for the claimant Carmen Hetaraka and on behalf of the descendants of Te Kauwhata. Veterans' issues relate to service in World War I, World War II and Vietnam; the unequal treatment of Māori veterans compared to Pākehā veterans; failure to provide adequate healthcare and rehabilitation; failure to provide sufficient support and care to Te Kauwhata descendent veterans; land alienation of veterans; and failure to mitigate the economic impact of the war on communities.
44. Original and prior statements of claim for Wai 1528 concern the establishment of the Native Land Court and the Crown's failure to guarantee tino rangatiratanga over the claimants' lands; and foreshore and seabed issues.

45. The Crown submits that the new allegations are entirely historical and are not sufficiently connected to the previous allegations to constitute an amendment in terms of s 6AA. The Crown's view is that the Tribunal therefore does not have jurisdiction to inquire into these issues. The Crown raises no other eligibility issues in relation to this claim.

*Wai 1477*

46. This amended statement of claim was filed by Tamaki Legal on 23 September 2016 for the claimant Emma Claudia Gibbs-Smith. Claimant counsel advise the claim is actively participating in the Te Paparahi o Te Raki (Wai 1040) inquiry. Veterans' issues relate to whanau service in World War II, J-Force and the Borneo Confrontation and include the Crown's alleged failure to rehabilitate and racism in the ranks.
47. Original and prior statements of claim for Wai 1477 include allegations regarding the Crown's failure to actively protect Māori women; its assumption of power over the foreshore and seabed; and its failure to actively protect the claimants' cultural beliefs and identity.
48. The Crown submits that the new allegations are entirely historical and are not sufficiently connected to the previous allegations to constitute an amendment in terms of s 6AA. The Crown's view is that the Tribunal therefore does not have jurisdiction to inquire into these issues. The Crown raises no other eligibility issues in relation to this claim.

*Wai 549*

49. This amended statement of claim was filed by Maureen Malcolm and Jason Pou on 22 September 2016 for the claimant Rudy Taylor and the whānau and hapū of Hokianga. Issues include undermining of mana and rangatiratanga; unequal treatment of Māori veterans; failure to rehabilitate; failure to provide assistance, support and care to Hokianga servicemen; failure to provide for their and their families' health and wellbeing; soldier settlement land takings and related issues; landlessness; generational loss of leadership and knowledge.
50. The original statement of claim for Wai 549 concerns the operation of the Native Land Court and the fragmentation of Māori land.
51. The Crown submits that the new allegations are entirely historical and are not sufficiently connected to the previous allegations to constitute an amendment

in terms of s 6AA. The Crown's view is that the Tribunal therefore does not have jurisdiction to inquire into these issues.

52. The Crown raises further eligibility issues relating to this claim below.

*Wai 1526*

53. This amended statement of claim was filed by Maureen Malcolm and Jason Pou on 22 September 2016 for the claimants Patu Hohepa and Claire Morgan on behalf of the peoples of Te Mahurehure. Veterans' issues include the undermining of mana and rangatiratanga; failure to ensure that Mahurehure servicemen had access to their ritenga and could maintain their cultural integrity; failure to adequately rehabilitate veterans; failure to provide sufficient assistance, support and care to veterans and whanau; failure to provide for health and wellbeing; generational loss of leadership, knowledge, culture, Te Reo and tikanga specific to Te Mahurehure.
54. Original and prior statements of claim for Wai 1526 assert a broad range of Te Mahurehure historical grievances including allegations regarding the imposition of the Native Land Court; natural and water resources; and the Crown's failure in respect of intertribal conflicts.
55. The Crown submits that the new allegations are entirely historical and are not sufficiently connected to the previous allegations to constitute an amendment in terms of s 6AA. The Crown's view is that the Tribunal therefore does not have jurisdiction to inquire into these issues. The Crown raises no other eligibility issues in relation to this claim.

*Wai 1536*

56. This amended statement of claim was filed by Afeaki Chambers on 23 September 2016 for the named claimant Dr Mary-Anne Baker and the descendants of various tūpuna. Claimant counsel advise the claim is actively participating in the Te Paparahi o Te Raki (Wai 1040) inquiry. Veterans' issues relate to service in both World Wars and include allegations regarding the Crown's alleged failure to provide basic military training, recognise whakapapa descent in military ranking, provide pastoral and financial support, nurture the practice of tikanga; and soldier settlement scheme issues.
57. The original statement of claim for Wai 1536 asserts a broad range of historical grievances including the alienation of Māori lands and resources and loss of culture.

58. The Crown submits that the new allegations are entirely historical and are not sufficiently connected to the previous allegations to constitute an amendment in terms of s 6AA. The Crown's view is that the Tribunal therefore does not have jurisdiction to inquire into these issues. The Crown raises no other eligibility issues in relation to this claim.

*Wai 1196*

59. This amended statement of claim was filed by Tamaki Legal on 23 September 2016 for the named claimants named claimants Merle Ormsby, Daniel Ormsby, Tiaho Pillot, Manu Patena and Pateriki Patena of Ngāti Hikairo. Claimant counsel advise the claim is actively participating in the Taihape: Rangitikei ki Rangipo District Inquiry (Wai 2180). Veterans' issues relate to service in the Malayan Emergency and the Vietnam War and include allegations regarding the Crown's alleged failure to rehabilitate veterans, provide sufficient medical treatment and adequately equip and protect soldiers; racism in the ranks; and soldier settlement.
60. Claimant counsel indicate they will seek to include claims relating to service in World War II and the Vietnam War upon receipt of further information.
61. The original statement of claim for Wai 1196 asserts a broad range of Ngāti Hikairo historical grievances including the alienation of Māori lands and resources.
62. The Crown submits that the new allegations are entirely historical and are not sufficiently connected to the previous allegations to constitute an amendment in terms of s 6AA. The Crown's view is that the Tribunal therefore does not have jurisdiction to inquire into these issues. The Crown raises no other eligibility issues in relation to this claim.

*Wai 1978*

63. This amended statement of claim was filed by Yashveen Singh on 29 September 2016 for the named claimant Fred William Herbert on behalf of himself and Ngati Paretekawa, Ngati Ngutu, Ngati Te Mawa and Ngati Ruanui hapu. There is only one veterans' claim alleged — that the Crown failed to ensure that after World War II, Māori service personnel were afforded the same treatment and benefits under the Crown's rehabilitation scheme. Other amended issues concern matters relevant to the Porirua ki Manawatu and Taihape district inquiries.

64. Original and prior statements of claim for Wai 1978 assert a broad range of historical grievances relevant to the Te Rohe Pōtae inquiry district.
65. The Crown submits that the new allegations are entirely historical and are not sufficiently connected to the previous allegations to constitute an amendment in terms of s 6AA. The Crown's view is that the Tribunal therefore does not have jurisdiction to inquire into these issues. The Crown raises no other eligibility issues in relation to this claim.

### **Claims raising settlement issues**

#### *Wai 1968*

66. This claim is listed in s 14(3)(b) of Te Rarawa Claims Settlement Act 2015 and will be settled under that Act to the extent that subs 14(2) of that Act applies to the claim and the claim relates to Te Rarawa or a representative entity.<sup>11</sup>
67. This amended statement of claim was filed by Tamaki Legal on 23 September 2016 for the claimant Rueben Taipari Porter and his whānau, the named claimants for Wai 1968 ("the Claimants"). Rueben Taipari Porter is described as being of Ngāpuhi, Ngāti Kahu, and Te Rarawa. The Claimants state that they bring this claim on behalf of their tūpuna Private Kahiti Koha ("Private Koha") and Private Tame Taipari ("Private Taipari"). Claimant counsel advise the claim is active in the Wai 1040 inquiry. Issues include soldier settlement; failure to rehabilitate; racism in the ranks; expendability of Māori soldiers.
68. The Crown has previously made submissions to the Tribunal on the expression "to the extent that the claim relates to" found in settlement legislation:<sup>12</sup>

The words "to the extent that subsection (2) applies to the claim and the claim relates to the [settling group] or a representative entity" capture those Wai claims that relate only in part to the settling group. Those claims are settled "to the extent that" the claims definition and claimant definition applies to the claim and the claim relates to the settling group.

69. As filed, the amended claim does not provide sufficient information for the Crown to determine if the claim is settled. The documents on record do not specify the whakapapa of both the claimant and the tūpuna to whom the claims relate so as to enable the Tribunal to determine whether the claims are made through their Te Rarawa whakapapa or through other whakapapa. The

<sup>11</sup> Te Rarawa Claims Settlement Act 2015, ss 13–15.

<sup>12</sup> Wai 2500, #3.1.115 (27 March 2015) at [70].

Crown submits the claim should be clarified and/or amended as required before a decision on eligibility is made.

*Wai 549*

70. This claim is listed in s 12(1)(c) of Te Roroa Claims Settlement Act 2008 and will be settled under that Act to the extent that para 12(1)(a) applies to the claim and as far as the claim relates to Te Roroa or a representative entity.<sup>13</sup>
71. This amended statement of claim was filed by Maureen Malcolm and Jason Pou on 22 September 2016 for the claimant Rudy Taylor and the whānau and hapū of Hokianga. Issues include undermining of mana and rangatiratanga; unequal treatment of Māori veterans; failure to rehabilitate; failure to provide assistance, support and care to Hokianga servicemen; failure to provide for their and their families' health and wellbeing; soldier settlement land takings and related issues; landlessness; generational loss of leadership and knowledge.
72. As filed, the amended claim does not provide sufficient information for the Crown to determine if the claim is settled. The documents on record do not specify the whakapapa of both the claimant and the tūpuna to whom the claims relate so as to enable the Tribunal to determine whether the claims are made through their Te Roroa whakapapa or through other whakapapa. The Crown submits the claim should be clarified and/or amended as required before a decision on eligibility is made.

*Wai 1501*

73. This claim is already participating in Wai 2500 but the amended claim filed on 23 September 2016 by Te Mata a Maui Law includes new allegations at para [84]–[102] concerning Waikato resistance to conscription in World War I and the consequential imprisonment of Waikato Māori. The claim notes the main reasons Waikato did not contribute troops to fight for the Crown in WWI were that they had not forgotten the confiscation of their lands 60 years earlier and had no appetite for war.
74. The evidence concerning reasons why Waikato did not contribute troops relates to the raupatu but the Crown accepts the claim itself relates to Crown acts unrelated to the raupatu. The Tribunal therefore has jurisdiction to inquire into these issues. The Crown notes any claims that are based on or

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<sup>13</sup> Te Roroa Claims Settlement Act 2008, ss 11–13.

related to the raupatu are settled under ss 8–9 of the Waikato Raupatu Claims Settlement Act 1995 and submits the Tribunal should take care in this case to avoid inquiring into allegations that fall within the scope of that settlement.

75. The Crown raises no other eligibility issues with this amended claim.

**Previous submissions on jurisdiction and eligibility**

76. In the course of the preliminary stages of Wai 2500 the Tribunal has made two decisions regarding eligibility that, in the Crown’s view, may have wide implications for future kaupapa inquiries and the finality of historical Treaty settlements.

77. In summary those decisions are:

77.1 that “non-descent” based historical claims made by individuals are not settled by historical Treaty settlement legislation, and therefore the Tribunal retains jurisdiction to hear such claims even where the claimant is a member of a group whose historical Treaty claims have been settled;<sup>14</sup> and

77.2 As discussed above,<sup>15</sup> that the Act permits the addition of a new historical cause of action to an existing historical claim by way of amendment of that existing claim with no qualification as to the subject matter of that amendment vis-à-vis the original claim.<sup>16</sup>

78. Regarding the first decision, the Crown has previously submitted:<sup>17</sup>

The Crown submits that the standard historical claims definition in settlement legislation is clear that every historical claim (whether notified or not) brought by an individual who is captured by the claimant definition is settled under settlement legislation, regardless of whether or not those claims relate to broader iwi or “collective” issues, or events that occurred in a certain geographical area.

79. As it happens, the implications of this decision for Wai 2500 are relatively limited as the Crown disputes the Tribunal’s jurisdiction to inquire in respect of only two claims on this basis, Wai 2250 and Wai 2076.<sup>18</sup> The Crown does not continue to oppose the inclusion of these two claims given the Tribunal

<sup>14</sup> Wai 2500, #2.5.15 (15 July 2015).

<sup>15</sup> See at [6]–[11].

<sup>16</sup> Wai 2500, #2.5.29 (1 April 2016).

<sup>17</sup> Wai 2500, #3.1.115 (27 March 2015).

<sup>18</sup> The Crown accepted the Tribunal’s jurisdiction to the extent Wai 2076 is based on affiliation with Ngati Raukawa ki te Tonga, but considered the claim was insufficiently precise to determine whether it falls within this exception.


has made findings as to its jurisdiction for these claims however reserves its position on the broader jurisdictional issue and may consider it necessary to revisit this issue in a later inquiry should more significant implications arise in future circumstances.

80. The Tribunal's second decision, concerning the ability of claimants to amend historical claims "in any way", has been discussed above. The Crown makes no further comment except to reiterate its view that the military veterans' issues in the amended statement of claim for Wai 2494 (dated 7 December 2015) should not be eligible for the reasons previously set out.<sup>19</sup>

### **Conclusion**

81. The Crown appreciates the difficulty of these jurisdictional matters for claimants and the Tribunal and hopes that the co-operative approach taken in this inquiry will continue as it progresses to the research stage.

7 October 2016

  
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Counsel for the Crown

**TO:** The Registrar, Waitangi Tribunal  
**AND TO:** Claimant Counsel

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<sup>19</sup> See Wai 2500, #3.1.313 (9 March 2016) at [12]–[22]; and Wai 2500, #2.5.29 (1 April 2016).