

**IN THE WAITANGI TRIBUNAL**

Wai 2500

**CONCERNING**

the Treaty of Waitangi Act 1975

**AND**

the Military Veterans Kaupapa  
Inquiry

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**MEMORANDUM-DIRECTIONS OF THE CHIEF JUDGE W W ISAAC**

14 December 2016

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## **Introduction**

1. This memorandum-directions addresses the eligibility of the following claims to participate in the Military Veterans Inquiry (Wai 2500):
  - (a) Wai 1978, the Hauturu Waipuna C Block (Herbert) claim;
  - (b) Wai 1477, the Emma Gibbs Smith and Whānau (Bay of Islands) claim;
  - (c) Wai 144, the Ruapani Lands claim;
  - (d) Wai 549, the Ngāpuhi Land and Resources claim;
  - (e) Wai 874, the Mangatu Block claim;
  - (f) Wai 1196, the Tongariro Power Development Scheme Lands claim;
  - (g) Wai 1314, the Ngai Tawake claim;
  - (h) Wai 1501, the Petunia Taylor Te Rohe Pōtae claim;
  - (i) Wai 1526, the Mahurehure claim;
  - (j) Wai 1528, the Descendants of Te Kauwhata claim;
  - (k) Wai 1536, the Descendants of Te Kemara Uri o Maikuku rāua ko Hua claim;
  - (l) Wai 1954, the Descendants of Rongopai Haika and Atareria Heta Te Kauwhata claim;
  - (m) Wai 1968, the Tutamoe Pā claim;
  - (n) Wai 2072, the Ihutai Lands (Robinson and Others) claim;
  - (o) Wai 2206, the Ngā Wahapu o Mahurangi – Ngāti Whātua/Ngā Puhi claim;
  - (p) Wai 1092, the Ūpokorehe claim.

## **The claim amendments**

### *Military veteran grievances*

2. The claimants seeking to amend the above claims and the military veteran grievances they raise are summarised in turn.
3. The *Wai 1978* claim was filed on 28 August 2008 by Fred William Herbert on behalf of himself and Ngāti Paretekawa, Ngāti Ngutu, Ngāti Te Mawe and Ngāti Ruanui hapū. On 29 September 2014, the claimant filed an amended statement of claim seeking to add, amongst other grievances, historical military veteran allegations. The claimant alleges that in breach of its duties under the Treaty of Waitangi, the Crown failed to ensure that Māori service personnel were afforded the same treatment and benefits under the Crown's rehabilitation and land resettlement schemes, after World War II.
4. The *Wai 1477* claim was filed on 1 July 2008 by Emma Gibbs Smith on behalf of herself and the whānau of Waitangi Horotutu me Taputaputa o Pahi, Ngare Raumati, Te Uri o Ngongo, Ngāti Kawa, Ngāti Rahiri, Ngāti Hine and Ngāti Toki. On 23 September 2016, the claimant filed an amended statement of claim seeking to add historical Māori military veteran allegations. The claimant alleges that the Crown failed to protect Māori soldiers

from the debilitating psychological effects of war, to provide proper assistance and care in rehabilitation upon return from active duty, and to protect Māori from racism within the New Zealand Defence Force.

5. The *Wai 144* claim was filed on 26 April 1990 by Vernon Winitana and others on behalf of the Panekiri Tribal Trust Board. On 22 September 2016, the claimant filed an amended statement of claim seeking to add military veteran allegations relating to the treatment of soldiers from Ngāti Ruapani during World War II and the Vietnam War.
6. The *Wai 549* claim was filed on 3 October 1995 by Rudy Taylor and Haakopa Tangihaere Te Whata on behalf of Ngāpuhi iwi and hapū. On 23 September 2016, the claimants filed an amended statement of claim seeking to add military veteran grievances relating to World War I, World War II and the Vietnam War. The allegations concern the Crown's failure to recognise the claimants' participation and service by way of rehabilitation, support or proper care, as well as soldier resettlement grievances and intergenerational loss of leadership due to participation in the Crown's military war efforts.
7. The *Wai 874* claim was filed on 21 July 2000 by David Brown on behalf of Te Iwi Ngariki. On 22 September 2016, the claimant filed an amended statement of claim seeking to add military veteran grievances relating to the the Boer War, World War I, World War II, the Korean War and the Vietnam War. The claimant alleges that Crown legislation and policies in relation to Army conscription destabilised the traditional leadership structures of Ngariki Kaiputahi. The claimant also alleges grievances in relation to land confiscation and soldier resettlement, post-traumatic stress disorder (PTSD), mental health problems and alcoholism as a result of military service, and the use of Agent Orange during the Vietnam War.
8. The *Wai 1196* claim was filed on 26 August 2004 by Merle Maata Ormsby, Tiaho Pillot, Daniel Ormsby and Manu Patena on behalf of the descendants of Te Taawhi and Rauaiterangi Mary Patena of Ngāti Tuwharetoa and Ngāti Hikairo. On 23 September 2016, the claimants filed an amended statement of claim seeking to add military veteran allegations. The allegations concern the Crown's failure to rehabilitate and provide proper care and assistance to Māori soldiers upon return from active duty, to provide sufficient medical treatment, to ensure fair allocation of land regarding soldier resettlement schemes, and to adequately equip and protect their soldiers from exposure to Agent Orange and contraction of diseases.
9. The *Wai 1314* claim was filed on 13 December 2005 by Kyle Hoani and Atareira Heihei on behalf of Ngai Tawake. On 23 September 2016, the claimants filed an amended statement of claim seeking to add military veteran allegations. The claimants allege that the Crown failed to support the claimants both during and after service; to provide Ngai Tawake veterans with the same rights as those provided to their non-Māori counterparts; to provide sufficient health care and rehabilitation support to Ngai Tawake veterans; and to mitigate the economic impact of war on Ngai Tawake.
10. The *Wai 1501* claim was filed on 7 August 2008 by Petunia Taylor. Miki Apiti, Ron Boss Mahara and Phillip Mahara were added as named claimants on 3 April 2012. On 23 September 2016, the claimants filed an amended statement of claim seeking to add military veteran allegations. They concern the Crown's failure to adequately care for Vietnam veterans and their families on return from service; to protect those same veterans from vilification; and to repatriate fallen soldiers. The claimants also raise issues concerning conscription and the subsequent imprisonment of Waikato Māori for failing to appear and participate in training when balloted in 1918.

11. The *Wai 1526* claim was filed on 1 September 2008 by Patu Hohepa and Claire Morgan for and on behalf of Te Mahurehure. On 4 March 2016, Te Ipuwhakatara Absolum was added as a named claimant. On 23 September 2016, the claimants filed an amended statement of claim seeking to add military veteran allegations. The claimants allege that the Crown failed to ensure that Te Mahurehure servicemen had access to their ritenga; to provide adequate rehabilitation, assistance, support and care to Te Mahurehure military veterans; and to provide for their and their families' health and wellbeing.
12. The *Wai 1528* claim was filed on 1 September 2008 by Carmen Hetaraka on behalf of the tupuna and descendants of Te Kauwhata. On 23 September 2016, the claimants filed an amended statement of claim which included the addition of military veteran allegations. The amended statement of claim alleges that the Crown failed to support the claimants both during and after war service; to provide Te Kauwhata veterans the same rights as their non-Māori counterparts; to provide sufficient health care, rehabilitation, support and care to Te Kauwhata veterans; to prevent the alienation of land belonging to Te Kauwhata descendants during their military service; and to mitigate the economic impact of war on Te Kauwhata Māori.
13. The *Wai 1536* claim was filed on 31 August 2008 by Maryanne Cheryl Baker on behalf of the descendants of Te Kemara uri o Maikuku rāua ko Hua. On 23 September 2016, the claimants filed an amended statement of claim seeking to add military veteran issues. The claimants allege that the Crown failed to provide adequate training to the claimant's tupuna; to afford the appropriate rank and protection to the claimant's tupuna; to provide sufficient medical care to Māori soldiers wounded in action; to provide sufficient counselling, treatment, financial and pastoral support for veterans and their families; to afford the same benefits to Māori soldiers under the Land Settlement Scheme as given to their Pākehā counterparts; and to protect Māori land belonging to returned Māori soldiers.
14. The *Wai 1954* claim was filed on 1 September 2008 by Hepi Haika, Mere Waikanae Hoani and Vania Haika on behalf of themselves and the descendants of Rongopai Haika and Atareira Heta Te Kauwhata. On 23 September 2016, the claimants filed an amended statement of claim seeking to add of military veteran issues. The claimants allege that Mohi Hoani did not receive proper financial and rehabilitative support for integration back into his community when he returned from service.
15. The *Wai 1968* claim was filed on 28 August 2008 by Reuben Porter on behalf of Ngati Rokeka, Ngati Pakahi, Nga Hapu o Wharo te Oneroa a Tohe, Nga hapu o Te Rarawa and Nga whanau o Unaiki Mare. On 23 September 2016, the claimants filed an amended statement of claim seeking the addition of military veteran issues. The issues concern the inadequacy of the Crown's soldier settlement schemes and the Crown's failure to protect Māori from the psychological effects of war and from racism within the New Zealand Defence Force.
16. The *Wai 2072* claim was filed on 29 August 2008 by Mereana (Ngahiraka) Robinson (nee Witana), Makarita (Waitohi-o-Rangi) Tito (nee Witana) and others on behalf of the Te Ihutai hapu and all descendants of the claimants' tupuna Witana Paapahia, Pangari, Aporo and Toki Pangari. On 23 September 2016, the claimants filed an amended statement of claim seeking the addition of military veteran issues. The claimants allege that the Crown failed to protect Māori from racism within the New Zealand Defence Force; to provide protection from the psychological effects of war and the requisite rehabilitative care; to prevent exposure to toxic chemicals; to ensure Māori veterans were allocated land under the soldier rehabilitation programmes; to actively protect the mana and tikanga of Māori during repatriation; to provide sufficient medical treatment

during and following active service and that it enlisted minors in the New Zealand Defence Force.

17. The *Wai 2206* claim was filed on 29 August 2008 by Charlene Walker-Grace on behalf of herself and Te Hokingamai e te iwi o Mahurangi and Nga Wahapu o Mahurangi (Ngati Whatua/Ngapuhi). On 23 September 2016, the claimants filed an amended statement of claim seeking the addition of military veteran issues. They allege that the Crown failed to protect Māori from racism within the New Zealand Defence Force; to provide protection from the psychological effects of war and the requisite rehabilitative care; to ensure Māori veterans were allocated land under the social rehabilitation programmes; to actively protect the mana and tikanga of Māori during repatriation; and to provide sufficient medical treatment during and following active service.
18. The *Wai 1092* claim was filed on 10 November 2003 by Charles Aramoana (deceased), Sandra Jeanette Kari Kari Aramoana, Wayne Aramoana, Wallace Aramoana, Lance Reha, Gaylene Kohunui and Kahukore Baker on behalf of themselves and Upokorehe hapu, Ngati Raumoana, Roimata Marae Trust and Upokorehe. On 22 September 2016, the claimants filed an amended statement of claim seeking the addition of military veteran issues. The claimants allege that the Crown failed to protect soldiers of Nga Uri o Te Upokorehe during and following their service. This consequently destabilised traditional leadership structures and, for some, leading to poverty.
19. The *Wai 919* claim was filed on 20 February 2001 by Heremoananuiakiwa Kingi, Poihakina Kira, Iwa Alker, Leo Mita Bowman, Ivy Williams, Marie Williams and Tangihaere Kingi on behalf of Ngatitupango hapu. On 23 September 2016, the claimants filed an amended statement of claim seeking the addition of military veteran issues. The claimants allege that the Crown did not recognise the claimants' military service by failing to provide appropriate rehabilitation and support their return from military service. Other allegations concern the inadequacy of the Crown's soldier resettlement scheme and the impact the absence of servicemen had in the preservation of Ngāi Tupango culture, knowledge and language.

#### *Participation in other current inquiries in preparation or hearing*

20. The *Wai 1477*, 549, 1314, 1526, 1528, 1536, 1954, 1968, 2072, 2206 and 919 claims are participating in the Te Papanahi o Te Raki District Inquiry (*Wai 1040*), currently in hearing. The *Wai 1978* claim is participating in the Taihape District Inquiry, which is in interlocutory proceedings in preparation for hearing. The *Wai 1196* claim is participating in the Taihape Inquiry and also in the Porirua ki Manawatū District Inquiry, which is in its research phase.
21. All the claims under consideration were filed on or before the deadline of 1 September 2008 for the submission of new historical claims that arose before 21 September 1992 or of historical amendments to existing claims that arose on or after 21 September 1992.

#### **The Crown's response**

22. On 7 October 2016, the Crown filed a memorandum on the eligibility of the above claims to participate in the Military Veterans Inquiry (*Wai 2500*, #3.1.508).

#### *Amended statements of claim*

23. In relation to amended statements of claim generally, the Crown continues to submit that section 6AA of the Treaty of Waitangi Act 1975 does not permit, by way of an amended statement of claim, the addition of a new historical cause of action to an existing historical claim. As each of the above claims did not contain causes of action relating to

military veteran issues prior to the introduction of section 6AA, the Crown contends that they are therefore not eligible to participate in the Military Veterans Inquiry.

#### *Claims potentially affected by Treaty settlements*

24. The Crown raises settlement issues with three of the amended statements of claim. In respect of the Tutamoe Pā claim (Wai 1968) and the Ngāpuhi Land and Resources claim (Wai 549), the Crown submits that the claims have been settled, to the extent that the former relates to Te Rarawa and the latter to Te Roroa, by the Te Rarawa Claims Settlement Act 2015 and the Te Roroa Claims Settlement Act 2008. Counsel considers that the amended claims fail to provide enough information to determine whether the claim is made through their Te Rarawa and Te Roroa whakapapa respectively, and that their eligibility cannot therefore yet be determined.
25. In respect of the Te Rohe Pōtae claim (Wai 1501), Crown counsel acknowledges that the claim is already participating in the Military Veterans Inquiry, but cautions that grievances relating to raupatu were settled under sections 8-9 of the Waikato Raupatu Claims Settlement Act 1995 and are outside the Tribunal's jurisdiction.

### **Discussion and decisions**

#### *Amended statements of claim*

26. In memorandum-directions dated 1 April 2016, I set out my views in respect to s 6AA of the Treaty of Waitangi Act 1975. In brief, I found that the plain meaning of the section is that claimants may amend a pre-deadline historical claim 'in any way'; that is, 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 (Wai 2500, #2.5.29). This view has not changed and I therefore conclude that to the extent the Tribunal's jurisdiction is not excluded by settlement legislation, the claims seeking inclusion are eligible to participate in the Military Veterans Inquiry. The amendments will therefore be registered.

#### *Claims potentially affected by Treaty settlements*

27. In memorandum-directions of 15 July 2015, I stated that in general terms the Tribunal retains jurisdiction under s 6 of the Treaty of Waitangi Act 1975 to inquire into claims of individual Māori veterans or groups of Māori veterans, notwithstanding that those claimants may whakapapa to a group whose historical claims have been settled (Wai 2500, #2.5.15 at [76]). However, I also noted that this general conclusion would vary from case to case according to the specific language of both claims and legislation.

#### Wai 549, the Ngāpuhi Land and Resources claim

28. In respect of Wai 549, the Te Roroa Claims Settlement Act 2008 states that the claim is settled as far as the claim relates to Te Roroa (or a representative entity). The original claim had not been amended when the settlement was enacted. The settlement therefore removed the claim from the Tribunal's jurisdiction only to the extent that Te Roroa could be construed as forming part of 'Ngāpuhi iwi and hapū'.
29. The amended statement of claim adding veteran grievances, filed on 22 September 2016, was made for and on behalf of 'the whānau and hapū of Hokianga'. The amendment does not mention Te Roroa, either in the grounds of the claim or the remedies sought. Further, nothing in the claim relates to the customary interests of Te Roroa or their area of interest. The issues raised in the amended statement of claim are thus not specific to Te Roroa. In my view therefore, the Tribunal's jurisdiction to inquire

into them was not removed by the passage of the Te Roroa Claims Settlement Act 2008. As such, I consider that Wai 549 is eligible to participate in the Military Veterans Inquiry.

Wai 1968, the Tutamoe Pā claim

30. The Te Rarawa Claims Settlement Act came into force on 23 September 2015 and settled the historical claims of Te Rarawa. Section 14(3)(b) of that Act states that Wai 1968 is settled to the extent the claim relates to Te Rarawa or a representative entity. At the date of enactment, the claim, as amended on 30 September 2011, was made on behalf of the claimant, 'his whanau and members of Kaitangata, Whanau Pani, Nga Tahawai hapu'. Tahawai and Whanau Pani, but not Kaitangata, are listed in Schedule 1 of the Act as hapū of Te Rarawa. The historical grievances brought by the Wai 1968 claimant on behalf of Tahawai and Whanau Pani were therefore settled by the Act. As it stood on 23 September 2015, the claim did not appear to raise any contemporary grievances that arose on or after 21 September 1992.
31. I conclude that the Tribunal's jurisdiction to inquire into Wai 1968 has been removed to the extent that the claims of Tahawai and Whanau Pani have been settled by the Te Rarawa Claims Settlement Act 2015. The Tribunal retains jurisdiction to inquire into any historical or contemporary issues that are or may be raised on behalf of the Kaitangata hapū and that do not relate to Te Rarawa. The Tribunal may also inquire into the grievances of Whanau Pani and Nga Tahawai alleged in the Wai 1968 claim to the extent that their members affiliate with tupuna not included in the Te Rarawa settlement.
32. The amended statement of claim for Wai 1968 was filed on 23 September 2016 by Reuben Porter, the named claimant. In it, he states that he affiliates with Ngāpuhi and Ngāti Kahu as well as Te Rarawa and that the amended claim is made on behalf of his tīpuna Private Kahiti Koha and Private Tame Taipari. The claimant thereby identifies his affiliation with tribal groups other than Te Rarawa. Subject to the limitations stated in paragraph 31, I conclude that the claimant is entitled to amend the claim, that the Tribunal has jurisdiction to inquire into the claim as further amended, that the amendment may be registered and that the Wai 1968 claim is eligible to participate in the Military Veterans Inquiry.

Wai 1501, the Te Rohe Pōtae claim

33. The Wai 1501 claim is already participating in the Military Veterans Inquiry and remains eligible. I note Crown counsel's caution regarding grievances concerning raupatu which were settled by the Waikato Raupatu Claims Settlement Act 1995.

The Registrar is to send this direction to all those on the notification list for Wai 2500, the record for the Military Veterans Kaupapa Inquiry.

**DATED** at Wellington on this 14<sup>th</sup> day of December 2016.



Chief Judge W W Isaac  
Presiding Officer

**WAITANGI TRIBUNAL**