

IN THE WAITANGI TRIBUNAL

**WAI 2500
WAI 1344**

UNDER

The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF

Military Veterans Kaupapa Claim

AND

IN THE MATTER OF

A claim by Turi Stone, Tamati Pohatu, Nolan Raihania and Bishop Brown Turei (WAI 1344)

AMENDED STATEMENT OF CLAIM

DATED 6 NOVEMBER 2020

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Waitangi Tribunal

6 Nov 2020

Ministry of Justice
WELLINGTON

Te Mata Law

527 New North Road, Kingsland

AUCKLAND 1021

Tel: 0508-TEMATA (0508-836282)

Counsel Acting: David Martin Stone | Harry Clatworthy | Tuari Brooking

David@tematalaw.co.nz | Harry@tematalaw.co.nz | Tuari@tematalaw.co.nz

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MAY IT PLEASE THE TRIBUNAL

The Claimants

1. The claimants for Wai 1344 are Turi Stone, Tamati Pohatu, Nolan Raihania and Most Reverend Bishop Brown Turei (“the claimants”).
2. The claimants are Te Whanau-a-Apanui, Ngāti Porou, Te Aitanga-a-Hauiti, Ngai Tāmanuhiri, Rongowhakaata, Te Aitanga-a-Mahaki, Rakaipaaka, Rongomaiwahine, Ngāti Kahungunu, Ngāti Toa, Ngāti Mamoe and Kai Tahu.
3. While this claim is brought in remembrance of all Maori who served the Crown during times of armed conflict – including Māori nurses, the claimants in particular remember the Māori Pioneer Battalion and the 28th Māori Battalion (“the Battalion”) because it is widely acknowledged that these two battalions were the ‘pathfinders’ who laid down a legacy which was followed by all subsequent Maori who enlisted and fought for the Crown.
4. Further, the claimants bring this claim on behalf of all those who did not enlist but suffered as a result of those Maori who fought for the Crown, namely the wives, children and mokopuna who continue to live with the prejudice which their husbands, fathers, uncles, grandfathers and tipuna were exposed to, endured and suffered and continue to suffer today.
5. This claim concerns the following Crown actions and inactions:
 - (a) The Crown’s failure to adequately prepare Maori soldiers for what is commonly referred to today as ‘shell shock’.
 - (b) The Crown’s failure to rehabilitate Māori soldiers from the effects of ‘shell shock’.

- (c) The improper subjugation of Māori soldiers under the ‘mana’ of British military control, rules, policy and regimes, which did not accord with Māori tikanga and mana.
- (d) The Crown failure to protect Māori soldiers from British military control, policy and regimes, which included execution of Māori.
- (e) How the Crown failed to honour promises made to the Battalion prior to leaving for war. Such promises included:
 - i. Recognition of their efforts in war in what has been referred to as ‘the price of citizenship’.
 - ii. The failure to provide land that was promised to them upon their return under the Rehabilitation Schemes, including:
 - 1. Those Battalion veterans who did receive land received lands that belonged to other Māori, thereby prejudicing those Māori by effectively alienating them from their ancestral lands, papakainga, waahi tapu and mahinga kai.
 - 2. The policies in relation to land settlement were discriminatory and Māori were in effect barred from entering ballots for settlement land and relegated to special Māori land ballots under which much less land was available.
 - 3. The settlement of Māori soldiers on land development schemes which disqualified them from receiving concessionary rates of interest.
- (f) The unequal treatment of Māori veterans compared to Pakeha in terms of entitlements, educational opportunities, benefits and war pensions.
- (g) The treatment of all veterans including those from Korea, Vietnam and the Battalion upon their return from war including:

- i. The failure of the Crown to ensure the adequate rehabilitation of the Battalion back into society which resultant prejudice included:
 1. Alcoholism.
 2. Depression.
 3. Domestic violence, which resulted in further resultant prejudice including the removal of children from the family home.
6. This claim also concerns the impact of the loss of mana for the unjust and wrongful execution of Victor Spencer for desertion suffered by him and his whanau. The loss of mana complained of here includes:
 - (a) The failure to exonerate Victor Spencer under the Pardon Act 2000.
 - (b) The failure to fully restore Victor Spencer's honour.
7. This claim also concerns the impact of loss of men from the Battalion and the subsequent impact on the families of the Battalion including:
 - (a) The untold story of the impact on the mothers and wives and children of the men of the Battalion.
 - (b) The impact on tikanga and kawa on marae as evidenced by the near empty paepae on marae throughout the country due to such large numbers of men being lost to the World War 2.
 - (c) The loss of te reo Māori due to native speakers not returning home and passing on the language to the next generation.
8. This claim also concerns the Crown taking away the autonomy of Māori dealing with the rehabilitation of their soldiers when they returned from active service.

9. This claim also concerns the ‘price of citizenship’ paid by the soldiers from the Pioneer Māori battalion and the 28 Māori battalion. These soldiers gave their lives on the understanding that this would secure a place for Māori in the future of New Zealand as citizens who lived on equal standing with Pakeha. Despite the price these soldiers paid, little changed for Māori on their return from war and today Māori still operate as second-class citizens in New Zealand including being overly represented in all negative socioeconomic indicators including:
- (a) Poor health, injury and illness.
 - (b) Prison population.
 - (c) Poverty and unemployment.
 - (d) Crime and discrimination in the justice system.
 - (e) Reliance on social services.
 - (f) Children in state care.
 - (g) Land ownership.
 - (h) Educational attainment.
 - (i) Obesity.
 - (j) Life expectancy.
 - (k) Alcoholism and drug use.
 - (l) Housing.
 - (m) Mental illness and suicide.
 - (n) Physical and Sexual Abuse
 - (o) Problem Gambling.
 - (p) Homelessness.
 - (q) Disability.
 - (r) Gangs.
 - (s) Discrimination;
 - (t) Wellbeing.
10. This claim also concerns the experience of Māori nurses in the First and Second World War and the Crown’s failure to recognise the

sacrifice given by these nurses who served valiantly on the front lines.

The Crown's failures in regards to Māori Nurses included:

- (a) A lack of acknowledgement of the service of Māori Nurses.
 - (b) A failure to recognise Māori Nurses as veterans despite the fact they served in the line of fire.
 - (c) A failure to provide Māori Nurses with a war pension;
 - (d) A failure to offer rehabilitation to nurses including land under Soldier Rehabilitation schemes.
11. This claim also concerns the medallic recognition of the 28th Māori battalion and the Crown's failure to ensure that campaign medals reached soldiers or their whanau and their failure to award these medals in a manner that displayed respect to the mana of these soldiers.

The Claim: The Causes of Action

12. The claimants say that their claim falls within one or more of the matters referred to in section 6 (1) of the Treaty of Waitangi Act 1975 namely:
- (a) that they are Māori;
 - (b) that they have been and continue to be prejudicially affected by various Acts, including the Soldiers Settlement Act and the Māori Social and Economic Advancement Act 1945, and thereby other attendant legislation or regulations and also by the various policies, practices, acts and omissions adopted by, or on behalf of the Crown or its agents.

PART ONE: WORLD WAR ONE AND VICTOR SPENCER

Duty

12. The New Zealand Defence Force (hereinafter referred to as the Army and/or the Crown) has a duty to care for its soldiers during World War One (“the war”).
13. Said duty of care includes preparing its soldiers for war in all its various forms, including shell shock and protecting those soldiers should they suffer from it.
14. That protection and care includes the Army protecting its soldiers when charged with desertion and facing execution, particularly where then the cause was shell-shock.
15. The Army had a duty to ensure the Commander-in-Chief of the British Army, Field Marshall Sir Douglas Haig was presented with mitigating evidence and circumstances of shell-shock when soldiers are charged with mutiny and facing execution.

Breach

16. The Army failed to prepare soldiers for shell shock.
17. The Army failed to rehabilitate soldiers from shell shock.
18. The Army failed to provide Field Marshall Sir Douglas Haig with evidence of Victor Spencer of Ngai Tāhu (“Victor”) suffering from shell shock.

Victor Spencer

19. Born in Ōtautau, Southland, in 1896, Victor Spencer was the only child of James and Mary Spencer.
20. In April 1915, aged 18, Victor enlisted in the New Zealand Expeditionary Force.
21. Victor was underage when he enlisted. He claimed to be 20 years old, the minimum age for recruits.

Particulars

22. At 6:45 AM on 24 February 1918, Victor was tied to a post and blindfolded.¹
23. Victor was then executed by 12 fellow New Zealand soldiers on orders of the British Government.²
24. Victor had been found guilty of deserting His Majesty's service after he had abandoned his unit in August 1917.³
25. On the night of 9-10 July 1916, Victor took part in a disastrous raid on the German lines in Armentieres, France.⁴
26. These soldiers had remained in the lines for a month without relief.⁵

¹ www.heraumahara.nz “*Victor Spencer, a fight for justice*” (Te Runanga o Ngai Tahu, 2017)

² Wai 2500, #A193(a) at [10]

³ at 1.

⁴ Cropp, A. “*Victor Spencer, the spirit lives on.*” (Te Karaka, Issue 33, 2006) at 14.

⁵ at 4.

27. Many men were broken by this prolonged stint of trench duty and never fully recovered, Victor being one of them.⁶
28. Victor was admitted to the field hospital suffering “shellshock” following the heavy bombardment.⁷
29. Victor was sent to the divisional baths in France to convalesce and re-joined his unit on the front line 19 days later.⁸
30. Victor was severely affected by the shellshocked he suffered in Armentières.
31. When Victor re-joined his unit, he immediately went missing.⁹
32. Victor was caught by Military police on 12 August and sentenced to 18 months imprisonment with hard labour.¹⁰
33. In June 1917 his sentence was suspended after nine months and he returned to his unit.¹¹
34. In August 1917 he went missing again.¹²
35. Victor was again caught and was brought before a general field court martial on January 17, 1918.¹³

⁶ at 4.

⁷ Wai 2500, #A193(a) at [2]

⁸ Wai 2500, #A193(a) at [2]

⁹ Wai 2500, #A193(a) at [2]

¹⁰ Wai 2500, #A193(a) at [2]

¹¹ at 1.

¹² at 4.

¹³ at 1.

36. At the court martial hearing, Victor recounted his experience at Armentières, stating:

“While in the trenches at Armentières I was blown up by a minenwerfer (mortar) and was in hospital for about a month, suffering from shellshock. Up to this time I had no crimes against me. Since then my health has not been good, and my nerve has been completely destroyed.”¹⁴

37. Despite Victor Spencer raising his claim of shell-shock, the court martial decided not to call medical evidence.¹⁵

38. Before sentence was passed, the captain of his platoon gave a character reference saying that Victor had:

- a. served in Gallipoli;
- b. was a good soldier; and
- c. they could find no fault with him.¹⁶

39. As in all cases where a sentence of death had been passed a report was produced by Victor’s Company.¹⁷

40. In that report no mention was made of Victor’s medical record and his suffering of shellshock.¹⁸

¹⁴ at 1.

¹⁵Wai 2500, #A193(a) at [7]

¹⁶Wai 2500, #A193(a) at [4]

¹⁷Wai 2500, #A193(a) at [4]

¹⁸Wai 2500, #A193(a) at [4]

41. The acting brigade commander, Lieutenant-Colonel A.E. Stewart stated, "...The accused has not been actually in action in France although he has been several times in an attack."¹⁹
42. The statement that Victor had never been in action in France presumably was meant to read that Victor had never been in an attack in France but had been in action several times.²⁰
43. It was not corrected nor questioned by divisional headquarters, but it damned Victor's shell-shock pleas.²¹
44. In order for Victor to be executed, he had to have his sentence confirmed by the Commander-in-Chief of the British Army, Field Marshall Sir Douglas Haig.²²
45. The onus was on the Army to present Haig with mitigating evidence on the circumstances of Victor's shell-shock.²³
46. The Army failed to present Haig with the mitigating evidence.²⁴
47. In the absence of any mitigating evidence, General Haig confirmed the death penalty.²⁵
48. Victor raised the issue of shell-shock at his court martial.²⁶

¹⁹Wai 2500, #A193(a) at [5]

²⁰Wai 2500, #A193(a) at [5]

²¹Wai 2500, #A193(a) at [5]

²²at 1.

²³at 1.

²⁴at 1.

²⁵at 1.

²⁶at 1.

49. No evidence was called, nor was a medical examination initiated.²⁷
50. This was in direct contravention of the British army's stated policy, confirmed by General Haig of making thorough medical investigations whenever shell-shock was raised as an issue.²⁸
51. The failure of the British government to call medical evidence for Victor Spencer's death was:
 - a. in direct contravention of stated policy directly;
 - b. directly led to his death; and
 - c. directly breached the British government's so-called policy on shell-shocked soldiers and executions.²⁹

The effect of Victor's death

52. Victor's death sent a wave of revulsion through the rank and file of the First Otago Battalion.³⁰
50. Highly respected Major James Hargest considered the punishment for Victor Spencer to be monstrous.³¹
51. A member of the First Otago Battalion (a man named Corkill) later wrote to John Lee in the 1930s about the case.³²

²⁷ Wai 2500, #A193(a) at [7]

²⁸ Babington, A. "*Shell-shock: A history of the changing attitudes to war neurosis.*" (Barnsley: Pen & Sword Select, 2003) at 115.

²⁹ at 29.

³⁰ Wai 2500, #A193(a) at [11]

³¹ Wai 2500, #A193(a) at [9]

³² Wai 2500, #A193(a) at [11]

52. Corkill wrote that Spencer had been brought up among Maori and wanted a transfer to the Pioneer Battalion.³³
53. Mr Corkill believed that if Spencer's application for a transfer to the Pioneers had been granted, the tragedy would have been averted.³⁴

Shell Shock

54. In 1999 Sir Edward Somer, a former Court of Appeal Judge reviewed the case of the five soldiers.
55. Sir Edward concluded that neither the court martial nor the reviewing authority that confirmed the death sentence would have the present understanding of what shell-shock meant.³⁵
56. Sir Edward concluded that they should not be pardoned.³⁶
57. The British army, including General Haig who confirmed Victor's death, made statements on numerous occasions about the issue of the potential of shell-shocked men being executed for war crimes.³⁷
58. The British army confirmed they made sure this did not occur by making thorough medical investigations where shell shock was raised as an issue.³⁸
59. Shell shock was a huge problem for the commonwealth army all throughout the War.

³³ Wai 2500, #A193(a) at [11]

³⁴ Wai 2500, #A193(a) at [11]

³⁵ Wai 2500, #A194(b) at [22]

³⁶ at 4.

³⁷ at 29.

³⁸ at 29.

60. Shell shock was well known by the public of the time and articles on shell shock were published in many newspapers in both Britain and New Zealand as well as in leading medical journals.
61. Shell shocked soldiers after 1915 were given very brief treatment and quickly returned to the front lines.
62. After 1915, the Army applied a restrictive definition of shell shock.

The British Army, Shell-shock, and execution.

63. By the time of Victor's execution there was a growing disquiet in Britain about the number of executions taking place in the British Executionary Force.³⁹
64. A group of Labour Members of Parliament were becoming increasingly concerned about shell-shocked soldiers being executed for military offences committed in the front line, and began to inquire into the issue.⁴⁰
65. The government and army confirmed on multiple occasions that they always made significant medical inquiries where shell-shock was an issue.
66. No medical evidence was called at Victor's court martial, nor was a medical exam initiated.⁴¹

³⁹ at 29 at page 114.

⁴⁰ at 29 at page 101.

⁴¹ Wai 2500, #A193(a) at [7]

67. At question time in the House of Commons in December 1917 the under-secretary of state for war was asked by a Labour Member to ensure that no soldier who had been seriously wounded or invalided with shell shock would ever be executed.⁴²
68. The minister replied he was not in a position to give effect to such a proposal.⁴³
69. After this question, a member of parliament suggested in reply that it was universal practice at courts martial for “a most complete and exhaustive report to be called for” so that it would be “practically impossible for any man to be executed who had suffered from shell-shock”. The under-secretary confirmed that this was universal practice.⁴⁴
70. The under-secretary added that in all cases which had been brought to his notice the courts had given the most careful attention to reports on the prisoners.⁴⁵
71. On 19 February 1918, five days before the execution of Victor Spencer, the British House of Commons again held question time.⁴⁶
72. Labour MP Phillip Snowden inquired to the under-secretary for the state of war whether at court martial’s for desertion medical evidence that the accused soldiers were not suffering from shell shock was always given on oath and was always subject to cross examination.⁴⁷

⁴² at 41.

⁴³ at 41.

⁴⁴ at 41.

⁴⁵ at 40.

⁴⁶ at 40.

⁴⁷ at 40.

73. The under-secretary of state for war assured him the answer was “yes” to both questions.⁴⁸

74. Sir Douglas Haig, the man who confirmed Victor’s execution, wrote a letter to parliament to confirm that all possible shell-shock cases were investigated at court martial.⁴⁹

75. Writing in March 1918 Sir Douglas’s letter stated:

“When a man has been sentenced to death if at any time any doubt has been raised as to his responsibility for his actions, or if the suggestion has been advanced that he has suffered from neurasthenia or shell-shock, orders are issued for him to be examined by a medical board which expresses opinion as to his sanity, and to whether he should be held responsible for his actions. One of the members of the board is always a medical officer of neurological experience. The sentence of death is not carried out in the case of such a man unless the medical board expresses the positive opinion that he is to be held responsible for his actions.”⁵⁰

76. Victor raised his defence of shell-shock at his court martial.⁵¹

77. Despite the British government’s stated policy to thoroughly medically investigate all cases of potential shell-shock, they did not call medical evidence.⁵²

Shell Shock: The Numbers

⁴⁸ at 40.

⁴⁹ at 29.

⁵⁰ at 29.

⁵¹ at 1.

⁵² at 4.

78. The statistics show considerable numbers of soldiers falling victim to shell-shock throughout the War.
79. Between April 1915 and 1916, 1300 officers and 10,000 men from other ranks had been admitted to special psychological hospitals in Britain.⁵³
80. It was estimated that by December 1914, 7-10% of all officers and 3-4% of other ranks casualties in the expeditionary force were nervous and mental shock' casualties.⁵⁴
81. In the year to April 1916, there was an epidemic of acute psychiatric casualties.
82. 24,000 of these casualties were sent back to Great Britain.⁵⁵

Treatment Centres

83. The Commonwealth forces suffered so many psychiatric casualties throughout the war that they created numerous special treatment centres for these casualties.
84. The British government set up a hospital for psychologically damaged soldiers as early as December 1914 at Maghull.

⁵³ Reid, F. *Broken men: Shell shock, treatment and recovery in Britain, 1914-1930*. (London: Continuum, 2011) at 13

⁵⁴ Macleod, A D. *Shell shock, Gordon Holmes and the Great War* (Journal of the royal society of medicine Volume 97, 204) at 86.

⁵⁵ at 55.

85. As demand grew more were added including 4th London territorial general hospital, Springfield war hospital and Napsbury war hospital.⁵⁶
86. In May 1915, neurological sections were established in all territorial general hospitals throughout England, Scotland and Wales.⁵⁷
87. By June 1918, there were six special neurological hospitals for officers and thirteen for other ranks.⁵⁸
88. There was a psychiatric unit at Brockenhurst, the principal hospital for wounded New Zealand soldiers.⁵⁹

Shell-Shock in the Media

89. By early 1915, there was a wide variety of newspaper stories about shell-shock in Britain.
90. This included a series of articles in the Times.⁶⁰
91. By mid-1916, it was said that the shell-shocked soldier had become a virtual cliché in the English press.⁶¹

⁵⁶ Reid, F. *Broken men: Shell shock, treatment and recovery in Britain, 1914-1930*. (London: Continuum, 2011) at 30.

⁵⁷ at 57.

⁵⁸ Bogacz, T. "War Neurosis and Cultural Change in England, 1914-22: The Work of the War Office Committee of Enquiry into 'Shell-Shock'" (Journal of Contemporary History. Vol. 24, No. 2, Studies on War, 1989), at 235.

⁵⁹ Paul Arthur Haydn Morris. *Attitudes Towards Psychological Casualties in the 2nd New Zealand Expeditionary Force, 1939 to 1945*. (MA Thesis, University of Canterbury, 2013) at 67.

⁶⁰ at 59 at 234.

⁶¹ at 61.

92. The term shell shock was widely used in the public realm via newspapers and was used as a common catch-all to describe the hysteric and neurasthenic injuries suffered by soldiers.⁶²
93. Shell shock articles were published in newspapers within New Zealand by September 1915.
94. An article titled, 'Effects of Shell Shock', was published in The Ohinemuri Gazette on 17 September 1915.⁶³
95. An article titled 'Dual Personality' was published in the Hawera & Normanby Star on 18 September, 1915, p. 3.⁶⁴

Medical Journals

96. Throughout the War articles appeared in leading British medical journals regarding shellshock.
97. This included journals such as 'The Lancet', 'The British Medical Journal' and 'The Journal Of Mental Science'.⁶⁵
98. The Army's own journal, 'The Journal Of Royal Army Medical Corps' published articles about nervous and mental shock in 1916 and 1917.⁶⁶

Treatment of Shell-Shocked Soldiers

⁶² at 67. p. 30.

⁶³ "Effects of Shell-Shock" (The Ohinemuri Gazette, September 17) 1915, p. 8.

⁶⁴ "Dual Personality" (Hawera & Normanby Star, September 18) 1915, p 3.

⁶⁵ Reid, F. *Broken men: Shell shock, treatment and recovery in Britain, 1914-1930*. (London: Continuum, 2011) at 46.

⁶⁶ at 66.

99. Originally, shell-shocked soldiers were often sent back home and to psychological treatment centres.
100. Between April 1915 and 1916, 1300 officers and 10,000 men from other ranks had been sent home from the front and admitted to special hospitals in Britain.⁶⁷
102. Until 1916 most of the shell-shocked men evacuated back to bases were sent back to England as soon as possible.⁶⁸
104. However, as the War went on and the Crown's forces suffered heavy losses, they decided they needed to return these men to the front line instead of sending them home.
107. A general order issued in July 1916 stated any patient who was affected by nervous exhaustion arising from insufficient self-control, should be kept in France for treatment.⁶⁹
108. After 1916, most shell shock cases were dealt with in France, according to the policy of PIE—"Proximity, Immediacy, and Expectation"—with the accent on returning as many soldiers as possible to active service.⁷⁰
109. The positioning of treatment centres close to the front lines allowed the immediate treatment of cases and their return to their units after several days.⁷¹

⁶⁷ at 66 at page 13.

⁶⁸ at 66 at page 27.

⁶⁹ at 66 at page 31.

⁷⁰ Horrocks, J. "*The Limits of Endurance: Shell Shock and Dissent in World War One*". (The Journal Of New Zealand Studies, NS27, 2018) at 40.

⁷¹ at 60 at page 28.

110. Victor Spencer was treated at the divisional baths in France and returned to service within 19 days.⁷²

111. Copying the British model for management of psychological casualties, a restrictive definition of shell shock was adopted, and medical officers were instructed that physical damage conducive to proximity to explosives must exist for an individual to be suffering legitimate psychological damage.⁷³

Duty

113. The Army had a duty to treat all soldiers equally, regardless of rank or ethnicity.

Breach

114. The Army failed to treat soldiers equally, to the detriment of Maori.

Particulars

115. In cases of shell-shock as well as in the court martial process, treatment of Māori soldiers was unlikely to be equal to that of Pākehā.

116. The Commonwealth Army in the War was divided along class lines.

117. Soldiers from higher socio-economic classes who had secondary education were seen to be fit to be officer's, while everybody else served as privates, although exceptions did exist.⁷⁴

⁷² at 8.

⁷³ At 60 at 39.

⁷⁴ Root, L. "Temporary Gentlemen on the Western Front: Class Consciousness and the British Army Officer, 1914-1918." (The Osprey Journal of Ideas and Inquiry, Volume 72, 2006) at 1.

118. This was reflected in the New Zealand expeditionary force in the class divide between Māori and Pākehā.
119. The majority of New Zealand officers and those in the higher ranks were Pākehā.⁷⁵
120. Some Māori were officers and junior officers within the Māori Pioneer Battalion.⁷⁶
121. Māori were generally seen as good soldiers but not fit for higher command positions.⁷⁷
122. The treatment of officers and non-officers in the War was vastly different, so much so as to be inequitable.
123. This inequity of treatment included:
 - a. how they were treated through the court martial process; and
 - b. the treatment they received when they suffered shell-shock.
124. When officers committed a crime, they went through a different court martial process than ordinary soldiers.⁷⁸
125. This included a right to appeal that privates did not have.⁷⁹

⁷⁵Monty Soutar, “*Ngā pakanga ki tāwāhi – Māori and overseas wars - Māori contingent in the First World War*”, (Te Ara - the Encyclopedia of New Zealand, 2012).

⁷⁶Monty Soutar, “*Ngā pakanga ki tāwāhi – Māori and overseas wars - Māori contingent in the First World War*” (Te Ara - the Encyclopedia of New Zealand, 2012).

⁷⁷Monty Soutar, Quoted in “*Māori soldiers’ Great War battle for equality*”, (Stuff.co.nz) retrieved from <https://www.stuff.co.nz/national/108363904/maori-soldiers-great-war-battle-for-equality> Nov 9, 2018.

⁷⁸Johnson, D. “*Executed at dawn: British firing squads on the western front 1914–18.*” (Stroud: The History Press, 2015).

⁷⁹ at 79.

126. As a private, Victor did not have a right of appeal.
127. It was rare that officers were found guilty of committing war crimes.⁸⁰
128. On the occasion they were found guilty the punishment was usually demotion.⁸¹
129. After the War, most officers found guilty were mostly pardoned and returned to rank.⁸²
130. It was even more rare for officers to be executed.
131. Throughout the War 306 soldiers were executed.⁸³
132. Of the 306 executed, only three were officers.⁸⁴
133. All of the five New Zealand soldiers executed in the War were privates, Victor included.⁸⁵
134. When privates were found guilty, considerations that decided whether they would face death included matters that had no relation to their personal conduct.
135. This included if their unit was well-behaved and whether this meant they should be made an example of.⁸⁶

⁸⁰ at 79.

⁸¹ at 79.

⁸² at 79.

⁸³ 'The executed five Great War Story' (Ministry for Culture and Heritage, updated 1 May 2020) URL: <https://nzhistory.govt.nz/media/video/executed-five-great-war-story>.

⁸⁴ at 84.

⁸⁵ at 84.

⁸⁶ Tomasini, F. (2017). *Remembering and disremembering the dead: Posthumous punishment, harm and redemption over time*. (London, Palgrave Macmillan) At 44.

136. Treatment for shell-shock also differed between officers and privates.
137. New Zealand soldiers followed the British class-based model, in which shell shock among enlisted men was likely to be regarded as a variant of hysteria, while officers were more likely to be diagnosed as suffering from neurasthenia.⁸⁷
138. Neurasthenia was seen as an acceptable and honourable malady to suffer from and suffered less stigma.⁸⁸
139. The neurasthenic officer was often to be sent home to convalesce in a calm environment with rest and good food.⁸⁹
140. Privates who suffered from hysteria were treated quickly and returned to battle lines.⁹⁰
141. Victor was only treated for 19 days before he was returned to battle.⁹¹
142. The treatment for hysteria was defined as 'disciplinary treatment'.
143. This involved shaming, physical re-education and electric shock.⁹²

⁸⁷ Horrocks, J. "*The Limits of Endurance: Shell Shock and Dissent in World War One*". (The Journal of New Zealand Studies, 2018) at 45.

⁸⁸ Horrocks, J. "*The Limits of Endurance: Shell Shock and Dissent in World War One*". (The Journal of New Zealand Studies, 2018) at 45.

⁸⁹ Grogan, S. *Shell-shocked Britain: The First World War's legacy* (2014) for Britain's mental health. <http://public.ebookcentral.proquest.com/choice/publicfullrecord.aspx?p=1832005>.

⁹⁰ at 71.

⁹¹ at 8.

⁹² Howorth, P. "*The treatment of shell-shock.*" (Psychiatric Bulletin, Volume 24, 2000) at 226.

144. Ethnicity was also a crucial factor in determining the treatment of soldiers.⁹³
145. Assumptions about the social and ethnic characteristics of soldiers translated into poor treatment.
146. Prejudices meant many of these soldiers were assumed to be “malingering” or faking their injuries to get out of battle.⁹⁴

Pardon for Soldiers of the Great War Act 2000

147. Prior to the enactment of the Pardon for Soldiers of the Great War Act 2000 (“the Act”) the then Shipley government of the time commissioned an enquiry into the executions.
148. This was undertaken by Justice Edgar Somers, whose report looked at the written evidence as present in the case files and took a middle ground approach to recommend apologies for the executions.
149. Notwithstanding the recommendation, the Act does not contain any apology for the executions.
150. The absence of an apology fails to acknowledge that the Crown were responsible for Victor’s death.
151. By failing to acknowledge responsibility, the Act thereby removes any culpability on the part of the Crown.

⁹³ Joanna Bourke. *“Effeminacy, Ethnicity and the End of Trauma: The Sufferings of ‘Shell-Shocked’. Men in Great Britain and Ireland, 1914-39”* (Journal of Contemporary History, Vol. 35, 2000) at 61

⁹⁴ at 94.

152. Section 4 of the Act defines the purpose of the Act as “(a)to pardon five soldiers of the New Zealand Expeditionary Force who served as volunteers in the Great War and who were executed in one case for mutiny and in the other four cases for desertion; and (b)to remove, so far as practicable, the dishonour that the execution of those five soldiers brought to those soldiers and their families”.
153. Section 4 imports blame on those soldiers.
154. Section 4 fails to acknowledge that blame should rightly be attributed to failings of the Crown: not Victor.
155. Section 10 of the Act concerns the ‘effect of pardons’ and says, “The pardons effected by sections 5 to 9 recognise that the execution of the five soldiers to whom those pardons are granted was not a fate that they deserved but was one that resulted from (a)the harsh discipline that was believed at the time to be required; and(b)the application of the death penalty for military offences being seen at that time as an essential part of maintaining military discipline”.
156. Section 10 does not acknowledge fault on behalf of the Crown: the Crown failed to produce the medical records at Victor’s trial, which directly led to him being executed.

Prejudice

157. The Crown’s failure to provide the medical evidence that should have been provided at Victor’s trial directly led to Victor being executed.
158. Victor’s execution has resulted in the following prejudice:
 - (a) Unjustified death.
 - (b) Stigma.

- (c) Victor being branded as a coward.
- (d) Complete loss of mana – for Victor and his descendants.
- (e) The end of Victor’s whakapapa line.

Findings and Recommendations

159. The claimants seek the following:

- (a) That this claim is well-founded.
- (b) That the Crown failed in its duty to protect and rehabilitate Victor from shell shock.
- (c) That Victor’s execution was completely avoidable.
- (d) That Victor’s execution was unwarranted.
- (e) That the Act wrongly removes culpability from the Crown.
- (f) That the Act fails to acknowledge its failures including:
 - i. The failure to adhere to its own practices, including the failure to produce Victor’s medical records.
- (g) That the Army did not treat its soldiers equally.
- (h) Any other recommendations the Tribunal deems appropriate.

PART TWO: THE MAORI BATTALION

Crown Duties

160. Under the Treaty of Waitangi the Crown's duties included:
- (a) A duty to ensure that those who served the New Zealand Government during times of armed conflict were taken care of by the New Zealand Government both in preparation for, during and after the armed conflict had ceased.
 - (b) A duty to honour the 'price of citizenship' paid for by the battalion and to give Māori all the same rights, privileges and treatment that Pakeha New Zealanders enjoy.

Crown Breaches

161. The Crown failed to:
- (a) Adequately prepare Maori soldiers for war;
 - (b) Adequately take care of Maori soldiers during times of armed conflict;
 - (c) Adequately treat Māori soldiers as equal; and
 - (d) Adequately take care of Maori soldiers once the armed conflict had ceased.
162. Further Crown failings included:
- (a) The failure to honour the 'price of citizenship' paid for by the Battalion by continuing to discriminate against Māori and relegate them to second-class citizens in New Zealand.
 - (b) The failure to treat returning Battalion soldiers with the proper respect and dignity which they deserved.
 - (c) The failure to implement a system of equal and proportionate land distribution to both Maori and non-Maori upon their return from armed conflict.

- (d) The failure to ensure that any land balloting system properly reflected tikanga and whakapapa associated to land allocated under the Rehabilitation schemes.
- (e) The failure to pay adequate consideration for land taken by Maori for the Rehabilitation schemes.
- (f) The failure to ensure that land gifted by Maori was properly assigned to those Maori whom it was intended would receive that land, in particular their whanaunga.
- (g) The failure to allow Māori to lead their own battalion.
- (h) The failure to adequately and properly support the Maori War Effort Organisation (“MWEO”).
- (i) The deliberate undermining of the MWEO.
- (j) The failure to provide Maori nurses to care for Maori soldiers despite recognising the need and providing New Zealand pakeha nurses for care for New Zealand soldiers.
- (k) The failure to adequately rehabilitate Maori soldiers (in various forms) into New Zealand society.
- (l) The failure to provide adequate care (in various forms) for Maori soldiers living in rural areas.

Background to the Battalion: an act of sovereignty

163. Captain Leaf of Nga Puhi insisted that the Battalion be called the 28th (Māori) Battalion because He Whakaputanga/Declaration of Independence was signed on 28th October 1835 and the subsequent naming of the Battalion as the 28th (Māori) Battalion reflected how Māori viewed the Battalion: an entity comprised of men volunteering on their own accord, with pride and mana, giving effect to their own way of life, exercising their tino rangatiratanga.
164. The Battalion represented everything that Māori wanted and thought had been guaranteed to them under both the Declaration of

Independence and the subsequent signing of Te Tiriti o Waitangi: independence, mana and tino rangatiratanga and if those concepts had not been honoured by the Crown, they were willing to fight to have them recognised.

C Company

165. The men of C Company of the Battalion were drawn from communities throughout the Tairāwhiti.⁹⁵
166. The total number of Māori troops and nurses from the Tairāwhiti region who served overseas in 1939 – 1945 was approximately 1100, from a Māori regional population of just over 11,000 (i.e. 10%).⁹⁶
167. Every person was a volunteer.⁹⁷
168. On 11th September 2020 the last remaining C Company veteran, Pine Ratapu, died.
169. At least half of Māori men in the Tairāwhiti region of military age were part of the 2nd New Zealand Expeditionary Force (“2NZEF”), mainly in C Company, while many more attempted to enlist but failed for a variety of reasons.⁹⁸
170. Tairāwhiti Māori and therefore C Company had one of the highest casualty and death rate per capita of any district with 70% killed,

⁹⁵ Nga Taonga A Nga Tama Toa Trust, *C Company Memorial House Opening and Dedication and launch of the Māori Edition of Nga Tama Toa: The Price of Citizenship*, 15 November 2015, p. 5.

⁹⁶ at 95.

⁹⁷ at 95.

⁹⁸ at 95.

wounded or taken prisoner.⁹⁹ The Second World War took from the Tairāwhiti the cream of the men available from their marae, kainga and whānau, the effects of which are still being felt today. Today the sacred paepae of many Tairāwhiti marae are nearly empty and Te Reo was nearly lost.

The Battalion

171. The Battalion was part of the 2NZEF during the Second World War (1939-45). A frontline infantry unit made up entirely of volunteers, the Battalion usually contained 700-750 men, divided into five companies. In total, almost 3600 men served overseas with the Māori Battalion between 1940 and 1945. Of these, 649 were killed in action or died on active service – more than 10% of the 6068 New Zealanders who lost their lives serving with 2NZEF in the Middle East and Europe. In addition, 1712 men were wounded and 237 taken prisoner.

The Price of Citizenship

172. There are several reasons why Māori volunteered to serve in the 28th (Māori) Battalion, but the influence that Tā Apirana Ngata played was instrumental, as evidenced by Archbishop Brown here:

“Just like the others I signed up. And like many others I was underage when I enlisted. My father was the recruitment officer and he obviously knew my age but he filed things so that I could get in. That was because of Ngata's influence. Ngata's pressure played a huge part in people from the East Coast joining the Māori Battalion. Ngata was called the Father of the Maon Battalion because he pushed it”.¹⁰⁰

⁹⁹ at 95.

¹⁰⁰ Wai 2500, #5 Paragraph 10

173. One promise made by Tā Apirana Ngata was particularly influential and became known as “the price of citizenship.”
174. The promises made during the recruitment for volunteers rested on this premise, leading Apirana Ngata, a Crown Minister at the time, to further comment that “we will lose some of the most promising of our young leaders... But we will gain the respect of our Pakeha brothers and the future of our race as a component and respected part of the New Zealand people will be less precarious.”
175. However, upon their return from service, Māori soldiers found that they came back to a New Zealand which:
- (a) remained racially divided, in which Māori continued to live on the “fringes” of society; and
 - (b) Crown policies and structures did not enable the promise of equality to be fulfilled, but instead added further discrimination and injustice.
176. Archbishop Brown explained his understanding of the price of citizenship in his evidence:

“It is my absolute belief that the Māori Battalion earned Māori the respect of Pakeha. It is also my absolute belief that there was a kawenata made between Māori and the Crown that by going to war that there would be equality between the two peoples. For me that was the promise.

Māori and Pakeha were fighting for different things. Pakeha were fighting because of their connection to the ‘motherland’. They were not fighting for equality in New Zealand, but Māori were. The equality that we continue to strive for today was laid out and began when the

Pioneer Māori Battalion first fought and was carried on with when the Māori Battalion went to fight. That is the legacy that all Māori today owe these soldiers. These Māori fought for it and should be honoured. Te Tiriti was meant to provide equality to Māori but it wasn't delivered. By fighting we reinforced our claim to equality.

Ngata and his korero of 'earning the respect of the Pakeha' would have been a major reason why many of them initially joined the Māori Battalion. After that the Crown were guaranteed to get supplied with reinforcements from Māori because *we had to*, especially when Ngata would say things to us like, 'go, fight, die and uphold the mana of those who went before you'. Our mana was on the line: both for those who had gone before us and for those families at home. It was our sense of mana and loyalty to tipuna and to family that would guarantee Māori would continue to enlist."¹⁰¹

177. Archbishop Brown further elaborated in his brief on how these soldiers were treated when they returned from the war:

"I think the Crown had a duty to the Māori Battalion to look after them when they got back but I think the Crown just abandoned them instead. I think there were benefits that the Māori Battalion should have received but never did. The Crown never went out of its way to let them know what was available to them. I experienced this first hand when I got back from war and I've always considered this to be racism. This was another *hara*.

When you were in the army they kept a portion of your pay, it was like superannuation. When I came back I went in to get mine. Kepa Paenga came in with me to get his too. We had to go to Auckland to get it, our

¹⁰¹ Wai 2500 #A005 at 37.

gratuity. For me, it came across as the sum total of our connection to the Crown and to the army. I remember going in to get ours. I remember the service we got and the service the Pakeha person before us received compared to us. The person behind the counter seemed interested in him, made conversation with him and seemed to make an effort to spend time with him and to make sure he got everything that he was entitled to. We didn't feel like that. Nor were we made to feel like that. There was no conversation between us. She didn't explain us, nor tell us what we were entitled to. It was 'sign here' and good bye.

I'm 91 and I still remember how we were treated that day when we went into that office. For me it summed up how I felt the Crown viewed Māori soldiers and the effort we put in towards the war. For me it minimalized our efforts and belittled the sacrifices that were made by Māori during the war and made it clear for me that despite the promises that were made before we left, things back home hadn't really changed. That's why I agree that the Māori Battalion didn't get the recognition that they deserved.”¹⁰²

178. Historian Monty Soutar described that the high number of Māori recruits:

“reflected an eagerness not only to prove that they were equal to their pakeha comrades in war but also to earn the full benefits and privileges of New Zealand citizenship, for even in 1939 the sense of equality and acceptance was marginal.”¹⁰³

¹⁰² Wai 2500 #A005 at 32.

¹⁰³ Wai 2500 #A247 at 192.

179. Turi Pohatu Stone explained in his brief of evidence how the soldiers of C Company and their whanaunga understood that their military service created an implied contract.

“When I visited my name sake’s grave I looked at all the other Maori names on the headstones around him. I knew all the names: names of families from Muriwai and Manutuke. Names of whanaunga. I saw them and wondered why on earth they were here, so far from home. I wondered what it was that motivated them to leave home to come to a place so far away. I wondered what it must have been like to be in the middle of battle, to see your friends, your whanaunga dying around you. I wondered what must have motivated them to charge and wondered what it must have been like to take life. I wondered if they were happy to be lying where they were or if they longed to be taken home?”

For me there was an implied contract between Maori and the Crown. The contract was, we’ll sacrifice our lives for you, the Crown, and in return you give our people a better life. This contract has been labelled ‘the price of citizenship’ but I don’t like that label. It shouldn’t be called ‘the price of citizenship’: it should be called ‘the price of *equal* citizenship’. And if that’s the case then the Crown has broken this contract because we don’t have equal citizenship.

15 years after visiting those graves I still wonder what it was that they were fighting for. I cannot pretend to know why they were fighting because I wasn’t alive then. I do not doubt that adventure played a large part in why my name sake and other tipuna left their homes. But equally if a Crown official was at the dock and said to them before they got on that boat that their sons, nephews and mokopuna would fill the prisons, live in sub-standard housing, fill our hospital wards, fill the waiting rooms of Work and Income New Zealand, that they would not get any farms in Muriwai under the land development scheme, be over

represented in all the wrong areas and that they would not be welcomed into RSA's, then I doubt very much that many of them if any would have got on that boat.

I have thought about what his death and the death of so many of our rangatira means for Maori today. Their death and sacrifice has to mean something because we won't accept that they died for nothing. My name sake and our rangatira didn't die so that Maori could be in the position they are in today. That's not the contract they had with the Crown. They were fighting for the opposite of what Maori have today. And until there is equality in these areas among Maori and Pakeha then it cannot be said that there is equal citizenship because how can there be when one people are so clearly better off than another?

To get our Maori people to fight Ta Apirana Ngata once asked, 'how can we ever hold up our heads, when the struggle is over, to the question, "Where were you when New Zealand was at war?"'. The question for the Crown now is how can it hold its head up and what is it doing now that we the Maori people struggle? Where is the reciprocity?

For my family and I this inquiry is about acknowledgement.

Acknowledgement about the sacrifice that my name sake and my tipuna went through, both overseas and at home.

Acknowledgement that the crown has not lived up to it's part of the contract.

Acknowledgement that the Crown has much to do to fulfil the promises it made to our tipuna."¹⁰⁴

¹⁰⁴ Wai 2500 #A004.

180. The expectation that these soldiers would return to a more equal New Zealand was not one that was blindly offered up by Māori leaders. The Crown on numerous occasions confirmed that it would uphold its side of the bargain.

181. Hon Edward Cullen, an MP for Hawkes Bay stated that:

“The magnitude of the sacrifice that Māori were being called on to make was fully appreciated and on a population basis, the Māori people were making a greater contribution than the Pākehā.”¹⁰⁵

182. Most importantly Prime Minister Peter Fraser made a number of addresses throughout and after the war that indicated that the crown would uphold its treaty of Waitangi duty and recognise the sacrifices Māori made by giving them full rights of citizenship and equality of treatment.

183. In 1940 at celebrations for the hundred year anniversary of the Treaty of Waitangi, Paikea stated that Māori had grievances that ought to be settled, but Māori would still support Britain in the war.¹⁰⁶ Fraser, anticipating that past injustices would be discussed at the celebrations, made a speech which addressed the subject:

“The Pākehā of today sympathised with the Māori over the mistakes and misunderstandings of New Zealand’s first 100 years. But efforts have been made to obliterate the effect and the memory of those mistakes through which the Māori people often suffered and suffered unjustly. In regard to all injustices, It is not much good brooding over

¹⁰⁵ Wai 2500 #A247 at 196.

¹⁰⁶ Wai 2500 #A247 at 295.

ancient wrongs. It is more sensible and efficient to try to put them right, and endeavours are repeatedly made to that end. At the close of 100 years we see signs of great progress for both races. We are seeing benefits in regards to education, the Māori people are entitled to as good as the European people. Their schools and their education opportunities are becoming very good so that their children can receive a fair opportunity. Also in regard to health and social insurance, provision against unemployment and poverty generally and the question of housing. It has been attended too, but a great deal more has to be done and will be done”.¹⁰⁷

184. At these centennial celebrations, Fraser announced that a commission would be established to investigate Māori grievances and ‘see how the trouble of the past could be adjusted.’ The announcement of this commission was an example of the acknowledgement that Māori grievance would be addressed as a result of sacrifices in the war.

185. At a gathering at Uepohatu marae in Ruatoria in 1947 to honour the fallen soldiers of the district, Prime Minister Fraser again committed to a united and equal New Zealand following the war:

“I hope that the spirit of unity, the spirit of veneration in which we are meeting here today can be carried on. During the war period, Māori and Pākehā were united completely. They were one, and they should remain one. I can only in conclusion extend once more our sympathy to those who have been bereaved during the war. They have the consolation that their lives have not been laid down in vain..If the spirit that prevailed during the war period is present.We are united in that

¹⁰⁷ Ngā Tāonga Kōrero, Treaty Of Waitangi Centenary Celebrations - The opening of the new meeting house 1940. Ref Number: 36195.

and I hope that as part of the future of our country is concerned, that that unity will grow and increase.”¹⁰⁸

186. Similarly, Te Arawa were repeatedly told during the war by the Government and British dignitaries that their sacrifices in the war would be recognised.
187. In 1943 the Governor-General told an assembled crowd during the opening of meeting houses at Te Awahou and Ohinemutu that Māori had ‘proved they were prepared to assume both the heavy burden of citizenship as well as the privileges.’¹⁰⁹
188. At the same meeting Prime Minister Fraser added that Māori and Pākehā were now bound by ‘bonds that can never be severed in the future’.¹¹⁰
189. Despite the sacrifices made by the soldiers of the Māori battalion the discrimination perpetuated by the Crown and its subsequent effect on Māori still exist to this day.
190. 80 years on from when these soldiers departed to fight in the hopes that their descendants would have an opportunity to live equally and equitably with Pākehā, Māori are still treated as second-class citizens within their own country.
191. More than 3,600 men fought as part of the 28th (Māori) Battalion in order to receive a fair and equal place for Māori, thereby paying the ‘price of citizenship’ many times over:
 - (a) 1,712 were wounded.

¹⁰⁸ Ngā Tāonga Kōrero, Uepohatu opening: Prime Minister Peter Fraser. Ref: 43117.

¹⁰⁹ Wai 2500 #A247 at 295.

¹¹⁰

- (b) 267 were taken prisoner or went missing;
- (c) 649 of these men were killed and paid the ultimate price.

192. The men of the 28th (Māori) Battalion did not fight to have second class citizenship - but that is what they discovered upon their return as expressed by Nolan Raihania:

“I also want the inequality that we experienced when we came back to be addressed too. I was made to feel like a second class citizen when I came back from war and I was made to feel that way for several years after the war ended. We all did. That needs to be acknowledged and an apology given”¹¹¹.

193. More concerning soldiers of the 28th (Māori) Battalion felt the racism immediately upon their return:

“We felt the racism as soon as we got off the boat. We wanted to drink to celebrate being home but the law at the time didn’t allow us to buy beer to take away. If we wanted to do that we had to get our Pakeha mates to buy the beer for us. They made ‘special allowances’ for us when we first got back from war but I remember thinking that this wasn’t right that we didn’t have the same rights as Pakeha. I know that Ta Ngata brought in that law and I understand the reasons behind it, but I didn’t agree with it. It didn’t seem fair and I understand the reasons behind it, but I didn’t agree with it. It didn’t seem fair and I remember being uneasy about it. I felt that we were being treated differently to the Pakeha. And the truth is we were. What irritated me about it was that a Māori boy could stop a bullet just as good as a

¹¹¹ Wai 2500, #A3(a) paragraph 6

Pakeha, and too many of us did, but that didn't seem to matter when we got back. It still irritates me to this very day.”¹¹²

194. Despite the price paid by these soldiers, the Crown has failed to uphold their side of the bargain. Māori over-representation in all negative socio-economic indicators is a clear illustration of the effects of this discrimination:

- (a) Poor health, injury and illness.
 - i. A study from 2007-2015 found that after adjusting for age, Māori patients who get cancer are twice as likely to die from it than non-Māori patients.¹¹³
 - ii. In respect of cancer, Māori adults aged 25 and over had significantly higher cancer registration rates in 2012-14 than non-Māori adults for total cancers. The total-cancer mortality rate among Māori adults is more than one-and-a half times as high as that among non-Māori adults.¹¹⁴
 - iii. In respect of meningococcal disease the frequency of meningococcal disease notifications in 2010-12 was higher for Māori than for the total New Zealand population for all age groups. The meningococcal disease notification rate for Māori infants aged less than one year old was 1.8 times as high as that of the total New Zealand rate..¹¹⁵

¹¹² Wai 2500, #A003 paragraph 37

¹¹³ Jason Gurney, Shelley Campbell, Chris Jackson, Diana Sarfati *Equity by 2030: achieving equity in survival for Māori Cancer patients* New Zealand Medical Journal (29 Nov 2019)

¹¹⁴ Ministry of Health. *Tatau Kabukura: Māori Health Chart Book 2015* (3rd ed, Ministry of Health, Wellington, 2015) at 32.

¹¹⁵ Ministry of Health. *Tatau Kabukura: Māori Health Chart Book 2015* (3rd ed, Ministry of Health, Wellington, 2015) at 40.

- iv. In respect of cardiovascular disease for the 2010-2012 period the total cardiovascular disease mortality rate among Māori was more than twice as high as that among non-Māori¹¹⁶
- v. In 2012–14, Māori were more than one-and-a-half times as likely as non-Māori to be hospitalised for cardiovascular disease.¹¹⁷
- vi. In respect of stroke mortality, the 2010-2012 stroke mortality rate among Māori was about one-and-a half times as high as that of non-Māori.¹¹⁸
- vii. In 2012-2014 the stroke hospitalisation rate among Māori was more than one-and-a-half times as high as that of non-Māori.¹¹⁹
- viii. In respect of heart failure the 2010-2012 heart failure mortality rate among Māori was more than twice as high as that of non-Māori, and Māori were about four times as likely as non-Māori to be hospitalised for heart failure during 2012- 2014.¹²⁰
- ix. In respect of rheumatic heart disease, the mortality rate among Māori was over five times as high as that of non-Māori for 2010-2012, and the rheumatic heart disease hospitalisation rate among Māori was almost five times as high as

¹¹⁶ Ministry of Health. *Tatau Kabukura: Māori Health Chart Book 2015* (3rd ed, Ministry of Health, Wellington, 2015) at 30.

¹¹⁷ Ministry of Health. *Tatau Kabukura: Māori Health Chart Book 2015* (3rd ed, Ministry of Health, Wellington, 2015) at 30.

¹¹⁸ Ministry of Health. *Tatau Kabukura: Māori Health Chart Book 2015* (3rd ed, Ministry of Health, Wellington, 2015) at 30.

¹¹⁹ Ministry of Health. *Tatau Kabukura: Māori Health Chart Book 2015* (3rd ed, Ministry of Health, Wellington, 2015) at 30.

¹²⁰ Ministry of Health. *Tatau Kabukura: Māori Health Chart Book 2015* (3rd ed, Ministry of Health, Wellington, 2015) at 30.

that of non-Māori for 2012-2014.¹²¹

- x. In respect of asthma during the 2012-2014 period, Māori aged 5–34 years were almost twice as likely as non-Māori in the same age group to have been hospitalised for asthma.¹²²
- xi. In respect of diabetes Māori adults were about one-and-a-half times as likely as non-Māori adults to have been diagnosed with diabetes after 25 years of age in 2013/14; that is, the self-reported prevalence of type 2 diabetes for Māori was about 50 percent higher than that for non-Māori.¹²³
- xii. In respect of dental health at school entry (5 years of age), Māori children had a higher mean number of missing or filled teeth than non-Māori children in 2013, and were less likely to be caries-free.¹²⁴ In 2013/2014 among adults with natural teeth, Māori adults were more likely than non-Māori to report that they had never visited a dental health care worker at all, or usually only visited a dental health care worker for dental problems.¹²⁵
- xiii. In respect of infant health, the prevalence of low birthweight was slightly higher for Māori than non-Māori in 2010–12. The Māori infant

¹²¹Ministry of Health. *Tatau Kabukura: Māori Health Chart Book 2015* (3rd ed, Ministry of Health, Wellington, 2015) at 31.

¹²² Ministry of Health. *Tatau Kabukura: Māori Health Chart Book 2015* (3rd ed, Ministry of Health, Wellington, 2015) at 37.

¹²³ Ministry of Health. *Tatau Kabukura: Māori Health Chart Book 2015* (3rd ed, Ministry of Health, Wellington, 2015) at 39.

¹²⁴ Ministry of Health. *Tatau Kabukura: Māori Health Chart Book 2015* (3rd ed, Ministry of Health, Wellington, 2015) at 45.

¹²⁵ Ministry of Health. *Tatau Kabukura: Māori Health Chart Book 2015* (3rd ed, Ministry of Health, Wellington, 2015) at 46.

mortality rate was about one-and-a-half times as high as that of non-Māori. The SUDI (Sudden unexpected death in infancy) rate among Māori infants was nearly five times as high as that among non-Māori infants. The SIDS (Sudden infant death syndrome) rate for Māori infants was about three times that of non-Māori infants.¹²⁶

- xiv. In respect of unintentional injuries, Māori children aged 0–14 years had an unintentional injury mortality rate three-and-a-half times that of non-Māori children in the same age group in 2010–12. Māori adults aged 15–64 years had an unintentional injury mortality rate more than one-and-a-half times that for non-Māori adults in the same age group.¹²⁷
- xv. Māori are more likely to sustain serious injury, but less likely to access ACC services.¹²⁸
- xvi. Māori have among the highest prevalence rates of gout in the world. In New Zealand Māori are disproportionately over-represented in terms of suffering gout: gout affects 10-15% of Māori men, compared with 1-2% of New Zealand European men.¹²⁹

¹²⁶ Ministry of Health. *Tatau Kabukura: Māori Health Chart Book 2015* (3rd ed, Ministry of Health, Wellington, 2015) at 48.

¹²⁷ Ministry of Health. *Tatau Kabukura: Māori Health Chart Book 2015* (3rd ed, Ministry of Health, Wellington, 2015) at 50.

¹²⁸ Accident Compensation Corporation, 'Investing in New Zealanders' Annual Report 2017, page 26.

¹²⁹ Winnard, D., Wright, C., Taylor, W. J., Jackson, G., Te Karu, L., Gow, P. J., Dalbeth, N. "National prevalence of gout derived from administrative health data in Aotearoa New Zealand" (2012) *Rheumatology*, 51(5), 901-909.

- xvii. In New Zealand, Rheumatic Fever is now almost exclusively a disease affecting Māori.¹³⁰
 - xviii. Māori do not have the same oral health status as non-Māori across all age groups.¹³¹
 - xix. Of all ethnicities in New Zealand, Māori had the highest reports of meningococcal disease in 2013.¹³²
- (b) Prison population.
- i. Māori make up 52.3% of the prison population despite accounting for only 15% of the general population.¹³³
 - ii. One in every 142 Māori New Zealanders is in prison, this compares with one in every 808 non-Māori.¹³⁴
 - iii. For females the statistics are worse. Māori females make up 63% of the female prison population.¹³⁵
- (c) Poverty and unemployment.
- i. In 2013 60% of Māori wage earners earned below the Living wage (then \$18.40 an hour).¹³⁶
 - ii. Sole Māori parents are over-represented among those earning the minimum wage.¹³⁷

¹³⁰ Best Practice Journal, *Rheumatic fever in Māori: what can we do better?* BPJ:37 (2011) at 22.

¹³¹ Inequities in oral health: Implications for the delivery of care and health promotion. *New Zealand Dental Journal* 88: 132–138 and Treasure ET, Whyman RA. 1995.

¹³² L Lopez and J Sherwood “The Epidemiology of Meningococcal Disease in New Zealand in 2013” (Institute of Environmental Science and Research Ltd (ESR), Wellington) at 18.

¹³³ Department of Corrections *Prison facts and Statistics* (June 2020)

¹³⁴ Stuff *Crime and Punishment* (2020)

<https://interactives.stuff.co.nz/2018/05/prisons/crime.html#/4>

¹³⁵ Stuff *Crime and Punishment* (2020)

<https://interactives.stuff.co.nz/2018/05/prisons/crime.html#/4>

¹³⁶ The Treasury *Living Wage Information Release* November 2013

¹³⁷ M. Claire Dale, *Whakapono. End child poverty in Māori whānau* Child Poverty Action Group (2017)

- iii. The average hourly earning for Māori in 2016 was \$23.48 while for Pākehā it is \$28.66.¹³⁸
 - iv. The Māori unemployment rate in 2016 was 11.9% while for Pākehā it was only 4.1%.¹³⁹
 - v. 23.3% of Māori children live in households that experience material hardship, while the national average is only 13.3%.¹⁴⁰
 - vi. In 2006 For Māori couples with children, the average income was \$67,000 while the total average income of couples with children in New Zealand was \$79,000.¹⁴¹
- (d) Crime and discrimination in the justice system.
- i. Māori are the most likely ethnic group to be a victim of crime.¹⁴²
 - ii. Māori are the most likely ethnic group to commit crime, committing 43.2% of crimes in 2019.¹⁴³
 - iii. A study in 2001 found that 80% of Maori pleaded guilty in court while only 73% of Pakeha pleaded guilty. Of non-guilty pleas, 24% of Maori were found to be guilty while only 21% of non-Maori were found guilty.¹⁴⁴
 - iv. Between 1981 and 1999 24.6% of all charges against Europeans in the lower courts were acquitted, while the figure for Maori was 20.4%.¹⁴⁵

¹³⁸ M. Claire Dale, *Whakapono. End child poverty in Māori whānau* Child Poverty Action Group (2017)

¹³⁹ M. Claire Dale, *Whakapono. End child poverty in Māori whānau* Child Poverty Action Group (2017)

¹⁴⁰ Stats NZ, *Child Poverty Measures*, 2018.

¹⁴¹ Te Puni Kokiri *Ngā Whānau me nga kainga Māori* 2006

¹⁴² Ministry of Justice, *New Zealand Crime and Victims Survey October 2018-September 2019* .(2020)

¹⁴³ www.policedata.nz, *Proceedings(offender demographics)*

¹⁴⁴ Paulin, Judy (2002) Ministerial Correspondence, Ministry of Justice

¹⁴⁵ Paulin, Judy (2002) Ministerial Correspondence, Ministry of Justice

- v. From 1996 to 2004, although there were more apprehensions of Europeans than Maori for violent offences, Maori made up 47% of convictions, while Europeans only made up 38%.¹⁴⁶
 - vi. In 2015 in the Waikato 55% of minor offences committed by Pakeha were let off with a pre-charge warning, compared to 24% for Maori.¹⁴⁷
 - vii. In 2015 it was recorded Maori were eight times as likely to be imprisoned for an offence than Europeans.¹⁴⁸
 - viii. The police commissioner in 2015 admitted to “unconscious bias” in the police force which led to Maori youth being arrested at three times the rate of Pakeha.¹⁴⁹
 - ix. In 2018, 66% of people arrested below 18 and under were Māori.¹⁵⁰
- (e) Reliance on social services.
- i. Māori make up 36% of benefit recipients while only making up 15% of the population.¹⁵¹
 - ii. 22 percent of Māori sole parents spend time on the domestic purposes benefit between the ages of 21 and 30 while only 7 percent of non-Māori do.¹⁵²

¹⁴⁶ Ministry of Justice (2006) *Conviction and Sentencing of Offenders in New Zealand: 1995-2004*.

¹⁴⁷ Independent Police Conduct Authority *Review of Pre-charge Warnings* (14 September 2016, Wellington) at [120]–[121] and [127]–[130].

¹⁴⁸ Action Station. *They're Our Whanau* (2018) University of Otago Medical School. P. 19

¹⁴⁹ Action Station. *They're Our Whanau* (2018) University of Otago Medical School. P. 22

¹⁵⁰ Dunlop, M. *Gap between Māori and non-Māori arrested continues to grow*. RNZ. (1 July, 2019)

¹⁵¹ Welfare Expert Advisory Group *Welfare System: Statistics* (14 November 2018)

¹⁵² Simon Collins *Māori face longer on benefits*. (19 May 2011) NZ Herald.

- iii. Māori spend an average of 21 months on welfare between the ages of 21 and 30 compared with just 8.5 months for non-Māori.¹⁵³
- (f) Children in state care.
 - i. Māori children are strongly overrepresented in state care. In August 2020 68% of children in state care are Māori.¹⁵⁴
 - ii. As at August 2019, tamariki Māori were two and a half times more likely to be reported to Oranga Tamariki.¹⁵⁵
 - iii. Māori children have suffered decades of physical and emotional abuse while being in the care of the state, as evidenced by the royal commission inquiry into historical abuse.
- (g) Land ownership.
 - i. When the Treaty of Waitangi was signed, the vast majority of the country's land was in Māori hands.
 - ii. By 2011, only 5% of the country's land mass was still owned by Māori.¹⁵⁶
- (h) Educational attainment.
 - i. In 2018, 73% of Pakeha students stayed until Year 13, only 54% of Māori stayed until year 13.¹⁵⁷

¹⁵³ Simon Collins *Māori face longer on benefits*. (19 May 2011) NZ Herald.

¹⁵⁴ Oranga Tamariki, *Care and protection statistics*, (28 August 2020)

¹⁵⁵ Office of the Minister for Children “Enhancing the Wellbeing of Tamariki and Rangatahi Māori” (Cabinet Paper)

¹⁵⁶ Judge W Isaac. *Māori Land Today*. Judge's Corner (May 2011)

¹⁵⁷ UniversitiesNZ, *Achieving Parity for Māori and Pasifika - the University Sector View*. (August 2018)

- ii. 40% of these Pakeha left school with UE achievement while only 13% of Māori left school with UE achievement.¹⁵⁸
 - iii. 35% of these pakeha students went on to University, with 27% completing their degree. Only 11% of Māori went on to university, with 7% finishing their degree.¹⁵⁹
 - iv. In 2019, 90.4% of Pākehā and 94.5% of Asian students in Year 11 achieved Level 1 of the National Certificate of Educational Achievement (NCEA), while only 78.3 % of Māori gained the qualification.¹⁶⁰
 - v. Māori are suspended and excluded from schools at a higher rate than any other ethnic group.¹⁶¹
- (i) Obesity.
 - i. New Zealand has one of the highest rates of obesity among developed countries, with one in three adults being classified as obese. Māori face a disproportionate health burden attributable to high rates of overweight and obesity.¹⁶²
 - ii. 48.2% of Māori adults are obese, in comparison with only 29.1% of Europeans.¹⁶³
 - (j) Life expectancy.
 - i. Māori have a life expectancy that is seven years below that of Pakeha.
 - (k) Alcoholism and drug use.

¹⁵⁸ UniversitiesNZ, *Achieving Parity for Māori and Pasifika - the University Sector View*. (August 2018)

¹⁵⁹ UniversitiesNZ, *Achieving Parity for Māori and Pasifika - the University Sector View*. (August 2018)

¹⁶⁰ Education Counts 2020, Ministry of Education.

¹⁶¹ Education Counts 2020, Ministry of Education.

¹⁶² R Theodore, et al, “Challenges to addressing obesity for Maori in Aotearoa/New Zealand”, 10 August 2015, *Australasian and New Zealand Journal of Public Health*.

¹⁶³ Ministry of Health *Adult Obesity Statistics* (12 November 2019)

- i. Māori are 1.8 times more likely to “binge drink”, or have a hazardous drinking pattern when compared to non-Māori drinkers.¹⁶⁴
- ii. Māori are 2.5 times more likely to die from an alcohol-attributable death when compared to non-Māori.¹⁶⁵
- iii. Rates of fetal alcohol spectrum disorder are estimated to be much higher than average in communities with a prevalence of hazardous drinking.¹⁶⁶ In a 2015 study, an estimated 34% of Māori women consumed alcohol while pregnant, in comparison to 20% of European women.¹⁶⁷
- iv. Young Māori men aged 15-24 years suffer more harm from living in areas with high numbers of liquor outlets in comparison to European men living in communities with the same number of liquor outlets.¹⁶⁸
- v. Māori comprise approximately half of New Zealand’s prison population. Police data shows that 31-46% of all offences are committed by persons affected by alcohol.¹⁶⁹
- vi. Alcohol and drug disorders (abuse and dependence) affect many Māori, with 1 in every 3 Māori (32.3%) having an alcohol or drug

¹⁶⁴ New Zealand Medical Association *Reducing alcohol-related harm* (Policy Briefing, May 2015) at 7.

¹⁶⁵ New Zealand Medical Association *Reducing alcohol-related harm* (Policy Briefing, May 2015) at 9.

¹⁶⁶ Fetal Alcohol Network NZ “Fetal Alcohol Spectrum Disorder” <http://www.fan.org.nz/fetal_alcohol_spectrum_disorder>.

¹⁶⁷ Patricia A Jamieson “The challenge of supporting children with Fetal Alcohol Spectrum Disorder in Aotearoa New Zealand: A narrative literature review” (Masters in Health Sciences, dissertation, University of Canterbury, 2017) at 24.

¹⁶⁸ Alcohol Healthwatch “Harm to Māori” <<http://www.ahw.org.nz/Issues-Resources/Harm-to-M%C4%81ori>>.

¹⁶⁹ New Zealand Medical Association *Reducing alcohol-related harm* (Policy Briefing, May 2015) at 12.

disorder at some time over their lives, 1 in 4 (26.5%) Māori already having had an alcohol or drug disorder in their life to date, and 1 in 11 (9.1%) having had an alcohol or drug disorder in the previous 12 months.¹⁷⁰

- (l) Housing and home ownership.
 - i. In 2013, 28 per cent of Māori adults owned a house, compared with 57 per cent for other New Zealand adults.¹⁷¹
 - ii. Between 1986 and 2013 the proportion of Māori living in owned homes dropped by 20 per cent, in this time the European rate only dropped 11 percent.¹⁷²
 - iii. The proportion of Māori in rental accommodation is higher than all other ethnicities.¹⁷³
 - iv. Māori are the Housing Corporation New Zealand's (HNZC) largest applicant group and the second largest occupant group.¹⁷⁴
 - v. Māori are more likely to live in overcrowded households.¹⁷⁵
 - vi. Māori are more likely to need an accommodation supplement than other ethnicities.¹⁷⁶

¹⁷⁰ Joanne Baxter *Māori Mental Health Needs Profile: A Review of the evidence* (Te Rau Matatini, Palmerston North, 2008) at 119-120.

¹⁷¹ Michael Neilson *Tackling barriers to financing Māori land and boosting home ownership*. NZ Herald 14 Aug, 2018.

¹⁷² Michael Neilson *Tackling barriers to financing Māori land and boosting home ownership*. NZ Herald 14 Aug, 2018.

¹⁷³ Te Puni Kokiri *Māori Housing The implications of a recession for the Māori Economy*. (2009)

¹⁷⁴ Te Puni Kokiri *Māori Housing The implications of a recession for the Māori Economy*. (2009)

¹⁷⁵ Te Puni Kokiri *Māori Housing The implications of a recession for the Māori Economy*. (2009)

¹⁷⁶ Te Puni Kokiri *Māori Housing The implications of a recession for the Māori Economy*. (2009)

- vii. Māori are more likely to become long term tenants of Housing New Zealand than other ethnicities.¹⁷⁷
 - viii. 48.5 percent of Māori households did not report living in a warm, dry home.¹⁷⁸
 - ix. 7.7 percent of Māori households reported living in a home with a major problem with dampness or mould, and a major problem with heating and/or keeping warm in winter.¹⁷⁹
 - x. 7.7 percent of Māori households reported being unable to pay utility bills once and 12.6 percent were unable to pay utility bills more than once in the last 12 months due to a shortage of money.¹⁸⁰
- (m) Mental Illness and Suicide.
- i. Over half of Māori will have a mental disorder some time in their lives.¹⁸¹
 - ii. Overall: For 12-month mental disorders, when compared with all ‘Others’ (non-Māori/non-Pacific) Māori were:1.5 times more likely to have at least one 12-month disorder (29.3% vs 19.3%) and 2.1 times more likely to have 12-month serious disorder (8.4% vs 4.0%).¹⁸²
 - iii. The age-specific suicide death rate for Māori youth (15–24 years) in 2012 was 48.0 per 100,000 Māori youth population, compared with the non-Māori youth rate of 16.9 per 100,000. That

¹⁷⁷ Te Puni Kokiri *Māori Housing The implications of a recession for the Māori Economy*. (2009)

¹⁷⁸ Ministry of HUD. *Household Economic Survey: High level findings for Māori households 19/20/2020*.

¹⁷⁹ Ministry of HUD. *Household Economic Survey High level findings for Māori households 19/20/2020*.

¹⁸⁰ Ministry of HUD. *Household Economic Survey High level findings for Māori households 19/20. 2020*.

¹⁸¹ Joanne Baxter *Māori Mental Health Needs Profile: A Review of the evidence* (Te Rau Matatini, Palmerston North, 2008) at 119-120.

¹⁸² Joanne Baxter *Māori Mental Health Needs Profile: A Review of the evidence* (Te Rau Matatini, Palmerston North, 2008) at 122.

- means the Māori youth suicide rate was three times higher than non-Māori.
- iv. Maori population who died as a result of prison suicide was eight times higher than that for non-Maori.¹⁸³
- (n) Physical and Sexual Abuse.
- i. For Māori wahine and tamariki the likelihood of sexual violence is nearly twice as high as the general population.¹⁸⁴
 - ii. One third of all Māori women interviewed were sexually abused as children, significantly higher than any other ethnic group.¹⁸⁵
 - iii. Lifetime prevalence of physical and/or sexual Inter Partner Violence (“IPV”) among Māori women (57.6%, more than 1 in 2) was significantly higher than any other ethnic group.¹⁸⁶
- (o) Problem Gambling.
- i. The 2012 National Gambling Study estimates that 1 in 16 Māori men and 1 in 15 women are problem or moderate-risk gamblers. Māori adults are approximately three and a half times more likely than the average adult to be problem gamblers.¹⁸⁷
 - ii. About a third of moderate-risk and problem gamblers are Māori.¹⁸⁸

¹⁸³ The New Zealand medical journal 106(948):1-3 February 1993.

¹⁸⁴ Matthew, P. and Reilly, J., (2009). Ministry of Justice, *The New Zealand Crime and Safety Survey*.

¹⁸⁵ Dominion Post, “*Abuse of Maori women 'shocking'*” dated Jan 31 2009.

¹⁸⁶ Fanslow, J. Robinson, E. Crengle, S & Perese, L. *Juxtaposing belief and reality: prevalence rates of inter-partner violence reported by New Zealand women*. (2010).

¹⁸⁷ Problem Gambling Foundation of New Zealand *Maori and gambling factsheet* (2017)

¹⁸⁸ Problem Gambling Foundation of New Zealand *Maori and gambling factsheet* (2017)

- iii. Half of the Māori surveyed for the National Gambling Study said they knew someone who likely had a problem with gambling, higher than any other ethnic group.¹⁸⁹
 - iv. Māori reported high rates of arguing with someone about time or money spent gambling, and high rates of someone in their family going without something they needed due to money being spent on gambling.¹⁹⁰
- (p) Homelessness.
- i. Homelessness disproportionately affects Māori. Māori homelessness rates are four to six times the European rate and the true number is probably greater.¹⁹¹
- (q) Disability.
- i. Māori are disproportionately represented among those with physical health problems and disability and socioeconomic disadvantage.¹⁹²
 - ii. Based on need, Māori receive lower levels of income support and health and disability services than non- Māori.¹⁹³
- (r) Gangs.
- i. Māori make up approximately three quarters of all gang members in New Zealand.

¹⁸⁹ Problem Gambling Foundation of New Zealand *Māori and gambling factsheet* (2017)

¹⁹⁰ Problem Gambling Foundation of New Zealand *Māori and gambling factsheet* (2017)

¹⁹¹ Amore, K., Viggers, H., Howden Chapman, P. (2020). *Severe Housing Deprivation in Aotearoa New Zealand, 2018*. Wellington: Ministry of Housing and Urban Development

¹⁹² Joanne Baxter *Māori Mental Health Needs Profile: A Review of the evidence* (Te Rau Matatini, Palmerston North, 2008) at 119.

¹⁹³ Keri Ratima, Mihi Ratima. Māori experience of disability and disability support services. In Robson B, Harris R.(eds) *Hauora: Māori Standard of Health IV. A Study of the years 2000-2005*. Wellington:

- ii. The two largest gangs in New Zealand, the Mongrel Mob and Black Power are comprised predominantly of Maori, with other gangs also having high rates of Māori membership.
 - iii. Ninety two percent of known gang members had received a main benefit from the Ministry of Social Development at some stage between 1 January 1993 and 31 December 2014.
 - iv. Fifty nine percent of all gang members had children included in a benefit; nearly 40 percent of the children of gang members were included in their parents' benefit before their first birthday.
 - v. Almost one third of all offenders in prison are recorded as being gang affiliated, with the Mob being the most common gang. Māori make up approximately three quarters of all gang members in New Zealand.
- (s) Discrimination;
- i. Studies support the finding that Māori face pervasive racial and other forms of discrimination including age, gender and income. This discrimination is experienced in multiple domains across the life course and represents a persistent breach of rights.¹⁹⁴
 - ii. In June 2020, 27% of Māori reported experiencing discrimination, as opposed to 17% of all New Zealanders.¹⁹⁵
- (t) Wellbeing.

¹⁹⁴ Ricci Harris, James Stanley *Māori experiences of multiple forms of discrimination findings from Te Kupenga 2013* (1 May 2019)

¹⁹⁵ Stats NZ *Wellbeing statistics: June 2020 quarter* (18 August 2020)

- i. Māori are the ethnicity with the lowest mental health wellbeing, according to the Treasury's Living Standards Framework definition, 15.5% of Māori had low mental health wellbeing.
- ii. Māori have the second highest rates of loneliness by ethnicity, with 19% of Māori reporting loneliness.
- iii. Significantly, the Treasury found that once factors such as low job wellbeing, low civic engagement, low physical health, low housing wellbeing and low material wellbeing were taken into account, Māori did not have a higher prevalence of low mental health wellbeing.¹⁹⁶

195. If these men knew that their mokopuna would continue to face this level of oppression it is doubtful they would have wished to lay down their lives in defence of the Crown.

Rehabilitation of the Battalion

196. The Crown failed to treat the returning Battalion soldiers with the proper respect and dignity which they deserved, which was reflected in Crown policies regarding land for returning soldiers; policies governing the treatment of physically and mentally affected soldiers; and the lack of policies acknowledging the fragmentation of many whanau and hapu due to the deaths or damage of Māori leaders, including the trauma inflicted upon their whanau.

¹⁹⁶ Simon Brown, *Wellbeing and Mental Health: An Analysis Based on the Treasury's Living Standards Framework*, The Treasury (9 July 2019)

197. Moreover, the Crown implemented a system of land distribution to soldiers returning from the Second World War which severely prejudiced the claimants.
198. Such prejudice included the allocation of lands to Māori who did not whakapapa to the lands that were allocated to them. This resulted in loss of papakainga, waahi tapu and mahinga kai for those Māori whose lands were taken and subsequently allocated to Pakeha or other Māori.
199. The Crown's schemes and allocation of resources aimed at supporting soldiers returning from World War Two was firmly biased towards the post-war advancement of Pakeha Soldiers, to the detriment of Māori who had fought for New Zealand in the Battalion.
200. The Crown's soldier settlement scheme and unequal resource distribution has affected the claimants in the following ways:
- (a) By taking land off Māori for the purpose of post-war Pakeha soldier resettlement.
 - (b) By establishing a system of balloting land to soldiers for the establishment of farms, and as a result all of the Māori soldiers within the claimant's rohe were unfairly prejudiced.
 - (c) By reducing the autonomy of Māori to establish and manage schemes to assist Māori soldiers returning from the Second World War, through the Government taking control of Māori welfare (replacing the previous, well-functioning Māori controlled structures of the MWEO).
 - (d) By failing to efficiently intervene or address the subsequent crisis of landlessness, displacement and unemployment of many returned Māori soldiers, thereby contributing to the ongoing low socio-economic position and subsequent effects of this on whanau, hapu and iwi.

Denial of Māori leadership of the Battalion

201. When war again seemed imminent in the late 1930's, many Māori came forward to offer their services.
202. Despite heavy losses in the first world war, Māori were again prepared to defend New Zealand and the empire in the second world war.
203. Māori were adamant that in order to retain their mana, a Māori battalion should be led and officered by Māori.
204. The government refused the call of Māori representatives to instate Māori as the leaders of the Māori battalion, instead choosing to follow the advice of army authorities.
205. The Crown announced that following advice from army authorities key appointments should initially be filled by selected officers and warrant officers of the Permanent and Territorial Force, almost all of whom were Pakeha.¹⁹⁷
206. Māori officers were limited to a minority of two appointments, no higher than company commander.¹⁹⁸
207. Historians generally see this as an important limitation of Māori equality of service.¹⁹⁹
208. Māori were outraged and made numerous petitions to the government to overturn this decision.

¹⁹⁷ Wai 2500 #A247 at 206.

¹⁹⁸ Wai 2500 #A247 at 206.

¹⁹⁹ Wai 2500 #A247, p 214.

209. In November 1939 the government received a petition from the Te Arawa Returned Services League imploring them to appoint Māori officers.²⁰⁰ This petition was one of many.

210. A petition by Ngati Porou stated:

“Our loyalty and earnestness were greatly gratified by your Government’s permission to form a Special Māori Battalion, but we feel that the PURITY of that Battalion is not kept if not officered by men of our own race. The Māori Pioneer Battalion in the last World War was ably led by their own Officers and we feel certain that the men of this generation would be able to maintain the splendid tradition of their predecessors.”²⁰¹

211. A letter to the Minister of Defence in 1939 stated:

“As leaders in times of peace, we are fully expected by our people to lead them also in time of danger. Our bodies are infused with this fighting spirit, a heritage from our ancestors. To deny us this honour, would mean the destruction and loss of our mana.”²⁰²

212. Another letter to the Defence Minister from K.T. Harawira explained that Te Arawa were ‘greatly concerned with the Reports, in respect to the appointment of Pakeha Officers for this battalion.’²⁰³

²⁰⁰ Wai 2500 #A247 at 213.

²⁰¹ Wai 2500 #A247 at 214.

²⁰² Wai 2500 #A247 at 214.

²⁰³ Wai 2500 #A247 at 214.

213. A later petition from Ngati Porou spoke of the need for Māori leaders to break the ‘inferiority complex’ that was destroying the ‘mana and soul of the people.’²⁰⁴
214. Sir Charles Bennett later wrote that he believed that the opposition to Pākehā officers reflected ‘a pro-Māori tendency rather than an anti-Pākehā one.’ Bennett continued ‘The Māori attitude to European officers must not be interpreted as racial prejudice. It was simply a manifestation of that strong natural urge, inherent in all self-respecting peoples, which is not willing to accept any inference of racial inferiority or ineptitude.’²⁰⁵
215. Despite the calls from Māoridom to let their own men lead the battalion, the Crown was not prepared to go against army advice and refused to do so.
216. The Minister of Defence insisted that the overall formation of the Battalion was the Government’s responsibility and would not be subject to pressure from Māori.²⁰⁶
217. When the main body of the 28th Māori battalion set sail in May 1940 with the Second Echelon, it was a predominantly Pākehā leadership. Major George Dittmer was commander, with Lieutenant-Colonel G.F. Bertrand acting as second-in-command with the rank of Major. The other key appointments were all Pākehā, with the exception of the company level where Captain Rangī Royal commanded B company and Tiwi Love commanded Headquarters Company. This meant the only leadership was Royal and Love at company level.²⁰⁷

²⁰⁴ Wai 2500 #A247 at 215.

²⁰⁵ Wai 2500 #A247 at 216.

²⁰⁶ Wai 2500 #A247 at 217.

²⁰⁷ Wai 2500 #A247 at 217.

Rehabilitation of the Battalion

218. On 3 June 1942 Cabinet approved the creation of a tribal based MWEO to organise the Maori war effort. The MWEO received £7,000 funding.²⁰⁸
219. The MWEO established tribal committees and executives across 21 operational zones to recruit Maori for overseas and domestic man power and woman power requirements.²⁰⁹
220. The MWEO was responsible to the Maori Parliamentary Committee which was responsible to the War Cabinet. The MWEO was autonomous from Native Department Control.²¹⁰
221. The MWEO allowed tribal authority to play a leading role in the organisation of Maori for World War II. The MWEO was run along and in accordance with tikanga Maori, which played a significant part in the success of MWEO.
222. The MWEO was credited for the enthusiasm of Maori enlistment, patriotism and Maori contributions to the Patriotic Fund.
223. The MWEO recruited for military service, the Home Guard and for war time industry.

²⁰⁸ Francis and Sarich, *Aspects of Te Rohe Potae Political Engagement 1939 - c1975*, Wai 898, #A72, p. 24.

²⁰⁹ Wai 898, #A72, p. 34.

²¹⁰ Wai 898, #A72 p. 24.

224. The MWEO evolved into managing other social and welfare issues affecting Maori such as housing, education and health.
225. The MWEO provided assistance to Maori pulled into urban war work.
226. The MWEO proved so successful that it continued beyond its original six month trial.
227. The framework of the MWEO with its tribal committees and executives was such that it allowed tribal authority to play a leading role in war related community affairs.
228. In 1944 Maori Member of Parliament PK Paikea advised Peter Fraser that ‘nothing should be allowed to happen which might endanger the future and full development of the MWEO,’ and that Maori people had already developed faith in the MWEO.²¹¹
229. In 1944 Native Minister Rex Mason promoted the role of the Native Department in the rehabilitation of Maori returned soldiers in opposition to the MWEO.²¹²
230. The MWEO led Maori criticism of the Native Department’s handling of rehabilitation, considering it was ‘not fit to handle the responsibilities placed upon it.’²¹³
231. The Parliamentary Committee of the Maori War Effort wished the MWEO to be retained after the war in a format closely resembling its

²¹¹ Wai 898, #A72 p. 49.

²¹² Wai 898, #A72 p. 64.

²¹³ Wai 898, #A72 p. 65.

current setup, not a new council system under Native Department control.²¹⁴

232. Treasury was advised by the Undersecretary of the Native Department that '[i]n my opinion the activities of the Maori War Effort Organisation should be taken over by the Native Department except that of recruiting for services in Armed Forces, and that organisation disbanded.'²¹⁵

233. In December 1945 the Maori Social and Economic Advances Act was passed which placed all tribal committees under the control of the Native Department, appointments to the committees were authorised by the Native Department, and the committees were organised within the Native Land Court Districts.

Prejudice

234. Māori lost their autonomy.

235. Māori lost the ability to care for their own.

236. Māori gave life and limb for the Crown on the understanding that they would be treated as equals on their return home, they were never treated as equals.

237. The Māori battalion suffered casualties 50% higher than the New Zealand average.

²¹⁴ Wai 898, #A72 p. 67.

²¹⁵ Wai 898, #A72 p. 68.

238. Māori lost the cream of the crop of their young male population, they were killed or maimed overseas in the name of the crown.
239. Those Māori that did survive the war unscathed bore the mental scars of the war.
240. Many whanau were thrown into poverty as their male breadwinners did not return home or were unable to work when they did return home.
241. Māori lost their future rangatira and kaumatua. The paepae of many marae sat empty.
242. With the loss of these soldiers, Māori lost matauranga tuku iho. The next generation lost the opportunity to learn their reo, whakapapa and tikanga.
243. When Māori returned home they continued to be subjected to a racist and discriminatory system which left them overrepresented in every negative socioeconomic indicator.
244. Māori experienced this racism and discrimination immediately upon their return from the war.
245. Māori today still experience this discrimination today and are still overrepresented in negative statistics.
246. The Crown did not allow Māori to lead their own battalion and instead placed Pakeha in leadership positions. This was an insult to the mana of the Māori battalion.

247. Battalion veterans were exposed to and brought under the care of a system and regime that:
- (a) Was neither organised nor reflective of tribal lines, tribal authority or tikanga.
 - (b) Did not reflect their tikanga or wairua.
 - (c) Failed to reflect their culture.
 - (d) Failed to respect their mana.
 - (e) Failed to prioritise the care and rehabilitation of Battalion veterans.
 - (f) Failed to ensure that Battalion veterans received all the care they required to properly reintegrate back into society.

Failure to properly rehabilitate into society

248. When the Battalion were demobilised the Crown failed to ensure their adequate rehabilitation back into society.
249. Few Battalion veterans received counselling to help them deal with the effects of war.
250. Many veterans, including those of the Battalion and subsequent armed conflicts, were unable to cope with the effects of war and turned to alcohol to help cope with the stress. Alcoholism resulted. Then domestic violence.

Prejudice

251. As a result of the alcoholism the whanau structure suffered.
252. In some instances, children were removed from the home and placed in the care of the Crown.

253. The prejudice includes the prejudice to the mothers, wives, sisters and children of the Battalion veterans.
254. A cycle of violence was created. In many families that cycle continues to this day.
255. The Crown enabled the discrimination and lack of opportunities for returned Battalion soldiers, leaving the question for Māori whether the sacrifices of Māori serving in the Battalion had been worthwhile?
256. This has contributed to the prejudice, domination, oppression, exploitation and marginalisation visited upon the claimants.

Principles of the Treaty of Waitangi

257. Such acts and omissions of the Crown are inconsistent with and breach the principles of the Treaty of Waitangi, in particular, the Principle of Partnership, the Principle of Good Faith and a breach of fiduciary duty

Relief and Findings Sought

258. The claimants seek the general recommendations sought as follows:
- (a) A finding of the facts in their favour.
 - (b) A finding that their claim is well founded.
 - (c) Such recommendations as the Tribunal considers appropriate.

PART THREE: REHABILITATION AND LAND SETTLEMENT

Duty

259. Upon their return from War, the Crown's duties to Māori soldiers included:
- (a) Fulfilling the promises made to Māori before, or upon enlistment;
 - (b) Treating Māori and non-Māori soldiers, the same.

Breach

260. The Crown failed to:
- (a) uphold its promises made to Māori upon their return from war.
 - (b) Treat Māori soldiers equitably and fairly with non-Māori soldiers in respect of soldier rehabilitation schemes.
261. Further, Crown failings include:
- (a) The failure to implement a system of equal and proportionate land distribution to both Māori and non-Māori upon their return from war.
 - (b) The failure to ensure that any land balloting system properly reflected tikanga and whakapapa associated too land allocated under the Resettlement schemes.
 - (c) The failure to ensure that land gifted by Māori was properly assigned to those Māori for whom the land was intended, in particular their whanaunga.
 - (d) The failure to provide further educational opportunities for Māori ex-servicemen at an equal level to Pakeha ex-servicemen.
 - (e) The failure to give Māori who had demonstrated the necessary skills open 'A' gradings for farming land ballots, disqualifying them from entering crown ballots based purely on their race.

- (f) Using discriminatory policies in land resettlement schemes to prevent Māori from being settled on the land.
- (g) The failure to allocate significant land for the specialised Māori land ballots administered by the Department of Native Affairs: resulting in very low rates of Māori land settlement.
- (h) The failure to ensure that Māori who were settled under Part I of the Native Land Amendments Acts were afforded concessionary interest rates, meaning they missed out entirely on rehabilitation assistance from the government.

Particulars: Soldier Resettlement Schemes

262. During the First World War many Māori were promised land in return for their service. This was known as the soldier resettlement scheme (“the scheme”).
263. The Crown failed to uphold this promise and the large majority of Māori veterans did not receive land under the scheme.²¹⁶
264. The scheme was:
- (a) biased towards Pakeha veterans;
 - (b) detrimental to Māori veterans who:
 - i. did not receive land under the scheme; but
 - ii. also lost their own land to Pakeha veterans.²¹⁷
265. Māori land owners were pressured to contribute land to the scheme.
266. Māori gifted their own land with the understanding that it would be allocated to their whanaunga and descendants.²¹⁸

²¹⁶ Wai 2500, #A248, T.J Hearn, *The economic rehabilitation of Maori military veterans*, [2018], at 96.

²¹⁷ At 96.

²¹⁸ Wai 2500, #A248, , at 40.

267. Despite this, the majority of Māori received no land.
268. In some cases, such as Awamate, where large quantities of land had been gifted, no Māori veterans received land.²¹⁹
269. Instead the Crown either:
- (a) allocated this land to Pakeha soldiers; or
 - (b) allocated the land to Māori from other regions.²²⁰
270. Reverend Hemi Pititi Huata of Wairoa contributed portions of his land to the Huamua and Awamate Settlements with the intention that it would be allocated to his whanaunga upon their return.²²¹
271. Despite the large number of Reverend Huata's descendants who served New Zealand in war, none of them were awarded this land.²²²
272. Instead, Reverend Huata's land was balloted to Pakeha veterans, or Māori from other regions.²²³
273. Other settlements such as the Ruakaukaka, Omana, Ohuka and Ardkeen Settlement blocks were awarded purely to Pakeha soldiers.²²⁴
274. The scheme has affected the claimants in the following manner:
- (a) Stripping Māori of their mana whenua for the purpose of post-war pākeha soldier resettlement.

²¹⁹ At 40-41.

²²⁰ At 40.

²²¹ At 40.

²²² At 40.

²²³ At 40.

²²⁴ Wai 2500, #A248, , at 37; 77.

- (b) Unfairly prejudicing Māori in the claimants rohe by establishing a biased system of balloting.
- (c) The loss of these ancestral lands has resulted in a loss of whakapapa, papakainga, mahi kainga and mana whenua.
- (d) Failing to ensure that Māori received equal treatment and rehabilitative opportunity as Pākeha soldiers, contributing to the ongoing low-socioeconomic and subsequent effects on Māori.

Land Settlement and World War Two

275. The Crown, as they had done in the First World War, promised soldiers that they would be provided assistance with rehabilitation and the opportunity to be settled on land in return for their service during World War 2 (“the war”).

276. In January 1940, as the First Echelon prepared to depart from New Zealand, Prime Minister Savage announced his Government’s determination to ensure that those who returned would not experience:

‘an unseemly struggle for the right to live’.²²⁵

277. Savage’s reference to an ‘unseemly struggle’ was a reference to the struggles that many ex-serviceman suffered following World War 1.²²⁶

278. The Government repeated on numerous occasions that Māori and Pakeha would, with respect to rehabilitation, have ‘equal opportunities’.²²⁷

²²⁵ Wai 2500, #A248, , at 260.

²²⁶ at 260-261.

²²⁷ Wai 2500, #A248, , at 263.

279. Following World War 1, many claims were made by Māori leaders that Māori ex-service personnel had suffered disadvantage, discrimination and exclusion.²²⁸
280. In April 1941, Finance Minister Walter Nash indicated that ‘Detailed plans for repatriating particular types and groups of returned men will be necessary’.²²⁹
281. In March 1943, the Rehabilitation Board (“the Board”) announced that while the facilities offered to Pakeha ex-service personnel were also available to Maori, nevertheless, the need for special Maori rehabilitation measures had been recognised.²³⁰
282. The Board claimed that it had conducted research into the issues involved, and that it had ‘formulated, ready for implementation at the appropriate time, plans which are expected to facilitate the industrial reabsorption of all serving Maoris in such a way as to take full account of their social needs.’²³¹
283. Paikea and Ngata informed the House on numerous occasions that Māori were disadvantaged in the rehabilitation schemes following WW1 and that there would need to be significant resources expended to support rehabilitation of Māori.
284. In February 1944, the Government thus announced that:

²²⁸ Wai 2500, #A248, , at 261.

²²⁹ Wai 2500, #A248, , at 262.

²³⁰ Wai 2500, #A248, , at 304.

²³¹ at 304.

‘In order to meet the special needs of Maori ex-servicemen, special administrative machinery will be set up’²³²

285. Langstone, the Minister of Native Affairs reiterated that Māori ex-service personnel:

‘will be treated in exactly the same way as the pakeha returned soldiers ... They will have equal rights with others when it comes to land settlement.’²³³

286. Despite these promises, the rehabilitation policies, particularly the land settlement policies were discriminatory against Māori.

287. The Crown implemented a system of land distribution to veterans of the war as an incentive to enlist and a means of rehabilitation upon their return.

288. Veterans had to apply for allotment and their name would be added to a ballot from which soldiers would be drawn.

289. Not all veterans, especially Māori veterans living in remote areas, were made aware of the ability to apply for land or other rehabilitation assistance.²³⁴

290. The Crown failed to ensure that all veterans who had served New Zealand had equal opportunity to apply.

²³² Wai 2500, #A248, , at 329.

²³³ Wai 2500, #A248, , at 273.

²³⁴ Wai 2500, #A248, , at 448.

291. For Māori who did apply, the allocation process was firmly biased towards the post-war advancement of Pakeha soldiers, to the detriment of Māori soldiers.
292. There was no requirement for Māori representation on the local rehabilitation boards that oversaw veterans' issues.²³⁵
293. Māori were effectively barred from participating in the normal ballots, relegated to special Māori ballots which were not provided with the same level of resources and land to award to soldiers.
294. Many Māori soldiers were settled on land that was part of Māori development schemes. The Crown barred these soldiers from receiving concessionary interest rates due to the nature of tenure on development schemes. This meant these soldiers were not provided any rehabilitation assistance from the crown.

Education Training

295. Following the War, the government created schemes to assist returning soldiers to train to find careers in civilian New Zealand.
296. The Crown created schemes for trade and farming training as well as schemes to assist with educational training and tertiary courses.
297. Very few Māori servicemen had secured educational standards equal to that of Pakeha due to the poor quality of education offered to Māori at the time.
298. Māori were thus at a significant educational disadvantage.

²³⁵ Wai 2500, #A248, , at 335.

299. Only very limited efforts were made to offer courses intended to improve literacy and numeracy among Māori veterans.
300. While a large number of Māori participated in the trade and farming schemes, very few Māori were given educational assistance.
301. By the end of March 1967, 21,054 Pakeha ex-service personnel had been granted initial full or part-time assistance to further their education, a rate of 10.7 per 100.
302. By the same date, only 155 Maori ex-service personnel had been similarly assisted, a rate of 3.1 per 100.²³⁶
303. Section 8 of the Rehabilitation Act 1941 was sufficiently broad in scope to have allowed the Rehabilitation Council and the Board to have at least considered a more comprehensive approach to the education of Maori veterans.

Land Settlement: Māori and Land Ballots

304. When Māori returned from the War, they had the option of applying through the Crown ballot system or seek placement on a Māori land development scheme.
305. The Crown ballot system was the traditional system that ex-soldiers used to apply for land after making an application to a farming sub-committee.

²³⁶ Wai 2500, #A248, , at 443.

306. Under the Servicemen's Settlement and Land Sales Act 1943 ("the 1943 Act") the Government secured practically complete control of the land market.²³⁷
307. The 1943 Act empowered the Crown to acquire (compulsorily, if need be) land and to control sales and leases of land in order to provide for and facilitate the settlement of discharged personnel.
308. The Crown excluded Māori freehold land from the 1943 Act.
309. Although this prevented Māori land from being compulsorily taken under the 1943 Act, it would prove to be a mechanism by which Māori were excluded from receiving the benefit of the land settlement scheme and pushed them towards settling through the Māori land development scheme.
310. In January 1944, Cabinet decided that, for rehabilitation purposes, the Department of Lands and Survey would conduct all land purchases on behalf of the Crown, and that it would develop, subdivide, and offer those lands for settlement.²³⁸
311. This purchased land became available to ex-serviceman who could apply through Crown ballots.
312. In order to be eligible for these ballots, servicemen would have to pass a 'grading' test.²³⁹
313. The Board established farming sub-committees to grade all applicants.

²³⁷ Wai 2500, #A248, , at 469.

²³⁸ Wai 2500, #A248 at 471.

²³⁹ Wai 2500, #A248 at 464.

314. The Board subsequently adopted a four-fold classification, namely, ‘A’ – fully experienced, ‘B’ – partially experienced, ‘C’ – totally inexperienced, and ‘D’ – unsuitable.²⁴⁰
315. Only farmers with ‘A’ gradings would be given land blocks to settle on.²⁴¹
316. Farmers who received ‘B’ or ‘C’ grades were given the opportunity to undergo farming training in order to move up to an ‘A’ grade.²⁴²
317. By the end of 1964, 277 Māori veterans had trained in farming.²⁴³
318. This was a rate of one in every 18 soldiers demobilised by the end of 1948.
319. In comparison, 3,046 Pakeha had trained as farmers by the end of 1964, a rate of one in every 63 demobilised.²⁴⁴
320. This indicated a strong demand by Māori for farm training and settlement.
321. There was a high demand for land in the Crown ballots, and the Crown chose to discriminate against Māori and restricted their ability to enter into these ballots, instead prioritising Pakeha soldiers.

²⁴⁰ at 464.

²⁴¹ Wai 2500, #A248 at 619.

²⁴² at 619.

²⁴³ Wai 2500, #A248 at 481.

²⁴⁴ Wai 2500, #A248 at 481.

322. The Crown instead wished Māori would settle on their own land that was purchased specifically for Māori rehabilitation, of which there was only a minimal amount available.

323. The Crown wished for soldiers who could not settle on this specifically provided land to settle on land that was part of Māori development schemes which was not eligible for concessionary interest rates.

324. The under-secretary of the Native Department wrote in 1943:

“we agree that any Maori will be eligible to apply for Crown lands ... provided he meets the full requirements demanded from other applicants, and can show that no Native lands are available to him he will receive equal treatment to that given to the Pakeha soldier. As Crown lands will be in limited supply it is however hoped that all Maoris requiring land will be rehabilitated on their own Tribal lands.”

²⁴⁵

325. In order to restrict settlement of Māori veterans towards ‘Māori districts’ or Māori land development schemes the Crown used the process of ‘tagging’.

326. The process of ‘tagging’ meant that Māori who received an ‘A’ grading could have their grading qualified so that they could only have their settlement arranged by the Department of Native Affairs on lands under its control or on lands that had had been acquired by the Department of Lands and Survey and handed over specifically for Maori rehabilitation purposes.²⁴⁶

²⁴⁵ Wai 2500, #A248 at 598.

²⁴⁶ Wai 2500, #A248 at 552.

327. These tagged gradings were also limited to land within the Māori Land Court district in which the soldier normally resided.²⁴⁷
328. These tagged 'A' grade soldiers were not entitled to participate in the ordinary ballots conducted by the Department Lands and Survey.²⁴⁸
329. Further, where it was considered that the soldier lacked the ability to manage his finances appropriately, then his certificate would be endorsed 'subject to supervision from the Department of Māori Affairs.'²⁴⁹
330. In deciding the question as to whether a Māori ex-serviceman should be granted an unrestricted grading or one subject to supervision by the Native Department, apart from practical experience, the Board took into account the applicant's managerial ability, and where it was considered that he was competent to manage a farm property without supervision, and was 'suitable for settlement in other than a Maori community'.²⁵⁰
331. Pakeha veterans who acquired Crown sections and rehabilitation loans through the State Advances Corporation were also placed under budgetary control. This implied a lack of financial management skills did not preclude them from participating in ballots for Crown sections.²⁵¹
332. It is clear that a decision was taken, apparently by the Board in response to concerns raised by the State Advances corporation, to tag

²⁴⁷ Wai 2500, #A248 at 606.

²⁴⁸ at 606.

²⁴⁹ at 606.

²⁵⁰ Wai 2500, #A248 at 607.

²⁵¹ Wai 2500, #A248 at 608.

the 'A' grade farming certificates issued to Māori veterans and to employ such tagging to exclude them from ballots conducted for Crown sections.

333. There was no evidence that indicated that the ability of each Māori veteran was assessed separately: tagging was entered indiscriminately and purely because these soldiers were Māori.²⁵²
334. In November 1948 Auckland's Registrar (J.H. Robertson) noted that most Māori ex-servicemen had been graded 'A' for farming subject to supervision by the Department of Maori Affairs. He wrote that: 'Many Maori's entitled to open gradings but who are graded subject to supervision merely because they are Maoris.'²⁵³
335. Having their 'A' grading tagged also meant that Māori could not apply through the State Advances Corporation to the Rehabilitation Loans Committee for finance to purchase single units (farms).
336. Although Māori could be given an untagged 'A' grading, this was extremely rare.
337. In January 1945, the Director of Rehabilitation recorded that the 'great majority' of Māori ex-servicemen farm applicants who were graded 'A' were tagged.²⁵⁴
338. This process of tagging limited the ability for Māori soldiers to receive land settlement at concessionary rates because there was not enough land available to meet the demand of soldiers.

²⁵² Wai 2500, #A248, at 765.

²⁵³ Wai 2500, #A248, at 648.

²⁵⁴ Wai 2500, #A24, at 552.

339. Because there was much less land available than under the open ballots, the soldiers who had their gradings tagged were far less likely to be settled on land and the majority were not settled.
340. By May 1950:
- (a) 528 Māori ex-servicemen had been graded 'A', 'B' or 'C'.²⁵⁵
 - (b) 373 of these received an 'A' grade.²⁵⁶
341. Only 89 of these men graded 'A' had been settled through rehabilitation, meaning that they had secured loans with concessionary rates of interest.²⁵⁷
342. A further 17 men were employed by the Department of Māori affairs with promise of a title.²⁵⁸
343. The total number of Māori ex-servicemen settled or promised settlement with rehabilitation assistance thus stood at 105.²⁵⁹
344. This represented only 1.4 percent of the total number of ex-service personnel settled with rehabilitation assistance at the time.²⁶⁰
345. A further 89 men had been settled through Māori land development, which meant they did not qualify for rehabilitation assistance.²⁶¹

²⁵⁵ Wai 2500, #A248, at 677.

²⁵⁶ Wai 2500, #A248, at 502.

²⁵⁷ at 502.

²⁵⁸ Wai 2500, #A248, at 679.

²⁵⁹ at 679.

²⁶⁰ at 679.

²⁶¹ Wai 2500, #A248, at 690.

346. 190 graded men were still looking to the Department awaiting settlement.²⁶²
347. Of the 528 graded men, 157 (almost 30 percent) had been forced to choose other occupations by May 1950 because they were not able to wait for settlement from the government.²⁶³
348. Not only did the process of tagging remove the ability to participate in traditional land ballots, the process of settlement for Māori ballots proceeded at a much slower pace than traditional ballots.
349. By March 1950, only 51 of these men who were to be settled had been placed on the land, this represented only 28.5 percent of those who had been graded.²⁶⁴
350. In comparison, 6,641 men who participated in the regular crown ballots had been placed on the land, this represented 54 percent of those who had been graded.²⁶⁵
351. In January 1948, the Under-secretary of Māori Affairs had advised Rotorua's Registrar that 'A' graded men awaiting settlement should seek some other permanent employment.²⁶⁶
352. In January 1950, noting the large number of 'A' grade Māori veterans awaiting settlement, he suggested to his staff that at the existing rate of settlement:

²⁶² Wai 2500, #A248, at 677.

²⁶³ Wai 2500, #A248, at 680.

²⁶⁴ at 680.

²⁶⁵ at 680-681.

²⁶⁶ at 681.

‘there appears to be no alternative but for a large proportion of these men to seek their rehabilitation through other channels’.²⁶⁷

353. At the end of March 1955, 86.3% of the overall regular soldiers who would be settled by 1972 had been settled on the land. In comparison, only 69.5% of the much smaller number of Māori who would be settled on the land had been settled.²⁶⁸

354. The contrast suggests that a greater and/or more effective effort was made to settle non-Māori veterans and meant that a larger number of Māori veterans were forced to choose other means of employment due to slow progress.

355. One of the key issues that contributed to uneven settlement was the Crown failing to make enough of the land purchased by the Department of Lands and Survey available for settlement by Māori.

356. By 31 March 1960, the Department of Lands and Survey had transferred a mere 11,963 acres to the Department of Maori Affairs for settlement.²⁶⁹ The Department claimed this area was insufficient for 30 units.

357. This is in comparison to a total of 1.326 million acres that had been purchased for and settled by 3,419 ‘A’ grade veterans through crown veterans at the same time.²⁷⁰

358. This means the Crown purchased more than 118 times the amount of land for the regular ballots than for Māori.

²⁶⁷ at 681.

²⁶⁸ Wai 2500, #A248, at 687.

²⁶⁹ Wai 2500, #A248, at 696.

²⁷⁰ Wai 2500, #A248, at 494.

359. The Crown's failure to provide sufficient lands to the Department of Māori affairs under this scheme was the key reason so many Māori were not settled under it.
360. By 1972, 217 Māori had been settled on land under the rehabilitation schemes representing 4.34% of all Māori ex-servicemen demobilised by 1948.²⁷¹
361. In 1942 when proposing the Maori land development as the primary vehicle for Maori rehabilitation settlement, the then Under Secretary indicated that 300 men would be settled in three years.²⁷²
362. The true figure was 217 men settled with rehabilitation assistance 27 years after the end of World War II.²⁷³
363. This statistic means that 340 Māori who were graded were forced to find other means of employment.²⁷⁴
364. By 1972 the number of non-Māori veterans who had been settled on the land stood at 12,287, representing 6.22% of all soldiers demobilised by 1948.²⁷⁵
365. This comparison per capita becomes even more stark when the extremely small number of Māori servicemen seeking settlement is compared to the large number of non-Māori.

²⁷¹ Wai 2500, #A248, at 685.

²⁷² at 685.

²⁷³ at 685.

²⁷⁴ at 685.

²⁷⁵ at 686.

Settlement under Part 1 of the Native Lands Amendment Act 1936

366. In addition to the 217 Māori settled through the rehabilitation scheme, 89 Māori were settled on land under Part I of the Native Land Amendment Act 1936, this was land subject to Māori development schemes.
367. Due to the discriminatory policies of the Rehabilitation Board, the soldiers settled under Part I of the Native Land Amendment Act 1936 were not provided concessionary interest rates and thus not provided any rehabilitation assistance by the government.
368. In June 1942, the Board appointed a committee to discuss the rehabilitation of Māori veterans.
369. This committee included prominent leaders such as Paraire Paikea, Apirana Ngata, Rangī Mawhete, H.T Ratana and Eruera Tirikatene.
370. At the committee's first meeting they noted that, 'As far as possible steps would be taken to settle soldiers on tribal lands while others could be assisted under the main scheme.'²⁷⁶
371. The settlement of Māori on their own tribal lands or lands specifically acquired for Māori, was a policy suggested by these Māori leaders who believed that Māori would not be treated fairly if they participated in the traditional Crown ballots.
372. These leaders hoped that the Crown would purchase lands that were taken out of Māori hands and make these available to Māori soldiers under a ballot system.

²⁷⁶ Wai 2500, #A248, at 299.

373. The Crown did create a ballot system specifically for Māori but the Crown chose to prioritise only a very small amount of the land it purchased through the Department of Lands and Survey for Māori.
374. Instead of transferring land to the Native Department, the Crown chose to prioritise settlement of Māori on Native land development schemes that were subject to Part 1 of the Native Land Amendment Act 1936.
375. The Crown's policy whereby it settled Māori ex-servicemen on these land development schemes was such that although these soldiers were settled on the land, they were not offered concessionary interest rates and thus not given any rehabilitation assistance by the New Zealand government.
376. As a result of the negative experience with land settlement following World War I, the new Crown rehabilitation authorities developed a set of principles to inform and guide land settlement following World War II.
377. The new principles required that:²⁷⁷
- (a) land values must be controlled;
 - (b) any land development must be undertaken by the State;
 - (c) the terms of settlement had to provide for security of tenure;
and
 - (d) that all farms would be required to be fully economic units.

²⁷⁷ Wai 2500, #A248, at 463.

378. For rehabilitation purposes, Native lands that were set apart for rehabilitation purposes were dealt with under Part 1 of the Native Land Amendment Act 1936.²⁷⁸
379. Section 4(1) of the Native Land Amendment Act empowered the Board of Native Affairs to ‘declare any Native land or any land owned or occupied by Natives or vested in a Māori Land Board to be declared subject to this Part of this Act’.²⁷⁹
380. The purpose of this Act was to allow for development of the land, and once it became subject to this Act it became a special class of land to which special properties applied.
381. Once land was subject to this Act, it became the property of the Board of Native Affairs and it allowed the Board to develop, improve or farm any land subject to the Act.
382. The goal was to promote settlement and effective utilization of Native land and to encourage farming and related industries.
383. The Crown’s early approach had been to declare very large tracts of land as development schemes under the Native Land Amendment and Native Land Claims Adjustment Act 1929.
384. In Northland in 1930 over 430,000 acres were proclaimed as part of the development schemes.²⁸⁰
385. Much more land would be declared to be subject to Part I of the Act in all parts of New Zealand over the coming years.

²⁷⁸ Wai 2500, #A248, at 346.

²⁷⁹ Wai 2500, #A248, at 513.

²⁸⁰ at 513.

386. Section 42(1) of the Native Land Amendment Act 1936 contained no qualifications, stating simply that ‘Except with the consent of the Board of Native Affairs, no person shall be entitled to exercise any rights of ownership in respect of any land that is subject to this Part of this Act.’ Section 42(1) applied both retrospectively and prospectively.²⁸¹
387. The powers granted under this Act were drastic, with the Minister of Native Affairs Langstone observing that the Native Land Amendment Act 1936 gave:
‘power to the Board of Native Affairs to do anything necessary for the development of Native lands, with a view to settling Natives on the land.’²⁸²
388. Despite worries from Māori, the Department of Native Affairs did settle Māori ex-servicemen on lands that were subject to Part 1 of the Native Lands Amendment Act 1936.
389. By 1953, it was established that 89 soldiers had been settled on lands under Part 1 of the Act.²⁸³
390. By 1972, no more soldiers had been settled on lands under the Act.²⁸⁴
391. Because these soldiers were settled on land subject to the 1936 Act, they had to accept leases on the terms that were set out in the Act and they were not eligible for concessionary interest rates.²⁸⁵

²⁸¹ at 513.

²⁸² Wai 2500, #A248, at 545.

²⁸³ Wai 2500, #A248, at 690.

²⁸⁴ at 690.

²⁸⁵ Wai 2500, #A248, at 570.

392. It was decided by the Board that the terms of the leases for development scheme land were not up to their standards, and accordingly these soldiers were not eligible for the rehabilitation concessionary interest rates.
393. This meant that these soldiers despite their service for the Crown were not afforded rehabilitation assistance by the Government and instead were simply afforded ordinary leases under Part 1 of the Native Lands Amendment Act.
394. Soldiers who were provided rehabilitation assistance and land settlement for the regular ballots had tenure provided as per the Small Farms Act 1932-1933.²⁸⁶
395. The terms of this tenure was a lease for 33 years but perpetually renewable, with rent in the first year at two per cent on the unimproved value, three per cent for the second and third years, and four per cent per year thereafter and compensation for improvements upon sale would be paid at the rate of 100 per cent.²⁸⁷
396. In comparison, the rules relating to leases under part 1 of the Native Affairs Amendment Act had a maximum period of 21 years, with a right of renewal for a further period of 21 years with no further right of renewal and the maximum compensation being 50 percent of improvements.²⁸⁸
397. In May 1945, the Rehabilitation Board asked the Board of Native Affairs to agree that Maori ex-servicemen settled on Crown and Maori

²⁸⁶ Wai 2500, #A248, at 490.

²⁸⁷ at 490.

²⁸⁸ Wai 2500, #A248, at 600.

land within Maori land development schemes should have the terms and conditions as defined by the Small Farms Act.²⁸⁹

398. With respect to Māori land, the Board decided that the lease terms would not change and the lease terms specified in Part 1 of the Native Land Amendment Act 1936 would still apply. That is, terms of 42 years with revaluation every 14 years and consequent adjustment of rental, and compensation at the rate of 50 per cent of the lessee's interest in improvements.²⁹⁰
399. In doing this, the Board of Native Affairs defied Māori their right to the rehabilitation promised to them when they paid the 'price of citizenship'.
400. Because of the lack of the right of perpetual renewal and the maximum compensation being only 50 percent of improvements, the Rehabilitation Board was not prepared to assist these soldiers, and they were not provided concessionary rates of interest.²⁹¹
401. This created two classes of Maori soldier settlers, the one assisted by concessionary rates of interest through the Board, and the other settled on land under Part 1 of the Native Lands Amendment Act who had to accept higher rates.²⁹²
402. The issue of Māori settlers on these lands not being afforded concessionary rates was brought up numerous times throughout the 1940's, but the Crown, particularly the head of the Board, Frederick Baker, resisted changing this policy at all opportunities.

²⁸⁹ at 600.

²⁹⁰ at 600.

²⁹¹ Wai 2500, #A248, at 620.

²⁹² at 620.

403. The position of veterans occupying land under Part I of the Native Land Amendment Act 1936 was discussed during the Rehabilitation Officers' Conference held on 8 November 1945.²⁹³
404. On the matter of concessionary interest rates, Baker remained adamant that those occupying land under Part I of the Native Land Amendment Act 1936 did not qualify.²⁹⁴
405. The Rehabilitation board was adamant that if Māori wanted their soldiers to be settled with concessionary interest rates, then they must provide lands themselves to allow these soldiers to have them on leases agreeable to the Board.²⁹⁵
406. On Gisborne's Poho-o-Rawiri Marae, on 2 August 1945, Baker also discussed the matter of land settlement.
407. Baker insisted that the Board was prepared to settle graded men on the land and added the needs of Maori veterans would not be sacrificed as the Board endeavoured to meet the needs of Pakeha.²⁹⁶
408. Baker said:
- ‘I am the one who in this matter applies the rule literally and I am not prepared and the Board has agreed that they will not provide rehabilitation loans to Maoris on any different terms.’²⁹⁷

²⁹³ at 620-621.

²⁹⁴ at 621.

²⁹⁵ at 621.

²⁹⁶ at 561.

²⁹⁷ at 561-562.

409. Baker also acknowledged:

... means that we cannot settle men under the present rules relating to land development or the present rules relating to Native leases. That means that the only man that we can deal with on a Rehabilitation basis is the man who can get a title to a piece of property or a lease from the Crown of a piece of property. With that in the back of our minds, how can we help the Maori Soldier? You might say help him by buying up all the Pakeha land and put him on that on the same terms as the Pakeha and in reply to that, I want to point out that in addition to the Maoris, we can see and we are sure that we will have the job of settling at least 6,000 Pakehas on the land ... we are going to have a big enough job settling those men and I cannot see yet how we are going to do it.²⁹⁸

410. After the debate of the last 18 months, Baker concluded:

‘it is now for the Maori people ... to decide whether they are going ... to make land available for their own boys; by gift if possible, if they are handing it from father to son, or by sale of their interests so that a particular man can be settled there ...’²⁹⁹

411. In late 1946, the Department of Native Affairs attempted to challenge the Board’s decision over its refusal to grant rehabilitation loans to Maori veterans occupying land under Part I of the Native Land Amendment Act 1936.

412. In October 1946, it appealed to Treasury, Shepherd advising the Secretary that ‘The rehabilitation of Maori ex-servicemen cannot

²⁹⁸ at 562.

²⁹⁹ at 562-563.

adequately be proceeded with whilst this state of affairs exists and the Department's native land development and settlement efforts will be hampered while it continues.'³⁰⁰

413. Maori veterans, occupying land under Part I of the Native Land Amendment Act 1936 to the satisfaction of the Board of Native Affairs, should be, he urged, accorded the same interest rate concessions as all other soldier settlers.³⁰¹

414. The Board was not disposed to accept any suggestion that its policies were impeding the settlement of Maori veterans.³⁰²

415. Baker remained adamant that the tenure offered by the Board of Native Affairs was unacceptable in respect of both term and provision for compensation for improvements.³⁰³

416. The Board, he recorded, had directed its efforts towards assisting veterans to acquire the interests of other owners and, once secured, making rehabilitation assistance available:

'The Rehabilitation Board definitely opposes the granting of rehabilitation terms to those ex-servicemen who may now accept settlement under Part I/1936'.³⁰⁴

417. The failure to provide these Māori soldiers with concessionary interest rates was a clear breach of the duties of equality and active protection,

³⁰⁰ Wai 2500, #A248, at 633.

³⁰¹ at 633.

³⁰² at 633.

³⁰³ at 633.

³⁰⁴ at 633-534.

which were especially high due to all the sacrifices made by Māori soldiers in WWII.

Prejudice

418. The overwhelming majority of Māori veterans from the War were not treated equally or equitably with Pakeha veterans.
419. The Crown discriminated against Māori in terms of rehabilitation assistance.
420. The Crown belittled the mana of Māori by failing to follow the tikanga of Māori in relation to the distribution of land for rehabilitation purposes.
421. The Crown misled Māori into giving up their own land for settlement under the false premise it would be used to settle Māori soldiers, particularly after World War 1.
422. Māori as a result gave up their land on false pretences.
423. The Crown's discriminatory policies meant that Māori ex-soldiers were not afforded the same educational opportunities, assistance and benefits as Pakeha veterans following the war.
424. The Crown's discriminatory policies disqualified Māori from the ability to participate in regular crown land rehabilitation ballots which meant that many Māori missed the opportunity to be settled on land with concessionary interest rates.
425. The Crown provided only a minimal amount of land to the Department of Native Affairs for the settlement of Māori soldiers

which meant only a small proportion were able to be settled on the land.

426. The Crown's discriminatory practices meant that the process of settling Māori on land that was administered by the Department of Native Affairs for rehabilitation purposes proceeded at a much slower rate than Pākēha settlement.
427. The minimal amount of land and slow process meant that many Māori had to seek other employment rather than fulfil their dream of working the whenua.
428. The Crown's discriminatory policies disqualified Māori from the ability to participate in regular crown land rehabilitation ballots which further prejudiced their ability to be settled on land.
429. The Crown's discriminatory policies meant that Māori settled on land subject to Part 1 of the Land Amendment Act 1936 did not receive rehabilitation assistance and concessionary interest rates.
430. The soldiers faced economic hardship and disadvantage due to the lack of rehabilitation assistance and loss of land following the war.
431. The economic disadvantage faced by these soldiers is still felt by the descendants of these ex-servicemen today.

Recommendations and Findings

432. In respect of Māori soldiers and rehabilitation schemes, the claimants seek the following findings in respect of the Crown, namely that the Crown
 - (a) Breached the Treaty;

- (b) Failed to act honourably;
- (c) Failed to act in partnership;
- (d) Failed to act fairly;
- (e) Failed to treat Māori equally;
- (f) Failed to treat Māori equitably;
- (g) Any other finding the Tribunal deems appropriate.

433. The claimants seek the following Tribunal recommendations:

- (a) An acknowledgement of its wrong doings.
- (b) An apology for the aforementioned breaches.
- (c) Any other recommendations the Tribunal deems appropriate.

PART FOUR: MĀORI NURSES

Duty

434. The Crown has a duty to treat all people, regardless of ethnicity or gender, equally.
435. The Crown has a duty to help all who return from active duty in a war to:
- (a) Reintegrate properly back into society;
 - (b) Recognise them as veterans;
 - (c) Provide them and their family with pensions;
 - (d) Honour them appropriately.

Breaches

436. Upon their return from war, Maori nurses were:
- (a) Not properly acknowledged by the Crown;
 - (b) Not recognised as veterans;
 - (c) Not entitled to a war pension;
 - (d) Did not receive land under the Soldier Rehabilitation Schemes.

Particulars: Nurses in the World Wars

437. Māori Nurses have served in every conflict since the Boer War.
438. The First and Second World Wars are significant as they were considered 'total war.'
439. Everyone, including Nurses, were a target.

440. Māori Nurses served in a variety of capacities which included, but are not limited to:
- (a) Military hospitals.
 - (b) Naval vessels.
 - (c) Civilian hospitals.
 - (d) Casualty Collection Stations (“CCS”).
 - (e) Māori Nurses in World War 1 began mobilisation with the New Zealand Expeditionary Force in 1914.
441. By January 1915 they were told to ready themselves for deployment to Melbourne, and then onward with the Australia and New Zealand Army Corps (ANZACs) to Egypt to deal with the multitudes of casualties coming in from Gallipoli.³⁰⁵
442. Ten Nurses lost their lives aboard the Marquette when she was torpedoed by the Germans, despite being clearly marked as a Hospital Ship.³⁰⁶
443. Many Nurses deployed further to France and were exposed to the horrors of the Western Front.
444. Māori nurses operating in CCS were often posted less than 500 metres from the front line and constantly under threat from indirect fire.
445. As a point of reference, the most common field gun used by German Artillery was the 10.5cm leFH 18 which had a maximum range of 11,000-12,000 metres.³⁰⁷

³⁰⁵ Sherayl McNabb *100 Years New Zealand Military Nursing: New Zealand Army Nursing Service – Royal New Zealand Nursing Corps 1915-2015* (Sherayl McNabb, Hawkes Bay, 2015), at 55-57.

³⁰⁶ Sherayl McNabb at 76-89.

³⁰⁷ Flames of War. https://www.flamesofwar.com/hobby.aspx?art_id=494.

446. Māori Nurses operated in CCS during battles such as Passchendaele where 843 New Zealand soldiers were killed or mortally wounded.
447. At battles such as La Basse Ville, Māori Nurses encountered the effects of mustard gas on soldiers.³⁰⁸

Second World War

448. Māori Nurses in World War 2 served with the New Zealand Army Nursing Service (NZANS) and the New Zealand Women's Army Auxiliary Corps (NZWAAC).
449. They began mobilisation with the rest of the 2nd New Zealand Expeditionary Force (2NZEF) in 1939.
450. By January 1940, Māori Nurses were stationed in Egypt.
451. Throughout World War 2 they would serve in:
- (a) North Africa;
 - (b) Italy;
 - (c) England;
 - (d) the Pacific; and
 - (e) the Middle East.
452. They served on:
- (a) Land;
 - (b) Sea; and
 - (c) In the air.³⁰⁹

³⁰⁸ Sherayl McNabb at 113.

³⁰⁹ Sherayl McNabb at 55.

453. As with the First World War, Māori Nurses in CCS followed the Allied Forces as they advanced into the German lines.
454. Nurses would be charged with aiding the wounded soldiers from battles of the war that raged in some instances only a few hundred metres away.
455. During the Second Battle of El Alamein, 300 wounded soldiers were ushered into a New Zealand CCS in a matter of three hours.³¹⁰
456. For many Māori nurses, their service did not end with the German surrender.
457. Like many soldiers, they joined Jay Force and were sent to the Pacific to continue to conflict with Japan.
458. They remained as part of Jay Force until 1948.³¹¹

Returning home

459. From the First World War, 21 Nurses died on active service or as a result of active service.
460. Of those who served in World War 2, 19 died on active service as a result of accidents or illnesses.³¹²
461. During and post the War, shell shock was widely known.

³¹⁰ Sherayl McNabb, at 270.

³¹¹ Sherayl McNabb at 55.

³¹² Sherayl McNabb at 55.

462. Māori nurses would have been affected by shell shock as well as soldiers.
463. Māori nurses and their suffering has not been acknowledged.
464. Upon their return from war, the Crown:
- (a) Failed to help Māori nurses with the psychological scars of war;
 - (b) Excluded Māori nurses from land settlement schemes;
 - (c) Excluded Māori nurses from war pensions.

War pensions

465. At the end of the First World War, serving in a war did not automatically entitle one to a war pension.
466. War pensions were then governed by the War Pensions Act 1915 (“the Act”).
467. The War Pensions Extension Act 1940 (“the Extension Act”) was enacted for those who served in World War 2.
468. Section 22 of the Extension Act excludes Nurses and those serving in the Auxiliary Corps from being defined as a “member of the forces within the meaning of this Act.”
469. Section 22 of the Extension Act states that a Nurse serving as part of the NZ Army may only be considered for a pension on the recommendation of the Minister of Defence.³¹³
470. This was corrected in the War Pensions Act 1954.

³¹³ War Pensions Act 1915, s 22.

471. Section 22 of the Act lacked objectivity and certainty.
472. Section 2 of the Act directly prejudiced Māori nurses by listing a ‘dependant’ as “a wife and children”.
473. The Act does not mention the husbands of Māori nurses.
474. If any of the 19 nurses who died as a result of war service had husbands, those husbands would not receive a war pension.
475. This wording continued in the War Pensions Act 1954.
476. It was finally corrected to recognise “surviving spouses’ and surviving partners’ under the War Pensions Amendment Act 1988.

Land settlement schemes

477. Land resettlement after the First World War was governed by the Discharged Soldiers Settlement Act 1915 (“the Discharge Act”).
478. Section 1 of the Discharge Act defines a ‘Discharged Soldier’ as a person who:
- (a) Has been a member of the New Zealand Naval Forces or any Expeditionary force;
 - (b) Has served beyond NZ in connection with the present war;
 - (c) Has returned to New Zealand; and
 - (d) Has received his discharge from service either before or after his return to NZ.³¹⁴

³¹⁴ Discharged Soldiers Settlement Act 1915, s 1.

479. Despite the language used Section 1 only applies to men.
480. The New Zealand Army Nursing Service received its official establishment from Cabinet on 11 January 1915 and became an integral part of the New Zealand Army.³¹⁵
481. Thus, they were part of the New Zealand Expeditionary Force and a Discharged Soldier under the Act.
482. The Tribunal has commissioned two reports that deal in depth with Soldier Settlement after the World Wars.
483. There is nothing in either Ester McGill's Report or T.J Hearn's report to suggest that Nurses benefitted from this scheme.
484. Although, given the wording in the Act to emphasise "he", it is unlikely that any application would have been granted.

Prejudice

485. Military nurses were not recognised as veterans. Accordingly, they:
- (a) Did not receive due recognition.
 - (b) Lost mana.
 - (c) Were not entitled to a pension, nor were their spouse and family.
 - (d) Did not receive land and assistance under the Soldier Rehabilitation land schemes.

Relief, Findings and Recommendations

486. The claimants seek the following:

³¹⁵ Sherayl McNabb at 55.

- (a) That this claim is well-founded.
- (b) That the Army did not treat nurses with the respect they deserved, including:
 - (i) Proper recognition of their status.
 - (ii) Proper and equal access to lands and opportunities provided under the soldier rehabilitation land schemes.

487. Any other recommendations the Tribunal deems appropriate.

PART FIVE: MEDALLIC RECOGNITION

Duty

488. The Crown has a duty of care to New Zealand soldiers to ensure they are properly acknowledged after armed conflict has ceased. This includes ensuring that those who serve receive the appropriate respect afforded to them for serving New Zealand in times of war.

Breach

489. The Crown has failed to ensure veterans of the 28th Māori Battalion (“the Battalion”) were afforded the proper respect and dignity that they deserved. This includes:
- (a) Ensuring that their service received medallic recognition in a manner that afforded that service the proper respect and dignity.
 - (b) Taking appropriate steps to ensure that campaign medals reached the soldier who had earned them.
 - (c) Displaying respect to the mana of soldiers killed in the war by ensuring that their medals reached their next of kin.
490. The Crown has failed to ensure that Māori women were afforded the proper acknowledgement, respect and dignity that they deserved. This includes:
- (a) Māori nurses and other Māori women in active service.

Particulars: Medallic Recognition

491. Māori were actively recruited to join the Second New Zealand Expeditionary Force.

492. This active recruitment included recruiters visiting a vast number of rural townships with a high Māori population.
493. Information on where to enlist was effectively distributed, resulting in many Māori travelling to local recruiting stations to enlist.
494. The Crown took these steps to ensure that the relevant enlistment information reached even those in the most remote areas of New Zealand.

28 Māori Battalion

495. The Battalion was a front-line infantry battalion made up entirely of volunteers.³¹⁶
496. The reasons for Māori enlisting were varied, but a major reason was what is now known as “the price of citizenship”.³¹⁷
497. The soldiers and officers of the Battalion paid this price of citizenship many times over:
- (a) 649 were killed.
 - (b) 1712 were wounded.
 - (c) 237 were prisoners of war.³¹⁸
 - (d) This is a casualty rate of 2:3.
498. By the end of the war, the 28 Māori Battalion had been awarded every single medal for gallantry, including the Victoria Cross.

³¹⁶ 28th Maori Battalion (28th Māori Battalion, updated 28 September) URL: <https://28maoribattalion.org.nz>.

³¹⁷ Ngata, A. T. *The Price of Citizenship: Ngarimu V.C.* Wellington: Whitcombe & Tombs, 1943.

³¹⁸ At 307.

Medals

499. Service medals:
- (a) Are a way of acknowledging service;
 - (b) Tell the curriculum vitae of any soldier who has served their country; and
 - (c) Can tell the stories that often the soldiers cannot.
500. New Zealand has a very specific process to determine eligibility for medals.
501. There exists a dedicated team at the New Zealand Defence Force Medals Department (“the Department”) that ensures medallic eligibility is correct.
502. The Department is also responsible for ensuring each soldier is awarded their medallic entitlement.

Medallic Awarding Process – Second World War

503. Following World War 2, the medals of those who were killed as a result of their service were sent to their nominated next of kin.³¹⁹
504. Unlike previous and subsequent conflicts, World War 2 campaign medals were not engraved with the soldiers details.
505. By 1945, 75 percent of the Māori population still lived in rural areas.³²⁰

³¹⁹ Interview with Geoff Fox, Team Leader NZDF Medals Department (Telephone call 02 May 2019).

³²⁰ Statistics New Zealand “*New Zealand Urban/Rural Profile*” (Accessed 25 September 2020), URL: http://archive.stats.govt.nz/browse_for_stats/Maps_and_geography/Geographic-areas/urban-rural-profile/historical-context.aspx#gsc.tab=0

506. If there was no specific address, as was the case for many Māori, medals were simply sent to the town the soldier enlisted from.
507. The majority of these were sent in bulk on 14 March 1950.³²¹
508. There is a very strong likelihood that un-engraved medals sent to a non-specific location would be lost or undelivered to the intended recipient.
509. Once medals were sent out, they were recorded as delivered on the soldier's personal file.
510. There was no requirement for an acknowledgement of receipt.³²²
511. The Crown at the time, failed to take adequate steps to ensure that the medals of Māori soldiers who gave their lives for New Zealand reached their final destination.
512. These steps were entirely within the Crown's ability: The Crown travelled to where Māori lived to get them to enlist, and they could have done the same to ensure their medals were delivered.
513. Soldiers who returned home were not awarded their medals upon reaching New Zealand shores.
514. Instead soldiers had to apply for them and they would be sent in the mail.³²³

³²¹ Interview with Geoff Fox, Team Leader NZDF Medals Department (Telephone call 02 May 2019).

³²² Interview with Geoff Fox, Team Leader NZDF Medals Department (Telephone call 02 May 2019).

³²³ Interview with Geoff Fox, Team Leader NZDF Medals Department (Telephone call

515. Many saw this as an insult to their mana and did not apply.
516. The Māori world view was that the presentation of War medals had to be done kanohi ki te kanohi, or face to face.
517. The face to face mentality was reflective of tikanga.
518. There is the very high likelihood that Māori were unaware of the need to write in to apply for their medals.
519. Not knowing that they had to write in to request their medals would most likely have been due to living in remote areas.
520. This system of medallic recognition is problematic, not only for reasons of mana, but because it favours those who live in urban areas, to the detriment of Maori soldiers, 75 percent of whom lived in rural areas.³²⁴

Scale

521. The negligence of the Crown in sending medals to remote locations with no requirement to acknowledge receipt means that the true number of lost medals will never be known.
522. As stated above, by 1945, 70 percent of the Māori population was not easily accessible.³²⁵ The Crown had the means to access them and honour them personally, but chose not to.

02 May 2019).

³²⁴ At n[311].

³²⁵ At n[311].

523. In 2011 the Crown issued the New Zealand Defence Service Medal to honour attested service after 02 September 1945.³²⁶
524. A campaign was launched with much media attention to ensure that the many thousands of people who were eligible for the medal knew to apply.³²⁷
525. This medal was created over 60 years after the first soldier became eligible for it, therefore it is clear why soldiers must apply. However, there is no excuse why the Māori Battalion were required to apply as the medals existed in 1945 such as the Africa Star which was first awarded in 1943.

Prejudice

526. The Crown created a process of medallic recognition that prejudiced Māori as:
- (a) Many lived in rural and remote areas.
 - (b) That process didn't not align with tikanga.
527. The Crown's failure to ensure that soldiers received medallic recognition for paying the cost of citizenship is an insult to the mana of the Māori Battalion.
528. 130 C Company soldiers from the 28th (Māori) Battalion are yet to be issued with their World War 2 medals.

³²⁶ New Zealand Defence Service Medal Regulations 2011.

³²⁷ Scoop. *Applications Now Open For the New Zealand Defence Service Medal* (Press Release New Zealand Defence Force, 15 April 2011) URL: <https://www.scoop.co.nz/stories/PO1104/S00207/applications-open-for-new-nz-defence-service-medal.htm>.

529. Another 4 C Company soldiers from the 28th (Māori) Battalion are yet to be issued with other war medals.

Findings and Recommendations

530. The claimants seek the following:
- (a) That this claim is well-founded.
 - (b) That the system and processes concerning medallic recognition were prejudicial towards Māori.
 - (c) That the Crown has failed in its duty to afford Māori who served in war the proper dignity and respect they deserved.
 - (d) That the Crown failed to take steps to ensure the medals of both veterans and those killed in the service of New Zealand made it to their intended recipients.
 - (e) That these steps were entirely within the Crown's ability.
 - (f) Any other recommendations the Tribunal deems appropriate.

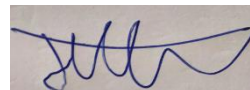
DATED at Auckland this 06th Day of November 2020



David Martin Stone



Tuari Brooking



Harry Clatworthy

Counsel for the claimant

TO: The Registrar, Waitangi Tribunal; Crown Law Office and those on the notification list for Wai 2500 Military Veterans Kaupapa Inquiry.