

MAY IT PLEASE THE TRIBUNAL

A. PREAMBLE

I. The Claimants

1. This is the second amendment state of claim for Wai 1501.
2. The claimants for Wai 1501 are Petunia Mahara, Te Rauangaanga Boss Mahara, Phillip Mahara and Ronald Miki Apiti (“the claimants”).
3. The claimants are both Ngāti Te Wehi (Aotea waka) and Waikato-Tainui (Tainui waka).
4. This amended statement of claim focuses on the Crown actions, omissions and policies as they affected one of the claimants in particular, namely Ronald Miki Apiti (“the claimant”).
5. The claimants file this claim to recognise what happened to the claimant and his family, but also all those who suffered as a result of the Crown actions, omissions and policy decisions.
6. This amended statement of claim is brought on behalf of:
 - (a) all those soldiers who fought for the Crown during the Vietnam War, their spouses, children and mokopuna.
 - (b) Those tipuna unfairly and wrongly imprisoned by the Crown for refusing to turn up to train when balloted in 1918.

II. The Claim

7. 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; and
 - (b) that they have been and continue to be or are likely to be prejudicially affected by the various Acts and Crown policies, practices, acts and omissions adopted by, or on behalf of the Crown or its agents.

8. This claim concerns two aspects, firstly the Crown's failings in respect of the Vietnam war:
 - (a) The Crown's failure to adequately take care of Vietnam war veterans upon their return from Vietnam in terms of financial, physical and psychological assistance.
 - (b) The Crown's failure to ensure the wellbeing of Vietnam veteran's spouse, children and mokopuna.
 - (c) The wrongful vilification of Vietnam Veterans.
 - (d) The Crown failing to support those soldiers which they sent to war once they came back from war.
 - (e) The repatriation of fallen soldiers from overseas.

9. Secondly, this claim concerns Conscription and the wrongful imprisonment of Waikato for failing to turn up for training when balloted in 1918. This claim then concerns:
 - (a) The right of Maori to say no to enlistment.
 - (b) The inherent repugnant ability of a Crown to unilaterally confiscate nearly all the land belonging to a certain people, namely Waikato, then expecting those same people to fight for them, and imprisoning them if they choose not to fight.

10. As a result of the aforementioned, the claimants say that in respect of the Vietnam war, this claim concerns the downstream prejudice of mental stress, anxiety, depression, marriage separation and ill health.
11. Further, in respect of Conscription and the wrongful imprisonment of Waikato Maori, the claimants say that this claim concerns the loss of mana and dignity.

B. CROWN BREACHES

I. REHABILITATION AND RESETTLEMENT

Duties

12. Under the Treaty of Waitangi the Crown's duties included:
 - (a) A duty to ensure that upon their return from war, that Veterans received effective counselling to help cope with the trauma of war.
 - (b) A duty to re-integrate the claimant back into society.
 - (c) A duty to ensure that all fallen soldiers were returned to their family.
 - (d) A duty to recognise the mana of the New Zealand soldiers as being distinct and different to other soldiers from other nations serving in Vietnam.

Breaches

13. Upon his return from Vietnam the claimant:
 - (a) Received no counselling assistance from the Crown.
 - (b) Received little financial support from the Crown.
 - (c) Was denigrated by the Crown for fighting in Vietnam.

- (d) Was denigrated by the New Zealand public for fighting in Vietnam.
- 14. The claimant's unit was put under the command and therefore the mana of an Australian unit.

Particulars

- 15. The claimant's regimental Number was U42476 and his rank was that of Private and Gunner.
- 16. The claimant's unit was Victor 2 1RNZIR, 161 Battery, Royal New Zealand Artillery.
- 17. The claimant served two tours in South Vietnam, the first was with Victor 2 of Victor Company 1RNZIR (First Battalion of the Royal New Zealand Infantry Regiment) from November 1967 to May 1968.
- 18. The second tour was with the Gunners, 161 Battery, Royal New Zealand Artillery from January 1970 until 161 Battery cease fire at Nui Dat Phuoc Toy Province May 1971 where he then returned to New Zealand the same month under Major John Masters MC, who was 161 Battery Commander.
- 19. During the first tour to South Vietnam with Victor 2 the claimant was under command of the Australian Task Force, serving firstly under 2 R.A.R (2nd Battalion Royal Australian Regiment) and later with 4 R.A.R.
- 20. The unit flew in to Vung Tau, South Vietnam from Singapore by Bristol Freighters.

21. The unit then flew to the Horse Shoe on Chinooks relieving Victor 1 of its Operational duties to South Vietnam.
22. The unit spent the first 4 weeks at the Horse Shoe on T.A.O.R (Tactical Area of Responsibility) patrols and were then re-deployed to Nui Dat which was the Australian Task Force Base Area.
23. From Nui Dat the unit went on a number of Operations inside the Phuoc Tuy Province, North of Saigon into the Bien Hoa Province. There the unit saw live action, in particular Operation Duntroon and Operation Coburg.
24. It was during the T.E.T Offensive (February – March 1968) that the unit had two members killed in action.
25. The first was Gunner Elwood of Foxton a member of 161 Battery a signaller for the F.O.O. Party (Forward Officer Observation Party) attached to Victor 2 on this Operation.
26. The next was Private Des Hirini.
27. Both were killed by enemy fire.
28. Gunner Elwood's body was air lifted out on the same day to Saigon.
29. Des Hirini's body was kept overnight because he was killed late that afternoon.
30. The claimant has clear memories of seeing Des Hirini's body and the enemy (NVA) who shot him, laying side by side together, their bodies silhouetted by moonlight lying down beside the units perimeter track.

31. The next morning Des' body was airlifted by Helo to Bien Hoa Air base and on to Saigon, now known as Ho Chi Minh City.
32. The claimant saw three other of his comrades killed in action two of whom were serving with Whiskey 1 Company 1RNZIR, namely Corporal George Hoerara of Te Araroa and Bill Awatere of Ruatoria.
33. The other was Jim Gatenby, who is buried at Terendak Camp Malacca, Malaysia.
34. Jim Gatenby was on his second tour when he was killed. He served with Victor 1 and later served with Whiskey 2.
35. The bodies of Des Hirini, George Hoerara and Bill Awatere were still in South Vietnam several weeks later after they had died.
36. While on operation the claimant and his comrades were asked to pay money so that their fallen comrades could be sent home to New Zealand.
37. Jim Gatenby is buried at Terendak Camp.
38. The grave is well looked after by the Malaysian Army.
39. Des Hirini is buried at Kawerau.
40. Bill Awatere's is buried at Ruatoria.
41. George Hoerara is buried at Hinerupe Marae, Te Araroa.
42. Nearing the end of the claimant's 6 month tour of duty to South Vietnam, with less than two weeks before the end of his tour, the

claimant's unit V2 Company was on its last operation when 4 Platoon's position was mortar bombed.

43. Five of the claimant's comrades were hit and wounded by shrapnel and were flown to Saigon and back to Singapore.
44. The claimant was not with 4 Platoon when this attack occurred but instead was a machine gunner of a 15 man two section security patrol doing TAOR patrol near the Hai Hill outside of Nui Dat.
45. Upon returning to Nui Dat, the rest of Victor 2 Company were already back at Base.
46. The following day the unit was relieved by Victor 3.
47. Later in 1968 the claimant returned to New Zealand amongst a barrage of protest.
48. The claimant did understand the protests because when he left for Malaysia in late 1966 to serve in Colonel Poananga's Battalion, the claimant did not see much if any protest at all.
49. The claimant was exposed to defoliants which would play a very big part in his health in later years.
50. September 1969 the claimant left the Army and drifted from one job to the other.
51. The claimant found it difficult to 'settle down'.
52. The claimant met his late wife Paku Raroa from Rangitukia, Tikitiki East Coast.

53. They had one child during this period, namely Desmond James Te Kaha Apiti born 28 December 1969.
54. He was named after the claimant's comrade Des Hirini.
55. The claimant re-joined the Army in May 1970 serving with 161 Battery Royal New Zealand Artillery stationed at Papakura.
56. The claimant's second tour to South Vietnam was with 161 Battery RNZA 1971.
57. The claimant's second child, Noeline Patricia Te Ru Apiti was born on the 30th of December 1970 and the next day the claimant left for South Vietnam with 161 Battery RNZA ("the Battery").
58. During this tour, the Battery was deployed on a number of fire support bases outside Nui Dat Base camp North of Phuoc Toy Province.
59. The Battery gave fire support to Victor 5 who was in contact with the enemy.
60. A Fire Support Helicopter flew just outside of the Battery's Perimeter hovering approximately 60 to 70 meters above them when the engine stopped and the helicopter crashed to the ground.
61. The pilot jumped out of the helicopter throwing his helmet on the ground.
62. The co – pilot, FSB Tobin was shot several times.

63. During the claimant's last month in South Vietnam, he along with Gunner Rameka flew down to Chi Lan near the Cambodian Border taking some of Battery's equipment to one of the NZATTV Training Team who were at Chi Lan training South Vietnamese soldiers.
64. The claimant and Gunner Rameka were stuck there for one week unable to fly out because of heavy enemy fire.
65. In May 1971 the Battery paraded on the tarmac at Nui Dat and each soldier was presented with the South Vietnamese Citation.
66. The claimant flew back to New Zealand via Singapore and arrived in New Zealand in darkness, which was deliberate, so as to hide the soldiers from the public upon their return.
67. When the claimant and his comrades paraded down Queen Street the public pelted them with red paint and tomatoes.

II. PROVISION AND ACCESS TO SOCIAL SERVICES

Duties

68. Under the Treaty of Waitangi the Crown's duties included:
 - (a) A duty to provide the claimant with services to help him cope with the stresses of returning from war and the duty to ensure that the claimant *knew* that those services were available to him.

- (b) A duty to assist and help the claimant's family, including spouse, children and mokopuna from any affliction resulting from the claimant serving in Vietnam.

Breaches

- 69. The Crown failed to provide the claimant with the services necessary to adequately reintegrate back into society.
- 70. When the Crown did provide services for Vietnam veterans the claimant was not aware that those services were available.
- 71. The Crown failed to make available to the claimant's family including spouse, children and mokopuna, any and all services needed to help them deal with any affliction resulting from the claimant serving in Vietnam.

Particulars

- 72. Upon the claimant's return from Vietnam there were no help line phone numbers or any other support networks which the claimant could access to help cope with the stress of returning from war.
- 73. When the claimant returned from Vietnam there were no services to help him deal with the physical strains of war.
- 74. The claimant was unaware that there was disability assistance available to him until 1998.
- 75. Nor were there any support networks in place to help the families of Vietnam veterans, in particular their wives, who may have been struggling with helping their husbands cope with the effects of war.

76. Nor was there assistance available to the children of Vietnam veterans to help them who may have been struggling with their father trying to cope with the effects of war.
77. While in Vietnam the claimant was exposed to defoliant.
78. The claimant suffers from the following medical conditions:
 - (a) Fracture Dislocation Left Ankle with internal Fractures and Osteoarthritis.
 - (b) Sensory Neural Deafness.
 - (c) Tinnitus.
 - (d) Throat Infection.
 - (e) Alcohol Dependency.
 - (f) Eczema.
 - (g) Chronic obstructive airway disease.
 - (h) Stomach Problems.
 - (i) Cervical Spondylosis.
 - (j) Ischaemic Heart Disease with Aortic Dissection.
 - (k) Recurrent Lumbar Strain.
 - (l) Hypertension.
 - (m) Post-Traumatic Stress Disorder.
 - (n) Diabetes Type 2.
 - (o) Hypertension.
79. The claimant's children and grandchildren suffer from ill health.
80. The claimant acknowledges the existence of the Veterans' Support Act 2014 ("the Act").
81. However, the Act only makes provisions for Vietnam War Veterans, their spouse and children.

82. The Act does not and will not extend to the Veteran's grandchildren, mokopuna, and future generations who might suffer from the ill health effects of the Vietnam War.

Prejudice

83. As a result of the Crown's breaches the claimant suffers prejudice including:
- (a) Ill health.
 - (b) Children and grandchildren who suffer from ill health.
 - (c) Future generations who might suffer from ill health.

III. CONSCRIPTION

Duties

84. The Crown has a duty to treat Māori fairly, to act honourably, to act in partnership and in good faith.
85. The Crown has a duty to actively protect the tikanga, mana and tino rangatiratanga of Māori.
86. The Crown has a duty to treat Māori equally with other New Zealanders.

Breaches

87. In breach of the aforementioned duties, the Crown:
- (a) unfairly and unjustly imposed conscription only upon Waikato Maori, overriding their rangatiratanga, mana and tikanga;
 - (b) unfairly and unjustly imprisoned Waikato Maori who failed to

- turn up for training when balloted in 1918; and
- (c) ignored Waikato tikanga-based objection to conscription.

Particulars

88. During World War 1, volunteers from the Waikato region were almost non-existent.¹
89. The Military Service Act 1916 (“the Act”) was the enacting legislation that imposed military conscription of non-Māori men aged between 20 and 46.
90. Māori were exempt from the Act, but section 50 of the Military Service Act 1916 maintained that “The Governor, may, by Proclamation, extend the provisions of this Act, with such modifications as he thinks necessary, so as to provide for the compulsory calling-up of Natives for military service with the Expeditionary Force”.²
91. Tau Henare, prominent Māori politician of the time, pointed out the historical roots of the Waikato reluctance to take part in the war effort, and called for the return of confiscated lands.³
92. There were two main reasons why Waikato did not contribute troops to fight for the Crown in World War 1.
93. Firstly, Waikato had not forgotten the confiscation of their lands by the Crown less than 60 years earlier where Tāwhiao and his followers were declared rebels and some 1.2 million acres (almost 500,000

¹ Ross Webb, Wai 2500 #A247 *Equality and Autonomy: An Overview of Māori Military Service for the Crown, 1899-1945* at 135.

² Military Service Act 1916, Section 50.

³ Wai 2500, #A247, above at n[1] at 137.

hectares) of their fertile lands were confiscated.⁴

94. Secondly, Waikato had not forgotten the words of King Tāwhiao, who after having made peace with the Crown in 1881, forbade Waikato to take up arms again when he said:
*“Listen, listen, the sky above, the earth below, and all the people assembled here. The killing of men must stop; the destruction of land must stop. I shall bury my patu in the earth and it shall not rise again ... Waikato, lie down. Do not allow blood to flow from this time on.”*⁵
95. On 11th July, 1881, only 33 years before the beginning of WW1, Tāwhiao, escorted by more than five hundred men went into the town of Pirongia. In the main street of the township they laid down their guns at the feet of Major William Mair as a symbolic show of peace.⁶
96. Tāwhiao’s granddaughter Te Puea Herangi and others in Waikato interpreted these words and actions as instructions to never fight again.
97. Te Puea Herangi, led a movement that influenced Waikato Māori not to join the overseas war effort.
98. Peace was part of the tikanga, mana and exercise of tino rangatiratanga for Waikato.
99. The Government was extremely unhappy with the lack of volunteers for the war from Waikato.

⁴ Rahui Papa and Paul Meredith *Kingitanga-the Māori King movement - Tāwhiao, 1860-1894*, Te Ara - the Encyclopedia of New Zealand.

⁵ The Ministry for Culture and Heritage *Te Puea Herangi*. www.nzhistory.govt.nz/media/photo/te-puea-herangi

⁶ Cowan, J. *The New Zealand Wars: A History of the Māori Campaigns and the Pioneering Period: Volume II: The HauHau Wars, 1864-72*. (1956).

100. In June 1915, Defence Minister James Allen wrote to Godley, Commander of the New Zealand Expeditionary Force:
*‘[the] Maoris seem to have a disposition not to serve led by some of the chiefs who are beginning to feel sore over their land question.’*⁷
101. In a reply dated 15 June 1915, Allen stressed that service was still voluntary. He also emphasised that combat was a Maori choice.⁸
102. In February 1916, Minister of Defence James Allen again wrote to Godley, outlining some of the issues with the Māori contingent:
*‘[w]e cannot get the Waikato tribes to encourage their young men to enlist’*⁹
103. Tensions regarding the lack of recruits from the Waikato existed from the outset of the War, and were heightened in the context of low Maori reinforcements for the contingent.
104. Allen made comments to Godley that suggested that it was more than just a lack of reinforcements that was the issue. Referring to the high-profile case of Tonga Mahuta, King Te Rata’s brother, who was repeatedly convicted for refusing to drill for the Territorial Force, Allen wrote:
*“the mana of Mabuta or the mana of the Government is to prevail. There can be no question about it that the Government’s mana must prevail”*¹⁰
105. The Minister of Defence specifically stated that the mana of the Government must prevail over the mana of Waikato.

⁷ John Sarich Wai 898 #A029 *An Overview of Political Engagement between Hapu and Iwi of Te Rohe Potae in inquiry district and the Crown, 1914-1939*.

⁸ Wai 898 #A029, above at n[7], at 23.

⁹ Wai 898 #A029, above at n[7] at 27.

¹⁰ Wai 898 #A029, above at n[7] at 27.

106. Later in 1916, Allen visited the Waikato along with Ngata, Pomare, and Tau Henare.
107. On 24 November 1916, a large hui was held, which was organised by the Kingitanga to honour the third anniversary of the accession of Te Rata.
108. The Waikato Times reported that Allen and the Maori MPs were there to argue the Government's cause, while the Kingitanga attempted to persuade the other tribes against allowing their young men to serve¹¹
109. The report described Waikato opposition in terms of the Treaty of Waitangi:
*"The trouble apparently arises from a clause in the Treaty of Waitangi, which states that no Maoris shall be required to bear arms for service outside the Dominion. The Waikato chiefs are making this clause the basis of their argument against recruiting and are practically accusing the Government of a breach of the Treaty in having taken away any natives at all."*¹²
110. The purpose of Allen's visit and speech was to attempt to persuade the Waikato to 'volunteer' before Section 50 was implemented.¹³
111. In 1917, s50 of the Military Service Act was enacted and conscription was extended to Māori.¹⁴
112. All Māori males aged between 20 and 46 had to register at the nearest police station by 20 February 1918, a failure to do so could carry a penalty of £50 or three months' imprisonment.¹⁵

¹¹ Wai 898 #A029, above at n[7], at 31.

¹² at 31.

¹³ at 31.

¹⁴ Wai 898 #A029, above at n[7], at 23.

¹⁵ Wai 898 #A029, above at n[7], at 36.

113. The extension of the Act was gazetted in terms that applied conscription to all Maori, but communications from the Minister of Defence, James Allen, made it clear that its application was to be in the Waikato alone.
114. This was demonstrated in June 1917 when Haki G. Thomas and 54 others of Te Arawa petitioned that conscription not be applied to them, with Minister Allen replying:
*'Compulsion of the Military Service Act need not be feared by the Tribes of New Zealand who voluntarily sent their sons on the service of the King and Empire'*¹⁶
115. Allen's reply emphasised that conscription was being implemented because:
*'One Tribe... has not done its duty.'*¹⁷
116. On 3 May 1918 the first Māori conscription ballot was held.¹⁸
117. The North Island had been divided into six Māori recruitment districts, but the ballot was only applied to Māori from the Waikato-Maniapoto District.¹⁹
118. 209 men were balloted in the initial ballot and called to report to the medical board for examination.²⁰
119. Only 68 of the balloted 200 men reported to the medical board.²¹

¹⁶ Wai 898 #A029, above at n[7], at 37.

¹⁷ at 37.

¹⁸ Wai 2500, #A247, above n[1], at 147.

¹⁹ Wai 898 #A029, above at n[7], at 47.

²⁰ Wai 898 #A029, above at n[7], at 43.

²¹ Wai 898 #A029, above at n[7], at 44.

120. By 1919, there had been three ballots and 552 men had been called to report.²²
121. Māori ballots were taken in the Waikato-Maniapoto district only.²³
122. Thus, Waikato Māori were the only Māori subject to conscription.
123. In order to overcome low registration for the ballot, the Crown used Māori census data in order to create the ballot.²⁴
124. At the time, general census data was confidential and only to be used for its statutory purposes.²⁵
125. The Māori census was not established and guided by the Census and Statistics Act, therefore it was unclear if it was technically illegal. However, the use of census data for such a purpose was controversial.²⁶
126. Sir Apirana Ngata in his recruitment waiata, ‘Te ope tuatahi’ highlighted those tribes that had contributed troops to World War 1. By highlighting which tribes had contributed troops, he was also criticising those tribes who had not contributed troops.
127. Ngata’s criticisms, which were made while a member of Parliament – were unfair: they did not take into consideration the reasons why Waikato did not provide troops for World War 1.
128. Waikato did not want to contribute troops to fight for a government

²² Wai 2500, #A247, above at n[1] at 360.

²³above at n[19]

²⁴ Wai 898 #A029, above at n[7], at 34-35.

²⁵ at 35.

²⁶ at 35.

that had confiscated their lands less than since 60 years earlier.

129. Waikato followed the tikanga of the call to peace made by their tipuna Tawhiao.
130. In 1917 in response to questions about Māori involvement in the war, the Māori King, Te Rata, had adopted a position that it was a matter of individual choice and that no one should be forced to serve.²⁷
131. Te Puea Herangi, supported those men who resisted conscription by gathering them up at Te Paina, a pā she had rebuilt at Mangatāwhiri.²⁸
132. Te Puea Herangi was unfairly criticised by both Māori and Pākehā who accused her of being a German sympathiser.
133. The criticism levelled at Te Puea Herangi was plainly unfair and did not take into account the tikanga of peace of the Waikato Māori and the Crown's unjust confiscation of nearly all Waikato lands.

Arrest of Waikato Māori

134. Those Waikato men who refused to report for training when balloted in 1918 were arrested and taken to Narrow Neck training camp at Auckland.²⁹
135. Anyone who refused to wear the army uniform were subjected to severe military punishments, including 'dietary punishments' (being fed only bread and water) and being supplied with minimal bedding³⁰

²⁷ Wai 2500, #A247, above at n[1], at 135.

²⁸ Wai 898 #A029, above at n[7], at 46.

²⁹ Wai 2500, #A247, above at n[1], at 147.

³⁰ Wai 2500, #A247, above at n[1], at 152.

136. Overall, 34 Waikato Maori arrested with Tonga Mahuta consistently refused to wear military uniform or to train, and were punished with 'dietary deprivation' (bread and water) and various periods of imprisonment.³¹
137. Six Waikato Māori were court-martialled and sentenced to two years in gaol with hard labour.³²
138. Waikato were the only Maori imprisoned under the Act.
139. Te Rauangaanga Mahuta, brother of the Māori king, was one of those called in the ballot of 3 May 1918.
140. Te Rauangaanga did not report to the medical board.
141. On 7 June, three constables arrived in Te Paina and arrested seven Maori, including Te Rauangaanga Mahuta.³³
142. Te Rauangaanga Mahuta was forcibly taken to Narrow Neck to undergo military training.
143. Te Rauangaanga Mahuta was only 16 years old at the time, and was thus ineligible for service.
144. On Te Rauangaanga's attestation form, military officials listed his date of birth as 'unknown, about 20 years'.³⁴

³¹ Wai 2500, #A247, above at n[1], at 152.

³² Wai 2500, #A247, above at n[1], at 152.

³³ Wai 2500, #A247, above at n[1], at 147.

³⁴ Wai 2500, #A247, above at n[1], at 149.

145. There is evidence that demonstrates that military officials believed that an arrest of Te Rauangaanga Mahuta could pressure other Waikato to enlist and end their resistance. Colonel Patterson wrote:

*“[a] very strong appeal has been made to the King’s brother, Te Rauangaanga Mahuta, and it is felt that if this man can be convinced to serve, all the other natives will follow his example’.*³⁵

146. At Narrow Neck, Maui Pomare and Colonel Patterson persuaded Te Rauangaanga to take the Oath of Allegiance and to write a letter to be distributed among Waikato Maori that stated he had changed his stance towards military service.³⁶

147. Te Rauangaanga’s granddaughter Tahī Mangu disputes the validity of the letter claiming the following:

*“It was terrible, how they were treated there at Narrow Neck. It was not good for them there. The way they were treated by the Pakeha. And other Maori also played a part in humiliating the ones from Waikato. I think that even though it says in the book that he was fine with the training, that’s not true. He didn’t like it. However the Pakeha have their versions of events, whatever. As if he wrote home telling us that he was fine! That what they were doing was good! Perhaps that’s a Pakehā story, for their purposes.”*³⁷

148. In a report to the Director of Recruiting in September 1918, Sergeant Cook wrote that he visited the soldiers’ quarters and

*‘singled out Te Rauangaanga Mahuta, paying him more marked attention and solitudes and of course refraining of any conversation that would lead anybody to infer or anticipate my mission’.*³⁸

³⁵ Wai 2500, #A247, above at n[1], at 135.

³⁶ Wai 2500, #A247, above at n[1], at 148.

³⁷ at 148.

³⁸ at 149.

Native military service board

149. Soldiers could appeal to the Military Service Board under s18 of the Military Service Act if they were called up for military service.
150. Soldiers could appeal for reasons of:³⁹
- (a) Not being a member of the Reserve.
 - (b) Being called up from a division or class of the reserve that had not been authorized under the Act.
 - (c) That because of their occupation being called up to the service is contrary to the public interest.
 - (d) That it would be a cause of undue hardship to themselves or others.
 - (e) Religious objection.
151. There was a narrow definition of religious objection under s18(1)(e).⁴⁰ Under the Act it was required that in order to be exempt due to religion that a man must:
- “On the fourth day of August, nineteen hundred and fourteen and since continuously been a member of a religious body the tenets and doctrines of which declare the bearing of arms and the performance of any constant service to be contrary to Divine revelation”.*⁴¹
152. This legislation failed to take into account Waikato objection by reason of tikanga.
153. Conscripted men who refused military service for non-christian religious or political reasons were known as ‘conscientious objectors’.

³⁹ Wai 2500, #A247, above n[1], at 150.

⁴⁰ Military Service Act 1918, s 18.

⁴¹ above at n[40].

154. Around 600 men were declared conscientious objections, including a number of Waikato Māori.
155. The Crown did not take kindly to conscientious objectors: 286 of these men were imprisoned, including 14 Waikato Māori.⁴²
156. 60 men were granted exemption on religious grounds.
157. No Māori were granted exemptions.
158. Non-religious objectors were not able to appeal against their conscription, although christian objectors could.⁴³
159. Take Puke was one of the Waikato Māori who refused to report when balloted in 1918, and was arrested.⁴⁴
160. He was later court martialled and sentenced to 18 months imprisonment with hard labour.
161. When Māori were called up for service in 1917 the Native Military Service Board was constituted to hear appeals lodged by Māori.⁴⁵
162. Waikato Māori who appealed their conscription were heard by the Native Military Service Board or by the Religious Objectors Advisory board.

⁴² Wai 898 #A029, above at n[7], at 53.

⁴³ at n[42].

⁴⁴ at n[42].

⁴⁵ Wai 2500, #A247, above at n[1], at 149.

163. The provisions of the Treaty of Waitangi were advanced in support of appeals for exemption from military service of a number of Waikato Māori.⁴⁶
164. Counsel for the Maori reservists submitted that the appellants were not reservists, in view of the Treaty, as clause three entirely exempted Maori from military service.⁴⁷
165. The Board stated that the English translation was inefficient and that the ‘native version’ stated that in return for royal protection, the rights and responsibilities of British subjects were ‘imparted to Maoris’.⁴⁸
166. All appeals were dismissed.⁴⁹
167. Several Waikato Māori also appeared before the Religious Objectors Advisory board to make a claim of religious objection.
168. The Religious Objectors Advisory Board found that none of the Māori objection was on “bona fide religious grounds”.⁵⁰
169. Although the Religious Objector’s Advisory Board did not find that Māori met the test under the Act, they made comment that conscription may be impinging on their civil rights:
- “In regard to the Maori Objectors we found that none of the Maori who appeared before us objected to Military Service on “bona fide religious grounds”, but nevertheless we are of the opinion that these cases merit your most earnest attention, with a view to deciding whether these men should, in equity, be longer detailed in prison. We consider it extremely doubtful whether they are fully conscious of the*

⁴⁶ Wai 2500, #A247, above at n[1], at 150.

⁴⁷ Wai 2500, #A247, above at n[1], at 150.

⁴⁸ Wai 2500, #A247, above at n[1], at 150.

⁴⁹ Wai 2500, #A247, above at n[1], at 151.

⁵⁰ Wai 2500, #A247, above at n[1], at 151.

*nature of their offence, and whether they understand or appreciate the reason for the further punishment they are to suffer by the deprivation of civil rights, if their names appear on the Military Defaulters list”.*⁵¹

170. Following the end of World War 1, the Waikato prisoners were released in 1919.

Prejudice

171. Waikato were branded as rebels and cowards for not participating in the War, but the reality is some Waikato did enlist and fought in World War 1 and 2.

172. The imprisonment of those Waikato has had long-lasting effects, which still continue to this very day.

173. Waikato have never received an apology for having been conscripted or imprisoned under the Act. Therefore the *hara* remains as does the stigma.

174. The mana of Waikato was harmed due to the crown failing to respect the same and their tikanga of non-participation.

Recommendations and Findings

175. The claimants seek the following findings:

- (a) The Act breached the Treaty.
- (b) The Crown in respect of Waikato and conscription:
 - (i) Breached the Treaty;
 - (ii) Failed to act honourably;

⁵¹ Wai 898 #A029, above at n[7], at 54.

- (iii) Failed to act in partnership;
- (iv) Failed to act fairly;
- (v) Failed to respect Waikato tikanga;
- (vi) Failed to respect – and belittled, the mana of Waikato;
- (vii) Failed to respect and uphold the tino rangatiratanga of Waikato;
- (viii) Deliberately targeted Waikato;
- (ix) Acted unjustly;
- (x) Any other finding the Tribunal deems appropriate.

176. The claimants seek the following Tribunal recommendations:

- (a) An acknowledgement of its wrong doings;
- (b) An apology for the aforementioned breaches;
- (c) The removal of any criminal record of those Waikato imprisoned under the Act.
- (d) Any other recommendations the Tribunal deems appropriate.

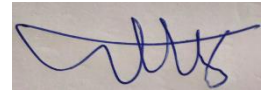
DATED at Auckland this 29th Day of September



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.