

# Is The Waitangi Tribunal Corrupt?

IS THE WAITANGI TRIBUNAL CORRUPT?

Past members of the Waitangi Tribunal believe it is!

A recently published book by Dr John Robinson, "The Corruption of New Zealand Democracy – A Treaty Industry Overview" puts right his astonishing revelation that as a Waitangi Tribunal researcher he had to falsify evidence to get paid.

Hired to study Maori depopulation from 1850-1900, he found the main cause was a chronic shortage of potential parents. The inter-tribal holocaust of the 1820s and 1830s had extinguished up to forty percent of the race, and it was customary practice to kill newborn girls.

This was not what Dr Robinson's state masters wanted to hear. They 'encouraged' him to blame the decline on the 'catastrophic' effects of Maori land loss. And so, against all the evidence, he did.

His book sets the record straight. It exposes the corruption within the Waitangi Tribunal to write reports to allow claims to proceed.

During our research for this article we came across 5 other ex-Waitangi Tribunal members that were concerned with re-writing our history to allow some of these claims to proceed. This included former Labour Cabinet Minister Michael Bassett who regularly criticised the tribunal, accusing his fellow members of bias. He criticised the tribunal's Tauranga report, in which he recorded a minority view. In a subsequent newspaper column he accused his fellow members of "inventive arguments" and said it was time to "review the tribunal's usefulness". After ten years on the Tribunal he did not want

to be reappointed.

Six ex-Waitangi Tribunal members have now come forward to expose the corruption within the Tribunal to deceive the people of New Zealand. We also believe there are a lot of people who work in the treaty claims industry – whether they work for the tribunal or the Office of Treaty Settlements or whatever – who share some concerns about the way history is being distorted/rewritten, but they are not in a position to voice those concerns.

Many of these claims had been heard in 1930/40 and while some were rejected others received full and final settlement. The Waitangi Tribunal has recommended and the government has settled many these claims again costing millions of dollars and some of our countries most valuable assets but from the six members of the Waitangi Tribunal that have come forward, it seems on rewritten history or corrupt evidence. See article below.

Instead of the Waitangi Tribunal and the Office of Treaty Settlement researching our history to prove a breach to the Treaty of Waitangi occurred, they are now re-writing history and the Treaty to allow the claim to proceed. This was never the intention of the taxpayer funded Waitangi Tribunal or the Office of Treaty Settlements.

The Government must hold an inquiry into the alleged corruption within the Waitangi Tribunal and the Office of Treaty Settlements.

**Historian Giselle Byrnes criticises the tribunal.**

**By DIANA McCURDY, NEW ZEALAND HERALD, 10 July 2004.**

Every week, 19 researchers and historians at the Waitangi Tribunal painstakingly unearth new information about New Zealand's disappearing past. As they investigate Maori claims against the Crown, the researchers document aspects of history

never before recorded on paper. In an improbable twist, the tribunal – one of New Zealand's more controversial institutions – has become a nursery for the rewriting of New Zealand's history.

It seems a laudable enterprise. But questions are emerging about the academic validity of the history the tribunal is producing. In a new book, *The Waitangi Tribunal and New Zealand History*, Victoria University historian Dr Giselle Byrnes lays damning charges against the tribunal, describing its attempts to write history as a “noble, but ultimately flawed experiment”. The tribunal, she says, is not writing “objective history”. Rather, the reports it produces are deeply political and overwhelmingly focused on the present. It commits the ultimate faux pas of judging the past by the standards of the present.

“As an historian, I believe history is inherently political, but the tribunal does not acknowledge that it has a philosophy or even that it is writing history, instead repeatedly saying it is simply issuing a report as a Commission of Inquiry.” In some cases, the political bent of the tribunal is strongly evident. In its 1996 Taranaki report, for example, the tribunal openly responds to the Government's fiscal-envelope policy of the previous year. “It was clearly saying in that report ... that this claim is just going to blow that kind of thinking apart. It really tried to challenge that mentality that there should be a cap on treaty settlements.”

Tribunal history also has a strong Maori bias, Dr Byrnes says. Maori characters and stories are given much more emphasis and weight than Pakeha characters and stories. “The reports increasingly champion or advocate the Maori cause.”

This is not the first time an historian has questioned the academic integrity of the history produced by the Waitangi Tribunal. Other historians – including Keith Sorrenson, Michael Belgrave and Bill Oliver – have raised similar

concerns.

Other academics are also concerned, but reluctant to say anything publicly, Dr Byrnes says. "I know that many historians have felt some kind of disquiet about the sort of history the tribunal has been producing over the past few years. They haven't spoken out about it because most historians have liberal political leanings and they don't want to be seen as undermining or criticising the whole process."

For her part, Dr Byrnes is at pains to stress that she is a strong supporter of the claims process. She regards the tribunal as a worthy institution that deserves greater support from both the government and the general public. However, she is adamant that the history the tribunal is writing should not go unchallenged simply because it is politically sensitive. Indeed, the very fact that the tribunal's reports receive so much public attention is further justification for exposing it to scholarly critique.

"This is an area of energy and activity that is exposing a huge amount about our history. We need to pay it serious attention because the tribunal is publishing these historical narratives and people are buying these books thinking they are truthful accounts. In lots of ways they are, but we need to engage with this." It's not that the tribunal is deliberately setting out to deceive, Dr Byrnes says. Ultimately, the bias and politicism of tribunal reports can be traced back to its governing legislation, which requires it to have a quasi-judicial role.

Often, the tribunal's historians produce excellent research. But that research then has to be presented in a form palatable to the adversarial environment of the tribunal. The version, which eventually reaches the public, is the tribunal's summary and interpretation of that research. The resulting flaws in tribunal history are typical of tribunals, commissions of inquiry and human rights investigations everywhere in the

world, Dr Byrnes says. Whenever history is pressed into the service of the law – where history is employed as evidence – distortion is inevitable.

So if the bias is inevitable, what is the point of her criticism? Why not accept that the reports are quasi-judicial findings and not works of academic rigour? Dr Byrnes returns to the mass consumption of the reports by the media and the general public. She believes the tribunal should make overtly clear its inherent bias otherwise there is a danger that lay people reading tribunal reports will be misled. “If you don’t read the reports alongside the legislation it does look like it’s very biased history.”

Waitangi Tribunal chief judge Joe Williams acknowledges Dr Byrnes’ concerns. He’s heard them before, from other historians. Yes, he says, the tribunal’s reports differ from the history produced in New Zealand’s universities. However, that doesn’t mean the history in the reports is flawed. “Personally, I don’t think the standard applied to academic history in New Zealand universities is anywhere near as rigorous as the standard applied to the recording of truth in an adversarial tribunal such as ours, in which the disciplines being applied are not just history but tikanga Maori, anthropology, economics, all sorts of things.” Judge Williams almost embraces the charge that the tribunal is a “presentist” body. He says there’s no question that the tribunal must remain sensitive to the standards of the past, but it can’t be a slave to them.

As a truth and reconciliation body, the tribunal is required not merely to describe and understand the past, but also to judge it, he says. This means that the tribunal must assess the past by the standards of today.

“This is something historians feel deeply uncomfortable with ...  
“We are there to describe, to understand and then judge. And it’s from judgment that reconciliation comes. This is

something historians have never done before, and the historians on the tribunal really tussle with this challenge of taking it beyond understanding to judgment ... “Historians hate that, and I don’t blame them because in my experience it’s bloody hard.”

#### OUR PAST: IN SEARCH OF THE TRUE STORY

Victoria University historian Giselle Byrnes began to question the history being produced by the Waitangi Tribunal while working there as a researcher. She joined the tribunal staff in 1995 fresh from completing her PhD at Auckland University. She was excited by the chance to use her skills as an historian away from the gleaming spires. “It opened my eyes, in one sense, to the contemporary utility of history and the real-world politics in which it gets used.”

Soon she developed creeping misgivings. “I remember working at the tribunal and having lunchtime conversations with other people who worked there about the significance of the tribunal and what it was doing. For a number of reasons, it was impossible while I was there to think about this in any sustained manner.” When she left the tribunal after two years to teach Maori-Pakeha relations at Victoria University’s history department, Dr Byrnes had an opportunity to reflect more on her misgivings. She started giving students tribunal reports to read as examples of how history is used in the modern world. In turn, this motivated her to begin critiquing the reports from a scholarly perspective.

“There are a lot of people who work in the treaty claims process – whether they work for the tribunal or the Office of Treaty Settlements or whatever – who perhaps might share some concerns about the way history is used, but they are not in a position to voice those concerns.”

The End.

*The One New Zealand Foundation Inc would be very interested in any other past or present member of the Waitangi Tribunal or the Office of Treaty Settlements that have concerns in relation to the work of these two institutions. The people have a right to know the truth.*