

He tono nā



Te Rūnanga o NGĀI TAHU

ki te

MINISTRY OF FOREIGN AFFAIRS AND TRADE

e pā ana ki te

GEOGRAPHICAL INDICATIONS

24 April 2020

1.	INTRODUCTION.....	3
2.	TE RŪNANGA O NGĀI TAHU	3
3.	TE RŪNANGA O NGĀI TAHU POSITION STATEMENT.....	3
4.	TE RŪNANGA COMMENTS ON THE GEOGRAPHICAL INDICATIONS PROPOSAL ... ERROR! BOOKMARK NOT DEFINED.	
	APPENDIX ONE: NGĀI TAHU TAKIWĀ.....	7
	APPENDIX TWO: TEXT OF CROWN APOLOGY.....	8

contact person

Rakihia Tau | Group Head, Strategic Relations | Te Rūnanga o Ngāi Tahu
Rakihia.Tau@ngaitahu.iwi.nz | PO Box 13-046 | Christchurch

1. INTRODUCTION

- 1.1 Te Rūnanga o Ngāi Tahu (“**Te Rūnanga**”) welcomes the work being undertaken by the Ministry of Business, Innovation and Employment and the Ministry of Foreign Affairs and Trade (“**the Ministries**”) on the framework for protection of Geographical Indications proposed (“**GI proposal**”) by the European Union (EU) as part of EU-NZ Free Trade Agreement negotiations.
- 1.2 Te Rūnanga is generally supportive of the GI proposal as we recognise the potential benefits that may arise from this kind of future intellectual property protection. This response supplements the earlier response provided by Te Runanga on 19 March 2019 regarding protected names.

2. TE RŪNANGA O NGĀI TAHU

- 2.1 Te Rūnanga is statutorily recognised as the representative tribal body for Ngāi Tahu whānui and works to advocate for and protect the rights and interests inherent to Ngāi Tahu as mana whenua. Te Rūnanga encompasses 18 Papatipu Rūnanga, who uphold the mana whenua and mana moana of their rohe (area).
- 2.2 The Ngāi Tahu takiwā (tribal area) covers the largest geographical area of any tribal authority in New Zealand (a map of the Ngāi Tahu takiwā is attached as Appendix One). Ngāi Tahu holds exclusive rangatiratanga within our takiwā.
- 2.3 Te Rūnanga respectfully requests that the Ministries accord this response with the status and weight of the tribal collective of Ngāi Tahu whānui comprising over 65,000 registered iwi members, most of whom reside in Aotearoa.
- 2.4 Notwithstanding its statutory status as the representative voice of Ngāi Tahu whānui “for all purposes”, Te Rūnanga accepts and respects the right of individuals and Papatipu Rūnanga to make their own responses in relation to this matter.

3. TE RŪNANGA O NGĀI TAHU POSITION STATEMENT

Te Tiriti o Waitangi

- 3.1 The contemporary relationship with the Crown and Ngāi Tahu is defined by three core documents; Te Tiriti o Waitangi, the Ngāi Tahu Deed of Settlement 1997 and the Ngāi Tahu Claims Settlement Act 1998 (“**NTCSA**”). These documents form an important legal relationship between Ngāi Tahu and the Crown and entrench the Treaty partnership.
- 3.2 Further, as stated in the Crown Apology to Ngāi Tahu (attached as Appendix Two), the Ngāi Tahu Settlement marked a turning point, and the beginning for a “new age of co-operation” between the Crown and Ngāi Tahu. In doing so, the Crown acknowledged that Ngāi Tahu holds rangatiratanga within the Ngāi Tahu takiwā. The apology also acts as a guide for the basis of the post-Settlement relationship between Ngāi Tahu and the Crown and as such, underpins this response.

- 3.3 Te Rūnanga expects that the Crown will honour Te Tiriti o Waitangi (“**Te Tiriti/ the Treaty**”) and the principles upon which Te Tiriti is founded, including the rangatiratanga status of Ngāi Tahu whānui. In that regard, Te Rūnanga expects that all persons proposed to exercise responsibilities under GI Proposal must do so in accordance with Te Tiriti and in a manner consistent with our Treaty partnership.

Te Rūnanga Interests in the GI Proposal

- 3.4 Te Rūnanga safeguards iwi rights and interests on behalf of Ngāi Tahu whānui – this includes management of tribal assets and businesses, including Ngāi Tahu Seafood, Ngāi Tahu Farming and one of the three largest mānuka honey companies in New Zealand, OHA Honey Limited Partnership.
- 3.5 More significantly, Te Rūnanga is charged with ensuring the integrity of tribal culture and heritage in order for these to be maintained for successive generations. Our tribal whakatauki “*Mō tātou, ā, mō kā uri ā muri ake nei*”, “*For us and our children after us*” describes how Ngāi Tahu view the world through an intergenerational lens and bestows an enduring responsibility on Te Rūnanga to ensure intergenerational outcomes for Ngāi Tahu whānui. This includes the responsibility to ensure that we protect our taonga and provide for mana whenua aspirations in the future.
- 3.6 Te Rūnanga has cultural and economic interests in the expansion of New Zealand’s geographical indications framework to include the registration of foodstuffs GIs.
- 3.7 There is commercial interest and advantage for Ngāi Tahu in the extension of New Zealand’s GI framework to include the registration of foodstuffs GIs as it would provide another tool that can be used on to protect Ngāi Tahu rights and interests in products derived from indigenous flora and fauna, mātauranga Māori (Māori traditional knowledge), cultural knowledge, and cultural property.
- 3.8 Ngāi Tahu has significant commercial interest in foodstuffs and GIs could assist Ngāi Tahu to exercise kaitiakitanga and rangatiratanga in relation to kai Māori (*Māori foods*) and ingoa Māori (*Māori names*) in the domestic and international market. However, as noted in the Waitangi Tribunal WAI 262 report “Ko Aotearoa Tēnei” GIs (at best) only provide an indirect mechanism to protect any kaitiaki relationship associated with those place names and products and that it is this kaitiaki relationship “that deserves protection, not the GI isolated from that relationship”.¹
- 3.9 Te Rūnanga considers that GIs in respect of products which specifically gain their reputation from their distinctly indigenous origin ought to be afforded IP protection, not only due to the associated economic interest, but also in order for the Crown to uphold its obligations to Tāngata Whenua under Te Tiriti/ the Treaty, who, in turn, are active kaitiaki of the natural resources which sustain us. The principles of Te Tiriti/ the Treaty, including rangatiratanga, partnership

¹ Wai 262 Report Ko Aotearoa Tēnei, Te Taumata Tuatahi, page 92

and active protection all apply here.

- 3.10 The GI proposal would be a step in the positive direction of supporting Māori rangatiratanga over taonga. The registration of GIs would provide an opportunity to achieve some benefits and protections until New Zealand's intellectual property regime is reviewed to ensure Māori rights and interests in indigenous flora and fauna, mātauranga Māori (Māori traditional knowledge), cultural knowledge, and cultural property are protected. Te Rūnanga encourages the Crown to advance the work outlined last year in Te Pae Tawhiti (the Government's response to the WAI 262 report),
- 3.11 This too goes in hand with the principle of active protection, whereby the Crown must proactively support Tāngata Whenua interests and aspirations for their taonga, including the right to economic development. The Crown's duty to actively protect Māori interests is also heightened when taonga may be under threat. In this regard we recall the earlier response provided by Te Runanga on 19 March 2019 regarding protected names and the request for "Mānuka Honey" to be considered for nomination as a New Zealand GI in the EU-NZ FTA negotiations.
- 3.12 As outlined above, Ngāi Tahu has economic interests in the expansion of New Zealand's GI framework. The proposals support this interest as it provides commercial protection for the reputation and quality of Ngāi Tahu products. Without the protection of GI, such products and/or taonga are at risk of 'passing-off' and manipulation by foreign competitors.
- 3.13 This is also imperative as New Zealand recovers and develops from the Covid-19 pandemic. As you will be aware, New Zealand's export industry is heavily weighted towards primary products including dairy, horticulture, seafood and timber. There is real opportunity for New Zealand's economic recovery to be supported by international trade given New Zealand's positioning as providing high quality and safe product. Brand 'New Zealand', especially in relation to primary products, in which Ngāi Tahu has significant interest, ought to be as actively protected as possible.

4. TE RŪNANGA COMMENTS ON THE GEOGRAPHICAL INDICATIONS PROPOSAL

- 4.1 Te Rūnanga has interests in the GI proposal and considers additional improvements are required to be made from the perspective of a Te Tiriti o Waitangi partner and in order to uphold Ngāi Tahu inherent rights and interests.
- 4.2 Set out below are comments on the proposed amendments of the GI Proposal where Te Rūnanga has either a specific view and/or recommendation.

Te Reo Māori exemption

- 4.3 The European Union takes a broad approach to GI protection and thus would likely seek to negotiate a framework that extends protection for GIs to include translations. The EU has proposed that protection against misuse, imitation or

evocation should apply “even if” a translation, transcription or transliteration of the GI is used rather than the original protected form of the GI. This may have unintended impacts for Māori if the original protected form of the GI is translated into te reo Māori.

- 4.4 Section 4 of Te Ture mō Te Reo Māori 2016 provides that the Māori language is a taonga of iwi and Māori. It also states that iwi and Māori are the kaitiaki of the language. Section 8(2)(g) of that Act further states that “the Māori language is protected as a taonga by article 2 of the Treaty of Waitangi”.
- 4.5 On these grounds, Te Rūnanga believes that any GI proposal should exclude protection for translation into te reo Māori of the original protected form of the GI.

Recommendation:

Te Rūnanga seek an exemption for protection for translations into te reo Māori of the original protected form of the GI.

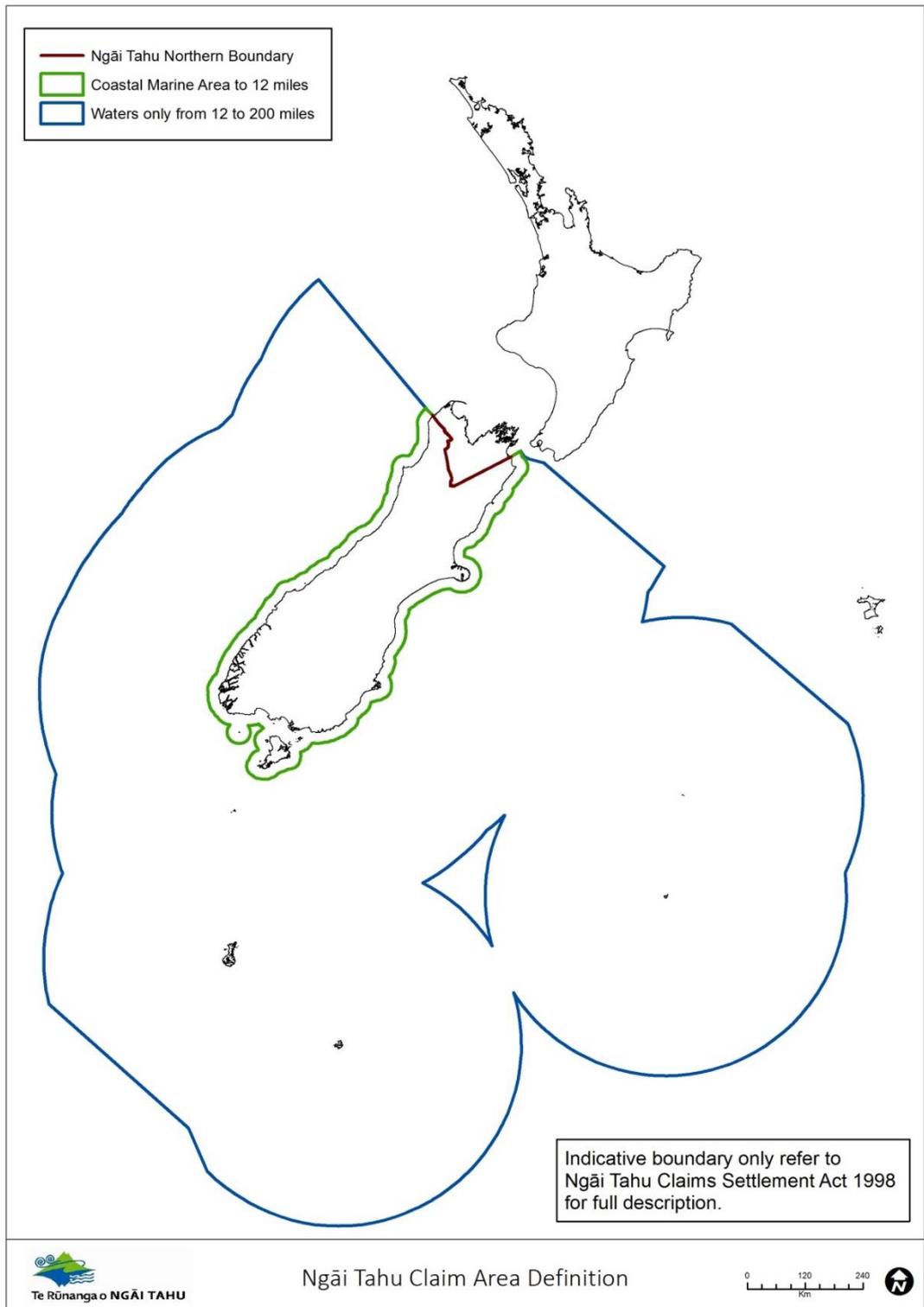
Māori Interests

- 4.6 The Free Trade Agreement (“**FTA**”) should be negotiated with the interests of Māori as Te Tiriti o Waitangi partners in mind.
- 4.7 Te Runanga acknowledges the work of Te Taumata in commissioning a technical expert report on “Maori Interests and Geographic Indicators - Strategic Intellectual Property Management enabling Maori whanau development” to support iwi engagement on this kaupapa and Te Rūnanga looks forward to updates from the Taumata on this process.
- 4.8 Te Rūnanga have been assured that the standard Treaty of Waitangi exception clause will be included in the proposed EU-NZ Free Trade Agreement but emphasises the need for the Crown to negotiate in a manner that does not close off any potential opportunities that could be created through the Crown’s longer term response to the Waitangi Tribunal WAI 262 report “Ko Aotearoa Tēnei” and any review of the Treaty exception clause as recommended by the Waitangi Tribunal in its reports on the WAI 2522 and WAI 2523 claims.
- 4.9 Te Rūnanga asserts that if the Crown was to enter into a trade agreement that prevented the Crown from meeting its Te Tiriti obligations this itself would be a breach of Te Tiriti.

Recommendation:

Te Rūnanga emphasises the need for the Crown to negotiate in a manner that ensures the Crown maintains flexibility to meet all Te Tiriti o Waitangi obligations.

APPENDIX ONE: NGĀI TAHU TAKIWĀ



APPENDIX TWO: TEXT OF CROWN APOLOGY

The following is text of the Crown apology contained in the Ngāi Tahu Claims Settlement Act 1998.

Part One – Apology by the Crown to Ngāi Tahu

Section 5: Text in Māori

The text of the apology in Māori is as follows:

1. Kei te mōhio te Karauna i te tino roa o ngā tūpuna o Ngāi Tahu e totohe ana kia utu mai rātou e te Karauna—tata atu ki 150 ngā tau i puta ai tēnei pēpeha a Ngāi Tahu arā: “He mahi kai tākata, he mahi kai hoakā”. Nā te whai mahara o ngā tūpuna o Ngāi Tahu ki ngā āhuetanga o ngā kawenga a te Karauna i kawea ai e Matiaha Tiramōrehu tana petihana ki a Kuini Wikitoria i te tau 1857. I tuhia e Tiramōrehu tana petihana arā: ‘Koia nei te whakahau a tōu aroha i whiua e koe ki runga i ēnei kāwana... tērā kia whakakotahitia te ture, kia whakakotahitia ngā whakahau, kia ōrite ngā āhuetanga mō te kiri mā kia rite ki tō te kiri waitutu, me te whakatakoto i te aroha o tōu ngākau pai ki runga i te iwi Māori kia noho ngākau pai tonu ai rātou me te mau mahara tonu ki te mana o tōu ingoa.’ Nā konei te Karauna i whakaae ai tērā, te taumaha o ngā mahi a ngā tūpuna o Ngāi Tahu, nā rēira i tū whakaiti atu ai i nāiane i mua i ā rātou mokopuna.
2. E whakaae ana te Karauna ki tōna tino hēanga, tērā i takakino tāruaruatia e ia ngā kaupapa o te Tiriti o Waitangi i roto i āna hokonga mai i ngā whenua o Ngāi Tahu. Tēnā, ka whakaae anō te Karauna tērā i roto i ngā āhuetanga i takoto ki roto i ngā pukapuka ā-herenga whakaatu i aua hokonga mai, kāore te Karauna i whai whakaaro ki tāna hoa nā rāua rā i haina te Tiriti, kāore hoki ia i whai whakaaro ki te wehe ake i ētahi whenua hei whai oranga tinana, whai oranga ngākau rānei mō Ngāi Tahu.
3. E whakaae ana te Karauna tērā, i roto i tāna takakino i te wāhanga tuarua o te Tiriti, kāore ia i whai whakaaro ki te manaaki, ki te tiaki rānei i ngā mauanga whenua a Ngāi Tahu me ngā tino taonga i hiahia a Ngāi Tahu ki te pupuri.
4. E mōhio ana te Karauna tērā, kāore ia i whai whakaaro ki a Ngāi Tahu i runga i te ngākau pono o roto i ngā tikanga i pūtaka mai i te mana o te Karauna. Nā tāua whakaaro kore a te Karauna i puaki mai ai tēnei pēpeha a Ngāi Tahu: “Te Hapa o Niu Tīreni”. E mōhio ana te Karauna i tāna hē ki te kaipono i ngā āhuetanga whai oranga mō Ngāi Tahu i noho pōhara noa ai te iwi ia whakaturanga heke iho. Te whakataua ki i pūtaka mai i aua āhuetanga: “Te mate o te iwi”.
5. E whakaae ana te Karauna tērā, mai rāno te piri pono o Ngāi Tahu ki te Karauna me te kawa pono a te iwi i ā rātou kawenga i raro i te Tiriti o Waitangi, pērā anō tō rātou piri atu ki raro i te Hoko Whitu a Tū i ngā wā o ngā pakanga nunui o te ao. E tino mihi ana te Karauna ki a Ngāi Tahu mō tōna ngākau pono mō te koha hoki a te iwi o Ngāi Tahu ki te katoa o Aotearoa.
6. E whakapuaki atu ana te Karauna ki te iwi whānui o Ngāi Tahu i te hōhonu o te āwhitu a te Karauna mō ngā mamaetanga, mō ngā whakawhiringa i pūtaka mai nō roto i ngā takakino a te Karauna i takaongetia ai a Ngāi Tahu Whānui. Ewhakaae ana te Karauna tērā, aua mamaetanga me ngā whakawhiringa hoki i hua mai nō roto i ngā takakino a te Karauna, arā, kāore te Karauna i whai i ngā tohutohu a ngā pukapuka ā-herenga i tōna hokonga mai i ngā whenua o Ngāi Tahu, kāore hoki te Karauna i wehe ake kia

rawaka he whenua mō te iwi, hei whakahaere mā rātou i ngā āhuatanga e whai oranga ai rātou, kāore hoki te Karauna i hanga i tētahi tikanga e maru motuhake ai te mana o Ngāi Tahu ki runga i ā rātou pounamu me ērā atu tāonga i hiahia te iwi ki te pupuri. Kore rawa te Karauna i aro ake ki ngā aurere a Ngāi Tahu.

7. E whakapāha ana te Karauna ki a Ngāi Tahu mō tōna hēanga, tērā, kāore ia i whai whakaaro mō te rangatiratanga o Ngāi Tahu, ki te mana rānei o Ngāi Tahu ki runga i ōna whenua ā-rohe o Te Wai Pounamu, nā rēira, i runga i ngā whakaritenga me ngā herenga a Te Tiriti o Waitangi, ka whakaae te Karauna ko Ngāi Tahu Whānui anō te tāngata whenua hei pupuri i te rangatiratanga o roto i ōna takiwā.
8. E ai mō ngā iwi katoa o Aotearoa e hiahia ana te Karauna ki te whakamārie i ngā hara kua whākina ake nei—otirā, ērā e taea i nāianei - i te mea kua āta tau ngā kōrero tūturu ki roto i te pukapuka ā-herenga whakaritenga i hainatia i te 21 o ngā rā o Whitu hei tīmatanga whai oranga i roto i te ao hōu o te mahinga tahi a te Karauna rāua ko Ngāi Tahu.

Section 6: Text in English

The text of the apology in English is as follows:

1. The Crown recognises the protracted labours of the Ngāi Tahu ancestors in pursuit of their claims for redress and compensation against the Crown for nearly 150 years, as alluded to in the Ngāi Tahu proverb ‘He mahi kai takata, he mahi kai hoaka’ (‘It is work that consumes people, as greenstone consumes sandstone’). The Ngāi Tahu understanding of the Crown's responsibilities conveyed to Queen Victoria by Matiaha Tiramorehu in a petition in 1857, guided the Ngāi Tahu ancestors. Tiramorehu wrote:

“This was the command thy love laid upon these Governors ... that the law be made one, that the commandments be made one, that the nation be made one, that the white skin be made just equal with the dark skin, and to lay down the love of thy graciousness to the Māori that they dwell happily ... and remember the power of thy name.”

2. The Crown hereby acknowledges the work of the Ngāi Tahu ancestors and makes this apology to them and to their descendants.
3. The Crown acknowledges that it acted unconscionably and in repeated breach of the principles of the Treaty of Waitangi in its dealings with Ngāi Tahu in the purchases of Ngāi Tahu land. The Crown further acknowledges that in relation to the deeds of purchase it has failed in most material respects to honour its obligations to Ngāi Tahu as its Treaty partner, while it also failed to set aside adequate lands for Ngāi Tahu's use, and to provide adequate economic and social resources for Ngāi Tahu.
4. The Crown acknowledges that, in breach of Article Two of the Treaty, it failed to preserve and protect Ngāi Tahu's use and ownership of such of their land and valued possessions as they wished to retain.
5. The Crown recognises that it has failed to act towards Ngāi Tahu reasonably and with the utmost good faith in a manner consistent with the honour of the Crown. That failure is referred to in the Ngāi Tahu saying ‘Te Hapa o Niu Tirenī!’ (‘The unfulfilled promise of New Zealand’). The Crown further recognises that its failure always to act in good faith deprived Ngāi Tahu of the opportunity to develop and kept the tribe for several

generations in a state of poverty, a state referred to in the proverb 'Te mate o te iwi' ('The malaise of the tribe').

6. The Crown recognises that Ngāi Tahu has been consistently loyal to the Crown, and that the tribe has honoured its obligations and responsibilities under the Treaty of Waitangi and duties as citizens of the nation, especially, but not exclusively, in their active service in all of the major conflicts up to the present time to which New Zealand has sent troops. The Crown pays tribute to Ngāi Tahu's loyalty and to the contribution made by the tribe to the nation.
7. The Crown expresses its profound regret and apologises unreservedly to all members of Ngāi Tahu Whānui for the suffering and hardship caused to Ngāi Tahu, and for the harmful effects which resulted to the welfare, economy and development of Ngāi Tahu as a tribe. The Crown acknowledges that such suffering, hardship and harmful effects resulted from its failures to honour its obligations to Ngāi Tahu under the deeds of purchase whereby it acquired Ngāi Tahu lands, to set aside adequate lands for the tribe's use, to allow reasonable access to traditional sources of food, to protect Ngāi Tahu's rights to pounamu and such other valued possessions as the tribe wished to retain, or to remedy effectually Ngāi Tahu's grievances.
8. The Crown apologises to Ngāi Tahu for its past failures to acknowledge Ngāi Tahu rangatiratanga and mana over the South Island lands within its boundaries, and, in fulfilment of its Treaty obligations, the Crown recognises Ngāi Tahu as the tāngata whenua of, and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui.
9. Accordingly, the Crown seeks on behalf of all New Zealanders to atone for these acknowledged injustices, so far as that is now possible, and, with the historical grievances finally settled as to matters set out in the Deed of Settlement signed on 21 November 1997, to begin the process of healing and to enter a new age of co-operation with Ngāi Tahu."