



NZCAN Inc.

## CONSTITUTION

*Ratified by Members on 20 December 2021*

*Amended: 20 March 2023*

### 1 NAME

1.1: The name of the society is NZCAN Incorporated (**NZCAN**).

### 2 REGISTERED OFFICE AND CONTACT PERSONS

2.1 NZCAN's registered office is 11 Te Pari Pari Rd, Pukerua Bay, New Zealand, or such other address as may be decided by the Board.

2.2 NZCAN's contact persons for the purposes of the Incorporated Societies Act 1908 and any subsequent legislation are the Chair and the Coordinator.

### 3 PURPOSES

3.1 NZCAN's purposes are:

- a) to work within New Zealand to achieve the full realisation of the Climate Action Network's (**CAN**'s) global Vision, Mission Statement, Objectives, and Strategies as set out at:
  - i. rule two of the Climate Action Network International Association e.V. (**CAN International**) Statutes, which are attached to this Constitution as Schedule One; and

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- ii. clauses 5-8 of the CAN Charter, which is attached to this Constitution as Schedule Two;
- b) in particular, to support New Zealand non-governmental organisations, civil society groups, rōpū Māori, and social movements to:
- i. influence the design and development of effective global and national strategies to reduce greenhouse gas emissions;
  - ii. ensure those strategies are implemented at international, national, and local levels;
  - iii. ensure that Te Tiriti o Waitangi, appended as Schedule Three, is upheld, in the context set out in the explanation appended as Schedule Four;
  - iv. recognise and give effect to the rights of nature, including
    - (1) affirming the rights of nature to exist, persist, thrive, evolve, and regenerate, except where the species are alien and invasive of indigenous biodiversity;
    - (2) recognising the rights and obligations of any person or organization to defend, protect and restore, those rights on behalf of nature; and
    - (3) acknowledging that humans have the obligation to ensure that the biophysical processes of Earth on which all life depends remain functional and intact; and
  - v. promote equity and sustainable development;
- c) to support and empower NZCAN members (**Members**) to achieve their purposes and objectives to the extent that they:
- i. relate to the above Purposes;
  - ii. align with the Values set out in clause 5 below; and
  - iii. do not involve private pecuniary or monetary gain; and
- d) achieve any other purposes within New Zealand that are incidental to the above.

**(Purposes)**

3.2 Pecuniary or monetary gain and private profit are not purposes of NZCAN.

3.3 In achieving the purposes set out in clauses 3.1 and 3.2 and otherwise, NZCAN will ensure:

- a) Te Tiriti o Waitangi is upheld; and
- b) that the rights of nature are recognised and given effect to.

#### **4 OBJECTS**

4.1 To advance NZCAN's Purposes, NZCAN may:

- a) provide mechanisms and processes to allow internal communication between its Members;
- b) draft and/or publish relevant editorials, press releases, reports, blog posts, discussion papers, submissions and other documents;
- c) provide capacity building materials and/or workshops to its Members and others;
- d) host relevant conferences, discussions, protest actions, and events;
- e) provide mechanisms and processes for its Members to build their capacities to uphold Te Tiriti o Waitangi;
- f) work with governments and their departments, agencies, researchers and research organisations, and non-governmental organisations, experts and others in civil society to achieve its Purposes; and
- g) do anything else appropriate to achieve its Purposes.

#### **(Objects)**

4.2 In carrying out its Objects to achieve its Purposes, NZCAN is not a campaign organisation in its own right, but rather a network designed to support the activities of its Members and the broader New Zealand climate movement.

4.3 NZCAN will not take policy positions on climate change or other political, environmental, economic or social issues in its own right without a process involving Members, following a decision-making process adopted by the Board.

## 5 VALUES

5.1 In carrying out its Objects to achieve its Purposes, NZCAN commits to the values set out in clause 60 of the CAN Charter and to the following fundamental values that underpin its Vision and Purposes:

- a) participatory, accountable and transparent decision-making;
- b) mutual cooperation, collaboration and networking internally and with other organizations around issues of mutual concern;
- c) equity, with particular reference to gender equity and intergenerational equity;
- d) peace and non-violence;
- e) the rights of Indigenous Peoples (including but not limited to the rights listed in the United Nations Declaration on the Rights of Indigenous Peoples);
- f) human rights (including but not limited to the rights listed in the Universal Declaration of Human Rights; International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination against Women; Convention on the Rights of the Child; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of Persons with Disabilities), with particular reference to the rights of:
  - i. Indigenous Peoples;
  - ii. women;
  - iii. transgender people and people of diverse genders, sexualities, and sex characteristics;
  - iv. working people;
  - v. young and old people
  - vi. people with disabilities, and
  - vii. future generations;
- g) human responsibility, as an ethical framework that sits alongside human rights, in recognition of interdependence and intergenerational wellbeing;
- h) the rights of nature;



- i) sustainable development, including but not limited to the Sustainable Development Goals; and
- j) the rights of indigenous ecosystems to exist, function, thrive and evolve, excluding invasive alien species.

5.2 Throughout its work to achieve its Purposes and Objects, the Society is committed to upholding Te Tiriti o Waitangi and recognising and giving effect to the rights of nature.

## **6 RELATIONSHIP WITH CAN**

### *Status as CAN node*

6.1 NZCAN is CAN's New Zealand node. For the avoidance of doubt, the NZCAN Coordinator is the coordinator of CAN's New Zealand node and the NZCAN Board is the board of CAN's New Zealand node.

### *NZCAN membership to be CAN membership*

6.2 Membership of NZCAN is deemed to confer membership of the CAN network, as set out at clauses 10-17 of the CAN Charter. For the avoidance of doubt, membership of NZCAN or the CAN network does not confer membership of CAN International under rule 3 of the CAN International Statutes.

6.3 Any existing CAN International member under rule 3 of the CAN International Statutes that operates in New Zealand is deemed to be an NZCAN Member, so long as that organisation consents. Where the CAN International member is an international non-governmental organisation that operates in New Zealand through a separate New Zealand registered entity, that New Zealand registered entity – not the international organisation – is deemed to be a Member (For example, Greenpeace International is a CAN International member, so Greenpeace Aotearoa is deemed to be a Member but Greenpeace International is not deemed to be a Member).

6.4 NZCAN will provide a register of its Members to CAN no less than twice per calendar year and will promptly notify CAN if a Member is expelled.

### *Expulsion from NZCAN and CAN*

6.5 If a Member is expelled from NZCAN, that Member is deemed to have been expelled from CAN, unless that Member is a CAN International member under rule

3 of the CAN International Statutes. If a Member is expelled from CAN, that Member is deemed to have been expelled from NZCAN.

*CAN International Statutes and CAN Charter to be read alongside this Constitution*

6.6 This Constitution is to be read with the CAN Charter and the CAN International Statutes.

6.7 A breach of the CAN International Statutes or CAN Charter is deemed to be a breach of this Constitution, and a breach of this Constitution is deemed to be a breach of the CAN Charter.

6.8 Where any conflict arises between this Constitution and the CAN International Statutes or the CAN Charter, the CAN International Statutes or CAN Charter prevails, so long as that is consistent with New Zealand law. Where there is any ambiguity in this Constitution, the interpretation most consistent with the CAN International Statutes or CAN Charter applies, so long as that is consistent with New Zealand law.

*Attendance at CAN General Assemblies*

6.9 NZCAN will use its best endeavours to send a representative to every CAN General Assembly convened under rules 11-14 of the CAN International Statutes and clause 40 of the CAN Charter.

*Compliance with CAN policies and decisions*

6.10 To the extent that is reasonably possible, NZCAN and its Members will comply with all applicable CAN policies and decisions.

*NZCAN to be financially independent*

6.11 NZCAN and CAN are financially independent. CAN has no claim to funds raised by NZCAN. NZCAN should, however, comply with clauses 50–59 of the CAN Charter and any applicable CAN policies if and when it raises funds in the name of CAN.

## 7 POWERS

7.1 NZCAN has the rights, duties, powers, and privileges of a natural person.

7.2 Without limiting clause 7.1, NZCAN may:

- a) use its funds to pay the costs and expenses of furthering or carrying out its Purposes and Objects,
- b) employ people for the purposes of furthering or carrying out its Purposes and Objects;
- c) purchase, lease, hire or otherwise acquire; exchange; and sell, lease or otherwise dispose of property, rights or privileges to further or carry out its Purposes and Objects;
- d) exercise all powers that a trustee might exercise;
- e) invest in any investment in which a trustee might invest;
- f) borrow or raise money by debenture, bonds, mortgage, and other means, with or without security. Such borrowing powers are only be exercised by resolution of an annual general meeting (**AGM**) or special general meeting (**SGM**).

## 8 MEMBERSHIP

### *Register of Members*

8.1 The Coordinator must maintain a register of Members. It is the Members' responsibility to keep the Coordinator informed of changes to their contact details.

### *Applications for membership*

8.2 Any non-profit New Zealand based non-governmental organisation, of any legal form, who agrees with CAN's vision and NZCAN's Purposes and Objects may, subject to clauses 8.3 and 8.4, become a Member by completing any application form provided by the Coordinator and paying the membership fee (if any) prescribed by the AGM.

8.3 NZCAN encourages any organisation that intends to apply for membership to develop a Te Tiriti o Waitangi policy or framework, setting out how it upholds Te Tiriti in its work.

8.4 Before accepting any application for membership, the Coordinator must advise existing Members of the application and allow them the chance to object. If one or more existing Members object to the application for membership, the Coordinator may refer the application to the Board for a decision upon whether the applicant should be admitted as a Member. If the Board declines an application for NZCAN membership, that applicant organisation may appeal that decision to an AGM or SGM by providing written notice to the Board within 14 days. For the avoidance of doubt, the appeal provisions set out in the CAN Charter also apply.

8.5 If the Coordinator considers that allowing an organisation to join NZCAN may breach this Constitution, the CAN Charter, or any NZCAN or CAN policy, or otherwise bring NZCAN or CAN into disrepute, the coordinator must refer that application to the Board. The Board may reject that organisation's application if it considers that allowing that organisation to join NZCAN would be reasonably likely to breach this Constitution, the CAN Charter, or any NZCAN or CAN policy, or otherwise bring NZCAN or CAN into disrepute. If the Board declines an application for NZCAN membership, that applicant organisation may appeal that decision to an AGM or SGM by providing written notice to the Board within 14 days. For the avoidance of doubt, the appeal provisions set out in the CAN Charter also apply.

#### *Observer Members*

8.6 Non-government organizations who:

a) qualify for NZCAN membership but wish to have observer status only; or

b) do not qualify for NZCAN membership but wish to have observer status;

may apply to become Observer Members of NZCAN. All Members that are not Observer Members are Full Members.

8.7 The Coordinator and Board have absolute discretion to decline applications for observer membership. Otherwise, rules 8.2 to 8.4 apply to applications for observer membership.

8.8 If the member is admitted, the Coordinator will place the member on a separate register of Observer Members. It is the Observer Members' responsibility to keep the



Coordinator informed of changes to their contact details.

8.9 Observer Members may observe NZCAN meetings and access NZCAN materials.

8.10 Observer Members may speak at NZCAN meetings, including General Meetings, but have no rights to vote, block consensus or otherwise influence decision-making at General Meetings.

8.11 Observer Members will respect the confidential nature of internal NZCAN meetings, discussions, and processes at all times.

8.12 The Coordinator or Board may exclude Observer Members from NZCAN meetings or processes if one or more Full Members request this.

8.13 Clauses 6.2 to 6.5 of this Constitution apply to Observer Members.

#### *No individual members*

8.14 For the avoidance of doubt, no individual natural person, for-profit company, or government department or agency may join NZCAN. Membership is open only to non-profit, non-governmental organisations.

8.15 The Board may, at its sole discretion, establish a process to allow individual persons to become Non-Member Observers, who have access to NZCAN's meetings and services. Non-Member Observers are not NZCAN or CAN members, and may not speak or vote at any General Meeting or CAN General Assembly.

#### *Resources for new Members*

8.16 NZCAN will provide welcome resources to all new Members and Observer Members, including a copy of the CAN Charter and a copy of Te Tiriti o Waitangi, along with any other materials that an AGM or SGM or the Board or Coordinator may consider useful.

#### *Compliance with this Constitution and CAN Charter*

8.17 Every Member, by virtue of their membership, is deemed to have agreed to be bound by this Constitution and the CAN Charter.

## 9 CESSATION OF MEMBERSHIP

### *Resignation of membership*

- 9.1 Any Member may resign membership by giving written notice to the Coordinator, who must then remove them from the register of Members.

### *Expulsion of Members*

- 9.2 The Board may expel any Member by notice in writing from the time of service of notice if that Member breaches this Constitution or brings the CAN network, CAN International, NZCAN, or any other Member into disrepute. That notice must include the grounds of expulsion.
- 9.3 A Member that is placed into liquidation or receivership, wound up, or otherwise prohibited from being a member of an incorporated society under New Zealand law is deemed to be expelled from NZCAN.
- 9.4 A Member expelled by the Board under clause 9.2 may appeal that decision to an AGM or SGM by providing written notice to the Board within 14 days. For the avoidance of doubt, the appeal provisions set out in the CAN Charter also apply.

## 10 GENERAL MEETINGS

- 10.1 "General Meeting" refers to both Annual General Meetings (**AGMs**) and Special General Meetings (**SGMs**), unless otherwise specified.

### *Quorum*

- 10.2 The quorum for a General Meeting will be one-third of Full Members and three Board members, unless otherwise specified in this Constitution.

### *Notice*

- 10.3 NZCAN must give at least 20 working days' notice of the time, date, location and draft agenda of each General Meeting to Members, using their last known contact details.

### *Speaking and voting*

10.4 All present Members may speak and all present Full Members may vote at a General Meeting, including those present via videoconference, telephone conference, or any other means of communication approved by the Board under clause 10.6.

*Selection of chair for General Meetings*

10.5 The Board Chair chairs each General Meeting. If the Board Chair is absent, a member of the Board will chair that General Meeting. If no member of the Board is available, a volunteer or employee of a Full Member, elected by a simple majority of the Full Members, will chair that General Meeting.

*Location of General Meetings*

10.6 General Meetings may be held in person, but Members may attend via videoconference, telephone conference, or any other means of communication approved by the Board.

*Decision-making at General Meetings*

10.7 Where possible, decisions at a General Meeting are made by consensus. If consensus cannot be reached, the decision may, unless otherwise specified in this Constitution, be made by a simple majority vote. Each Full Member has one vote.

10.8 Elections of Board members are by secret ballot. Where possible, a person who does not work for, volunteer for, or otherwise have an interest in a Member will act as a returning officer.

10.9 Electronic voting of those Full Members represented at the meeting is permissible. The Board may, at its sole discretion, provide a mechanism and rules for proxy voting from Full Members that are not represented at the General Meeting.

## **11 ANNUAL GENERAL MEETINGS**

*Timing of Annual General Meetings*

11.1 NZCAN must hold an Annual General Meeting (**AGM**) no sooner than nine months and no later than 15 months after the last annual general meeting.

*Business to be carried out at AGMs*

11.2 Each AGM will carry out the following business:

- a) review and adopt (or not) the minutes of the previous AGM and of any SGM held since the last AGM;
- b) receive reports from the Coordinator and Board, which must include:
  - i. a report on NZCAN's activities over the last year, which may also include a draft strategic plan for the upcoming year;
  - ii. a report on changes in membership; and
  - iii. financial reports.
- c) receive the balance sheet and statement of income and expenditure for the past year;
- d) review and approve, where possible, a budget for the next year;
- e) review how NZCAN has ensured that Te Tiriti o Waitangi is upheld over the year;
- f) elect three to five members of NZCAN's Board;
- g) if necessary appoint an auditor or Reviewer of NZCAN's accounts;
- h) prescribe a membership fee for NZCAN (which may be zero dollars); and
- i) conduct any other business outlined in the agenda, or any business a Member may bring before the meeting, so long as it complies with this Constitution.

## 12 SPECIAL GENERAL MEETINGS

### *Calling of Special General Meetings*

12.1 NZCAN must hold a Special General Meeting (**SGM**) within 30 days of:

- a) being requested to do so by five or more Full Members by written notice delivered to the Coordinator or a Board member; or
- b) the Board falling below three members.

### *SGM agendas to be closed*



12.2 A SGM may not consider any issue other than that it is called to consider.

*Quorum if Board in breach*

12.3 Notwithstanding clause 10.2, if the Board is inquorate or otherwise in breach of this Constitution, quorum for an SGM is 20% of Full Members.

### **13 GOVERNANCE AND MANAGEMENT**

13.1 NZCAN is governed by a Board and a Coordinator.

13.2 The Board oversees NZCAN's operations on a strategic level.

13.3 The Coordinator manages NZCAN on a day-to-day level.

#### ***Board***

##### *Composition and officers*

13.4 The Board comprises three to eight individual persons, who may or may not be employees or volunteers of Members.

13.5 At its first meeting after the AGM or after a role becomes vacant, the Board will elect a Chair, Secretary and Treasurer. Where possible, this will be by consensus. Otherwise, it will be by secret ballot with the candidate with the most votes elected, whether or not more than 50% of those present vote for them.

13.6 The Board may determine any term it wishes for the Chair, Secretary and Treasurer, so long as:

- a) it does not expire before the next Board meeting; and
- b) it does not expire after the next AGM.

13.7 The Board may appoint any person to the positions of Chair, Secretary or Treasurer, whether or not they are elected Board members and whether or not they already hold a position. Officeholders who are not Board members may not vote.

13.8 Decisions and actions of the Board will be deemed to be valid irrespective of whether the positions of Chair, Secretary and Treasurer are filled. If there is no Chair, Secretary or Treasurer, the Board as a whole must ensure that the work

required in these roles is completed.

*Membership and term*

- 13.9 Full Members can nominate individual persons for election to the Board by writing before the AGM or orally at the AGM. Any individual person can be nominated, whether or not they work or volunteer for a Member.
- 13.10 If there is a vacancy amongst the Board's elected members, the Board can co-opt persons who work or regularly volunteer for a Member to fill that vacancy.
- 13.11 In electing and appointing Board members, NZCAN's Members will consider:
- a) Te Tiriti o Waitangi;
  - b) the importance of genuine diversity, particularly including representation of frontlines and/or structurally oppressed people and communities;
  - c) NZCAN's purposes and values.
- 13.12 Membership of the Board is for a term of three years.
- 13.13 Notwithstanding clause 13.7, at least one third of elected Board members will retire at or in advance of each AGM, with the longest serving Board members retiring first. If two or more Board members have served an equal term, they will endeavour to agree between them which of them will resign. If they cannot agree, the decision will be made randomly.
- 13.14 Retiring Board members will be eligible for re-election at the same and subsequent meetings. No Board member may be re-elected more than twice in a row.
- 13.15 Newly elected Board members take office immediately upon their election.
- 13.16 All elected Board members should complete training in allyship and Te Tiriti o Waitangi, either prior to election or within 40 working days of their election.
- 13.17 Board members may resign by giving one month's notice in writing.
- 13.18 An AGM or SGM may dismiss any Board member or members by passing a motion of no confidence in those members. If an AGM or SGM does so, that AGM

or SGM must also either:

- a) appoint sufficient new Board members to ensure that it may maintain quorum; or
- b) appoint interim Board members to ensure that the Board may maintain quorum and implement an alternative procedure for the selection of replacement Board members.

13.19 If at any time the Board comprises fewer than three elected Board members, those members must call a SGM.

#### *Conduct of Meetings*

13.20 The procedure for Board meetings is as follows:

- a) quorum is three Board members;
- b) each meeting is chaired by the Chair;
- c) each meeting receives a report from the Coordinator, who may attend each Board meeting;
- d) where possible, decisions at a meeting are made by consensus, but if consensus cannot be reached, the decision may, unless otherwise specified in this Constitution, be made by a simple majority vote;
- e) the Secretary is to ensure minutes are maintained and made available to any NZCAN Member, and which record:
  - i. the names of those present;
  - ii. any apologies;
  - iii. all decisions made; and
  - iv. any other matters discussed at the meeting.
- f) notwithstanding clause (e) above, the Board may choose to go into committee, where all discussions are strictly confidential (including, at the Board's discretion, from the Coordinator) and the Secretary will not include discussion in committee in the minutes;
- g) the Board meets at least four times every year;

h) meetings may be held in person or by any other means of communication (including telephone or video conference) as decided on by the Board;

i) the Secretary will give all Board members, the Coordinator, and any other officeholders at least seven days' notice of each meeting. The Secretary or Chair will circulate an agenda in advance of each meeting.

13.21 The Board may resolve to determine any issue by email voting.

13.22 The Board is bound by the decisions of General Meetings.

#### *Powers*

13.23 The Board governs NZCAN and may exercise any power conferred on it or on NZCAN by this Constitution, or by a General Meeting.

13.24 If for any reason there is no Coordinator, the Board may exercise any powers conferred on the Coordinator by this Constitution or otherwise.

#### *Dispute resolution*

13.25 The Board must develop and implement procedures for dealing with complaints from Members and disputes between Members or within the Board. These procedures must be publicly available via the NZCAN website or on request from a Member.

#### **Coordinator**

##### *Appointment*

13.26 The Coordinator is appointed by the NZCAN Board.

13.27 The Board may formalise the Coordinator's appointment through an employment contract, or by hiring them as a contractor, or through a volunteer agreement. No written agreement, however, is necessary to appoint the Coordinator, except in that the Coordinator's appointment must be by written resolution or recorded in the minutes of a Board meeting or General Meeting.

##### *Term and termination*

13.28 The NZCAN Board may set the term for the Coordinator's appointment.



13.29 Subject to any relevant New Zealand employment or other law, either the Board or the Coordinator may terminate the Coordinator's position by one month's notice in writing.

13.30 Subject to any relevant New Zealand employment or other law, if the Board considers that the Coordinator has breached this Constitution, the CAN Charter, or an applicable NZCAN or CAN policy, the Board may dismiss the Coordinator with immediate effect.

#### *Reporting*

13.31 The Coordinator reports to the Board. Between Board meetings, the Coordinator should report to the Chair in the first instance.

#### *Coordinator's powers*

13.32 The Coordinator manages NZCAN's operations on a day-to-day level. In particular, the Coordinator:

- a) processes applications for NZCAN membership and maintains the register of Members;
- b) represents NZCAN at CAN meetings, unless otherwise instructed by or agreed with the Board;
- c) maintains NZCAN's financial statements;
- d) exercises the powers conferred on them elsewhere in this Constitution or otherwise delegated to them by the Board; and
- e) does whatever else may be reasonably necessary to achieve NZCAN's Purposes and Objects, subject to the supervision and direction of the Board.

13.33 The Board may further define the Coordinator's powers by adopting policies and or passing resolutions to delegate specific powers to them.

#### *Delegation*

13.34 Subject to the Board's supervision, the Coordinator may delegate any powers conferred on them by this Constitution or by the Board to NZCAN employees, contractors or volunteers.

## **14 INCOME, BENEFIT OR ADVANTAGE TO BE APPLIED TO OBJECTS**

14.1 Any income, benefit or advantage must be applied to NZCAN's Purposes and Objects. That is, notwithstanding any other provision in this Constitution, NZCAN must not expend any money:

- a) except to achieve its Purposes and Objects;
- b) on any purposes out of New Zealand, except for the benefit of Members that are based or operate within New Zealand or the advancement of its Purposes and Objects within New Zealand; nor
- c) for the sole personal or individual benefit of any Member.

14.2 Any transactions between NZCAN and either any NZCAN Board member or any Member or any associated persons must be at arms' length and in accordance with ordinary commercial terms on which NZCAN would deal with third parties not associated with NZCAN, and any payments made in respect of such transactions are limited to:

- a) a fair and reasonable reward for services performed;
- b) reimbursement of expenses properly incurred;
- c) usual professional, business or trade charges; and
- d) interest at no more than current commercial rates.

14.3 No Board member or Member or any person associated with a Board member or Member shall participate in or materially influence any decision made by NZCAN in respect of any payment to or on behalf of that Board member or Member or associated person of any income, benefit or advantage whatsoever

14.4 The provision and effect of this clause shall not be removed from this Constitution and shall be implied into any document replacing this Constitution.

## **15 POWER TO DELEGATE**

15.1 The Board and/or Coordinator may from time to time appoint any committee and may delegate any of its powers and duties to any such committee or to any person, whether or not they are Members. The committee or person may without confirmation by the Board or Coordinator exercise or perform the delegated powers

or duties in the same way and with the same effect as the Board or Coordinator could itself have done, except in that the Coordinator may not delegate any powers not first delegated to them by the Board.

15.2 Any committee or person NZCAN delegates powers or duties to will be bound by NZCAN's Purposes, the terms of this Constitution, and any terms or conditions of the delegation set by the Board.

15.3 NZCAN may revoke any delegation at will, and no such delegation will prevent the exercise of any power or the performance of any duty by the Board.

## **16 FINANCIAL ARRANGEMENTS**

### *Financial year*

16.1 NZCAN's financial year is from 1 April each year to 31 March the following year.

### *Bank accounts*

16.2 The Board and Coordinator may maintain bank accounts in NZCAN's name. All payments from such account must be authorised by two Board members or by the Coordinator and one Board member.

### *Financial policies and processes*

16.3 At the first meeting of the Board after each AGM, the Board will decide by resolution the following:

- a) how NZCAN may receive money;
- b) who is entitled to claim reimbursements;
- c) what bank accounts will operate for the ensuing year, including the purposes of and access to accounts; and
- d) policy concerning the investment of money by NZCAN, including what type of investment will be permitted.

### *Financial records*

16.4 The Treasurer must keep such books of account as may be necessary to provide a true record of the NZCAN's financial position, report on NZCAN's financial

position to each Board meeting, and present an annual statement of accounts (including a statement of income and expenditure and balance sheet) to each AGM.

#### *Audit/Review*

16.5 The Board may arrange for NZCAN's accounts to be reviewed or audited by a person appointed for that purpose.

### **17 COMMON SEAL**

17.1 The Secretary is to keep NZCAN's common seal.

17.2 When required, the Common Seal will be affixed to any document following a resolution of the Board and will be signed by two Board members.

### **18 INDEMNITY**

18.1 Neither the Coordinator nor any Board member shall be liable for the acts or defaults of any other Board member or any loss occasioned thereby, unless occasioned by their wilful default or by their wilful acquiescence.

18.2 NZCAN indemnifies the Coordinator and the Board members for all liabilities and costs they incur in the proper performance of their functions and duties, whether caused by negligence or otherwise, other than as a result of their wilful default. This includes an indemnity for any award of costs made in litigation furthering NZCAN's Purposes and Objects.

### **19 ALTERATION OF RULES**

19.1 This Constitution may be amended or replaced by resolution of any General Meeting passed by a 75% majority of those Full Members present and voting, except that no addition to or alteration of its Purposes and Objects, the pecuniary or monetary profit clause or the winding up clause will enter force until the amended constitution is accepted by the Registrar of Incorporated Societies.

19.2 No addition to, deletion from or alteration of the organisation's rules shall be made which would allow personal pecuniary profits to any individuals. The provisions and effect of this clause shall not be removed from this document and shall be included and implied into any document replacing this document."



19.3 Amendments to this Constitution will be by consensus decision if possible.

## **20 COMPLIANCE WITH LEGISLATION**

20.1 NZCAN is to comply with all relevant New Zealand law, including the Incorporated Societies Act 1908 and/or its successors.

20.2 Where any ambiguity arises in the construction of this Constitution, an interpretation consistent with the legal obligations under clause 20.1 is to be taken.

## **21 MEDIATION**

21.1 NZCAN may refer any dispute arising out of or relating to this Constitution to mediation, a non-binding dispute resolution process in which an independent mediator facilitates negotiation between parties. Either party may initiate mediation by writing to the other party and identifying the dispute that is being suggested for mediation. The other party may either agree to proceed with mediation or agree to attend a preliminary meeting with the mediator to discuss whether mediation would be helpful in the circumstances. The parties will agree on a suitable person to act as mediator. If they are unable to do so within 15 working days of the dispute being referred to mediation, either party may ask the Arbitrators' and Mediators' Institute of New Zealand Inc. to appoint a mediator. The mediation will be in accordance with the Mediation Protocol of the Arbitrators' and Mediators' institute of New Zealand Inc.

## **22 WINDING UP**

22.1 NZCAN may be wound up if:

- a) a General Meeting passes a resolution to wind up NZCAN with a 75% majority; and
- b) NZCAN holds a second General Meeting no earlier than 30 days after that resolution was passed for the purpose of confirming that winding up; and
- c) that second General Meeting passes a resolution to wind up NZCAN with a 75% majority.
- d) On winding up or dissolution of the organisation any surplus funds or assets shall not be paid or distributed to any members or individuals but shall be: applied to a purpose in line with the organisation's objects, or given or transferred to another not-for-profit organisation.

22.2 If NZCAN is wound up:

- a) its debts, costs, and liabilities must be paid; and
- b) surplus money and other assets must be disposed of for such purposes in New Zealand as may be determined by resolution, provided that no distribution shall be made to any Board member or Member.

22.3 If NZCAN cannot resolve any disagreement over the distribution of surplus assets then the provisions of Section 27 of the Incorporated Societies Act 1908, or the relevant provisions of subsequent enactments, will apply, but no distribution shall be made to any Board member or Member.

**Common Seal of NZCAN Incorporated:**



**NOTE:** On 20 March 2023 a Special General Meeting of NZCAN was held with the specific purposes of adding the following clauses, as per advice from the Inland Revenue Department, in order to clarify the Society's eligibility for reduced tax liability:

- (i) Adding the following words as sub-clause to Clause 19 Alteration of Rules:

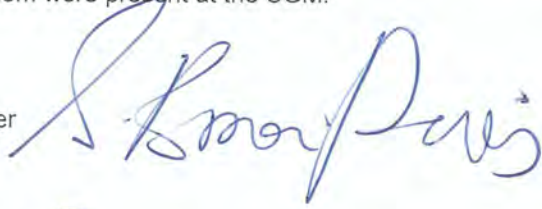
*"No addition to, deletion from or alteration of the organisation's rules shall be made which would allow personal pecuniary profits to any individuals. The provisions and effect of this clause shall not be removed from this document and shall be included and implied into any document replacing this document."*

- (ii) Adding the following words as the final sub-clause to Clause 22 Winding Up:

*"On winding up or dissolution of the organisation any surplus funds or assets shall not be paid or distributed to any members or individuals but shall be; applied to a purpose in line with the organisation's objects, or given or transferred to another not-for-profit organisation."*

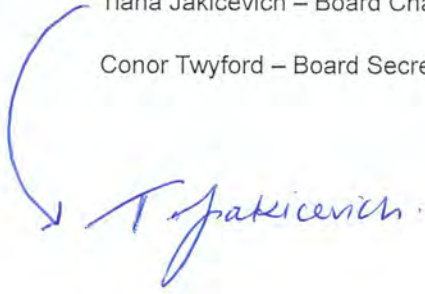
These motions, as minuted, were passed by consensus, and are hereby signed off by the following three NZCAN Board members, all of whom were present at the SGM:

Sina Brown-Davis – Board member



Tiana Jakicevich – Board Chair

Conor Twyford – Board Secretary



## Schedule One

### Climate Action Network International Association e.V. (CAN International) Statutes

(Reflecting amendments adopted by the Climate Action Network General Assembly, March 9, 2021)

## Statutes

### §1

#### Name, Seat, Fiscal Year

- (1) The Association is called "Climate Action Network International Association e.V."
- (2) It is included in the official registry of associations (*Vereinsregister*) of the district court (*Amtsgericht*) of Bonn.
- (3) The Association is seated in Bonn.
- (4) The fiscal year of the association is the calendar year.

### §2

#### Purpose

- (1) The Association shall pursue directly and exclusively non-profit and charitable purposes in the meaning of the section "tax-favourable purposes" of the German Tax Code (AO).
- (2) The purpose of the association is the promotion of environmental protection through the NGO network Climate Action Network (CAN). Hereby, CAN's mission is to support and empower civil society organisations to influence the design and development of an effective global strategy to reduce greenhouse gas emissions and ensure its implementation at international, national and local levels in the promotion of equity and sustainable development.

CAN is a worldwide network of environmental Non-Governmental Organisations, aiming to limit human-induced climate change to ecologically sustainable levels.

CAN performs its activities especially within the United Nations Framework Convention on Climate Change (UNFCCC) and publishes the newsletter "ECO." CAN promotes information exchange and coordinated development of strategies on international, national and regional climate issues. CAN's aim is to protect the atmosphere while allowing for sustainable and equitable development worldwide. Therefore, CAN has regional network hubs that



coordinate these activities around the world. To achieve its purposes CAN participates actively in the international climate change negotiations, coordinates research efforts, raises awareness and advocates on common positions.

(3) The Association is not for profit and does not have its own economic gain as its primary purpose.

(4) Funds of the association may only be used for the purposes stated in the articles of association. Members do not receive any gifts from the funds of the association.

(5) No individual shall be reimbursed for expenses which do not conform to the purpose of the association or through disproportionately high remuneration.

(6) The association is pursuing its purpose, inter alia, by raising funds for the implementation of the purpose of other organisations or public corporations; in the case of fundraising for private corporations, it is required that those corporations also have preferential tax status.

## § 2bis

### Definitions

**“CAN network”** means the global network of non-governmental organisations, called Climate Action Network.

**“CAN International”** is the Climate Action Network International Association e.V., the association that is governed by these Statutes, and whose purpose includes the promotion and support of the CAN network and its members.

A **“node”** means a regional or national node of the global CAN network. Members of the CAN network organise themselves in regional (i.e., encompassing more than one country) and/or national associations, called nodes, in the regions or countries in which they are active.

A **“regional node”** is a node that is active in and is composed of organisations and groups from several countries in a world region.

A **“national node”** is a node that is composed of organisations and groups from a single country and is limited in its activities to that country.

A **“non-overlapping national node”** is a national node that is active in a single country and is composed of organisations and groups from that country, and where in that country no regional node of the CAN network is active and no organisations or groups from that country are members of a regional node of the CAN network.

An **“international organisation,”** for the purpose of determining eligibility of membership in CAN International, is an organisation that is, directly or through its subsidiaries, a member of at least five regional or national nodes.

"**Indigenous peoples**" are individuals or peoples who self-identify as indigenous.

A "**grassroots organisation**" is an organisation or group that self-identifies as a grassroots organisation. The "**Global South**" refers to countries that are member states of the Group of 77 at the United Nations.

"**CAN-talk**" is a subscription-based email distribution system used by CAN International and the CAN network for communication with members, with all members of CAN International and national and regional nodes eligible for subscription.

The "**board**" is the board of directors of CAN International, and "**director**" means a member of the board.

The "**secretariat**" is the secretariat of CAN International, which is headed by its Executive Director and supported by additional staff as required.

### §3

#### Membership

(1) All non-governmental /community-based non-profit organisations in the sense of §2.6, that do not represent industry, and which have an interest in the promotion of sustainable development and are active in, have a focus on, or are interested in climate change issues, are eligible to become members and may apply to do so.

(2) There are 2 classes of membership:

(a) Full members, which have voting rights at the General Assembly. Eligibility for full membership is limited to organisations that are either: i. CAN regional or non-overlapping national nodes; or ii. International NGO networks which are, directly or through their subsidiaries, members in at least five national or regional nodes;

(b) Non-voting members, which have every right to participate in the content and strategic work of CAN, and enjoy all the rights and benefits of members, except that they do not have voting rights at the General Assembly. Eligibility for non-voting membership is limited to national nodes and regional nodes and to organisations that are based in countries without an established regional or national node, or whose focus of work is international, rather than national or regional, in scope and nature.

(3) Requirement for full membership and for non-voting membership is a written application for membership sent to the secretariat, using the application process as established and amended from time to time by the Board. This process will also include criteria to assess whether an organisation's focus of work is deemed to be international in scope and nature to determine



eligibility pursuant to §3.2.b above. In the case that an applicant for membership is eligible for either class of membership, the application should state the class in which membership is sought.

(4) The General Assembly will decide about applications for membership. The Board may, at its discretion, admit applicants for full membership into the non-voting membership class and vice-versa. Admissions of new members by the Board are provisional until reviewed and affirmed, amended, or rejected by the subsequent General Assembly, based on recommendations from the Board. The Board will also each year review the list of full members and assess whether the criteria for full membership still apply and present its recommendations to the General Assembly for decision making. Similarly, requests for changing membership classes from non-voting to full membership are made to the Board which makes recommendations to the General Assembly for decision making.

(5) The secretariat shall maintain a list of members of CAN International in each class and publish this list on the CAN website.

(6) Member organisations of one of the national or regional nodes of CAN may exercise the rights of non-voting members, if they wish to do so and unless otherwise decided by the board or the general assembly.

## **§4**

### **Termination of Membership**

(1) Membership ends because of dissolution, exclusion, deletion from the membership list, or withdrawal.

(2) Withdrawal of the membership takes place by written declaration to the board. Withdrawal is possible at the end of the fiscal year, declared two months in advance.

(3) A member may, at the discretion of the board, be removed from the membership list if it does not pay its membership fees after two written reminders. The removal can only take place two months after sending the second reminder, announcing the removal after this time. The member shall be informed about the removal.

(4) If a member knowingly harms the interests of the association in a serious manner it can be excluded by decision of the board. The board must give the member the opportunity to oral or written statements. The decision must be explained in a written form and be sent to the member. The member can challenge the decision in the general assembly. This must be declared within a month after reception of the decision towards the board. The board shall include the matter on the agenda of the next general assembly, which will make a final decision. The membership is suspended until a decision is made by the General Assembly.

## **§5**

### **Membership Fees, Donations, Grants, and Contributions**

(1) Membership fees are due annually and shall be paid in January. The fee schedule shall be decided by the General Assembly for each membership class. Membership fees may be set on a sliding scale taking into account members' head office location, budget size and similar relevant criteria. Decisions on membership fees shall not take effect until the beginning of the calendar year following the General Assembly.

(2) The association can receive donations in kind or money as well as other grants and contributions.

## **§6**

### **Organs of the Association**

Organs of the association are the board and the general assembly, the latter being the supreme organ of the association.

## **§7**

### **Board**

(1) The board consists of at least seven and at most fifteen board members. The number of board members shall be determined by the General Assembly according to §14.5 prior to for each board election and shall be an odd number.

(2) The board shall from among its members determine two co-chairs, a secretary and a treasurer.

(3) The board shall from among its members determine three persons to be the board in the meaning of §26 of the German Civil Code. The association is represented legally jointly by two of these persons.

(4) The board in the meaning of §26 of the German Civil Code shall not take action or decisions that are not consistent with resolutions of the board in the meaning of section 1 above, except to avoid personal liability or where required by law.

## **§8**

### **Responsibilities of the Board**



(1) The board is responsible for the external representation of the association as well as for any internal affairs unless certain affairs have been delegated to other organs of the association by law or this constitution. The board in particular is responsible for:

(a) Preparation of and invitation to the general assembly and proposals for its agenda;

(b) implementing decisions by the general assembly;

(c) Keeping financial records and preparing the annual report;

(d) Preparation and adoption of the budget of the subsequent year;

(e) Recommendations to the General Assembly about accepting new members, and changing membership categories, and subsequent to the review of the list of full members;

(f) Decisions about deleting and excluding members;

(g) Appointment, dismissal and general supervision of the Executive Director of the CAN International secretariat, who is accountable to the board. The Executive Director shall, in turn, be responsible for the day-to-day management decisions for the secretariat, including, but not limited to, decisions with regards to staffing and relevant infrastructure.

(2) In all matters of particular importance, the board should seek decisions by the General Assembly.

(3) Board members shall abide by the Board members' Code of Conduct, as adopted by the Board and amended from time to time, and shall declare any potential conflicts of interests between their position as Directors and their personal interests or the interest of any other positions they may occupy.

## §9

### **Elections and Office Terms of Board Members**

(1) Board members will be elected by the general assembly for a term of two years, counted from the election day. The board remains in office, however, until the election of a new board. Directors may be elected for one succeeding term. Board members may, per decision of the General Assembly, be elected by slate or individually; run-off elections are permitted. If possible, one third of the board members after each election should be new board members, in order to allow for rolling board terms.

(2) Board members will be natural persons, that will be nominated by one of the full members or by a non-voting member that is a regional or national node. Each member may nominate one candidate or multiple candidates. Board members act in their personal capacity, not as

representative of the member who nominated them. Staff members of CAN International are not eligible to be nominated.

(3) The composition of the board should observe the CAN policy with regards to gender equity, as adopted and amended from time to time by the General Assembly, and should reflect the geographical composition of the CAN network to ensure Global South representation, as well as the network's desire for meaningful representation of grassroots organisations, People of Colour, and Indigenous Peoples. There shall not be two or more directors that were nominated for election to the board by the same member. The membership of the board should also consist of no more than 80% of directors nominated by nodes, nor of more than 40% of directors nominated by international organisations. At least 80% of the board should be staff, officers or volunteers of CAN nodes, of member organisations of CAN nodes, or of member organisations of CAN International.

(4) A nominations committee shall be established by the General Assembly or the Board, no later than six weeks prior to a General Assembly at which board elections will be held. The nominations committee should consist of individuals knowledgeable about the governance affairs of CAN International and must not include individuals currently serving as directors, or individuals seeking nomination for election to the board. The nominations committee shall develop, from among the candidates nominated according to the rules set out in sub paragraph 2 above, a proposal for a slate of candidates to be considered by the General Assembly, that in the nominations committee's own view would lead to the best possible board composition, while also striving to reflect the composition outlined in sub paragraph 3 above. The nominations committee shall, in addition to its proposed slate of candidates, bring before the General Assembly a list of all other eligible nominations received.

(5) If a director leaves the board before the end of their term, the board can appoint, by ordinary resolution, a substitute on an interim basis until the next general assembly. The board shall endeavour to implement the provisions regarding board composition in sub paragraph 3 above when selecting a substitute director.

## **§ 10**

### **Meetings and Decisions of the Board**

(1) The board decides in meetings that are invited by the chairpersons and should occur at least once per calendar month. The invitation shall be issued at least one week before the meeting.

(2) Quorum in board meetings is established when at least half the members are present. Participation in board meetings can also occur through telephone or video conferencing; such participation is considered equivalent to personal attendance when establishing quorum. Resolutions are passed through consensus, unless a vote is decided at the discretion of the chair or by request of at least 10% of directors present. In the case of voting, resolutions are passed with a majority of valid votes.

- (3) If all board members agree, the board can decide in written form without a meeting.
- (4) Every member has the right to present proposals to the board. The board has to decide about such proposals.
- (5) A board member may be removed by a simple majority of the board for failure to adhere to board governance agreements, the Our CAN values, or the CAN Code of Conduct, so long as there are three board members remaining.

## § 11

### General Assembly

- (1) In the General Assembly, every full member shall have one vote. The vote is exercised by one duly authorised representative of each full member. Wherever possible, representatives of members should not be current Directors or persons nominated to be elected to the board of directors at the General Assembly in question. One individual may not be the duly authorised representative of more than two members. Additionally, individuals may attend a General Assembly and participate in its debates if they are additional, non-voting representatives of full members, or if they are representatives of non-voting members, or if they are representatives of member organizations of national or regional nodes. Participation in the General Assembly can also occur through telephone or video conferencing; such participation is considered equivalent to personal attendance when establishing quorum.
- (2) The General Assembly is responsible for the following matters:
  - (a) Accepting the annual report of the board;
  - (b) Deciding about membership fees;
  - (c) Electing and recalling board members;
  - (d) Appointing the external auditor;
  - (e) Accepting the reports of the auditors;
  - (f) Decisions about changes in the statutes and about the dissolution of the association;
  - (g) Decisions about challenges against a board decision to expel a member;
  - (h) approval of membership applications and changes to the membership categories, resulting from the board's review of the criteria of full membership, pursuant to § 3.5;
  - (i) Decisions on any other matters of particular importance based on motions of the board.

## § 12

### Ordinary General Assembly

(1) The general assembly should be held annually, though the general assembly may be held only once every 24 months under exceptional circumstances. The board issues the invitations two weeks before with a proposal for an agenda. The two-week timespan begins with the day after sending out the invitations. The invitation shall be considered received by members if it has been sent to the CAN-talk email list or to the last address or e-mail address that full members have given the board in a written form. The agenda shall be proposed by the board.

(2) Any document presented for approval to the General Assembly must be provided to the General Assembly at least 5 working days before the meeting. The General Assembly can decide to accept late proposals by majority decision. Changes to these statutes have to be announced in the invitation to the general assembly, including information on which provisions of these statutes are proposed to be changed.

(3) Any member can propose changes of the agenda. The agenda shall be decided at the beginning of the meeting.

## § 13

### Extraordinary General Assembly

(1) The board shall call an extraordinary general assembly if it is necessary in the interest of the association or if 1/3 of the members demand it by stating the purpose and the reasons for it.

(2) The provisions of § 12 apply for the invitations.

## § 14

### Decisions of the General Assembly

(1) The general assembly shall be co-chaired by two chairpersons, with at least one chairperson being a woman and at least one chairperson being from a grassroots organisation or the Global South. The two chairpersons shall consist of one board member and another non-board member elected by the general assembly or two board members should the general assembly choose not to elect different chairs for the assembly. During elections and the preceding discussion, the chairing of the assembly can be transferred to an electoral commission.

(2) The chairpersons decide about the modalities of decision making. Voting must be conducted secretly and in writing if one tenth of the present members request it.



(3) A quorum of the general assembly shall be 75% of the full members that are regional or national nodes. If this cannot be achieved, the board has to invite for another assembly with the same agenda. This assembly can make decisions regardless how many members are present, if this has been stated in the invitation.

(4) The assembly will normally decide through consensus-based decision making. The chairs of the Assembly shall declare the consensus decision of the Assembly on any decision of the Assembly. Alternatively to consensus-based decision making, votes may be called at the discretion of the chairs or the request of at least 10% of voting members present. Where members request votes for decisions that the chairs of the Assembly have already declared decided by consensus, the results of the vote override the chairs' declaration. Votes must also be held for resolutions changing these statutes or for dissolving the association. In the case of voting, decisions are carried with a two-thirds majority of the valid votes; abstentions are considered invalid votes. Two-third majorities of the valid votes are required for changing these statutes, three-fourth majorities of the valid votes are required for dissolving the association.

(5) For board elections, the general assembly shall decide the total number of members for the board. The General Assembly should, by ordinary resolution, decide to elect directors to vacant board positions by electing a slate of candidates, provided that the number of candidates on the slate is not larger than the number of vacancies. If the General Assembly does not decide to elect directors by slate, or where vacancies remain open after an election by slate, directors shall be elected as follows: In such cases, where the number of received nominations exceeds the number of remaining vacant board positions, voting shall be carried out through ranked ballot, where candidates that have been ranked on more than half of the cast ballots are elected to the board according to their rank until all vacancies are filled. The ranked ballot shall follow the rules of the Single Transferable Vote approach as contained in the Scottish Local Government Elections Order 2007. In case of a tie, the assembly shall break the tie with a run-off ballot. In such cases, where the number of nominations is less or equal to the number of vacant board positions, those will be elected that get more than half the valid votes.

(6) Decisions of the general assembly have to be recorded in minutes that have to be signed by the chair of the assembly and a board member.

## **§ 15**

### **Dissolution of the Association**

(1) The association can only be dissolved by the general assembly by a majority of three-fourths of the valid votes.

(2) If the general assembly does not decide otherwise, the board shall determine from its membership two individuals as jointly responsible liquidators.

(3) In the case of dissolution of the association or if the tax-favourable purposes no longer apply the assets of the associations must be transferred to a legal person under public law or to

another tax- exempt entity for the purpose of utilising the funds directly and exclusively for the advancement of environmental protection especially with regard to climate protection.

## **§ 16**

### **Changes to these Statutes in Special Circumstances**

In addition to § 14, the board is authorised to adopt, by unanimous board resolution, changes or additions to amendments to these statutes that have been adopted by the general assembly where such changes or additions are requested by the district court (*Amtsgericht*) in order to allow the registration of the amended statutes in the district court's registry of associations (*Vereinsregister*).

## Schedule Two CAN Charter

### Climate Action Network

# CAN Charter

## Our Network Rules and Governance Principles

### Amended Version as approved by the CAN International General Assembly March 2021

#### INTRODUCTION

This document aims to provide clarity and set rules for the way the CAN global network is organized and works. It should be used as a guide to define how members, Nodes and CAN International best work together with the ultimate aim to bring the change we need.

#### A. DESCRIPTION, VISION AND MISSION

1. CAN is a global network of non-government not for profit member organizations from all over the world committed to combating harmful climate change and advancing climate justice and equity. This network is based on trust, transparency, democracy, and inclusiveness and should hold itself accountable for this.
2. CAN members are primarily engaged through National and Regional Nodes, but also engage, together with the Nodes at the international level through CAN International. While Nodes are fully responsible for the actions taking place in their country or region, CAN International ensures coordination at the international level and facilitates and implements international cooperation between Nodes, members and its Secretariat. The global CAN network encompasses all activities in the name of CAN, by National Nodes, Regional Nodes and by CAN International. CAN International Association E.V. is a legal organisation established to create a secretariat that coordinates activities of CAN Nodes and their members at the international level. In terms of governance, each Node should have its own governance structure that is fully and autonomously accountable for the activities within its Node. This autonomy does not exclude that in cases (and only in those cases) where certain activities of a given Node are in breach of the CAN Charter and the CAN Code of Conduct, that the CAN International Board, per its discretion and when possible in cooperation with the relevant Node(s), may take up the role of dispute resolution agency and may request the CAN International Secretariat to assess and if feasible resolve the issue, and/or appoint an arbitrator or set up other relevant avenues to help the Board in resolving the dispute. In case of failure of mediation, the issue will be brought to the General Assembly for final decision.

3. CAN is led by the power of its members aimed at creating change, at national and regional level through its National and Regional Nodes, and at the global level through CAN International. CAN sees itself as a bottom-up network, that is driven by its members. In support of this, CAN International as well as the CAN Nodes may establish to support and coordinate the activities of its members.

4. CAN notes that life on earth is under severe threat from catastrophic climate change, which is being caused by humans through our constant production of greenhouse gases. CAN as a network faces this threat with the common concern of its members all over the world.

5. The vision of CAN is a world striving actively towards and achieving the protection of the global climate in a manner which promotes equity and social justice between peoples, sustainable development of all communities, and protection of the global environment. CAN unites to work towards this vision.

6. CAN's mission is to support and empower civil society organizations to influence the design and development of an effective global strategy to reduce greenhouse gas emissions and ensure its implementation at international, national and local levels in the promotion of equity and sustainable development.

7. The objectives of CAN are:

- a) To prevent dangerous climate change through awareness and capacity building of governments and citizens worldwide;
- b) To protect the global climate from dangerous human interference;
- c) To be the conscience of the world concerning issues of climate change;
- d) To promote the protection of the global climate from dangerous human interference; and so to facilitate the radical transformation in the way we use resources, the land and energy;
- e) To prioritize sustainable development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs;
- f) To inspire government, business, community, and individual action to this effect;
- g) To develop an objective understanding of climate change and its causes, and share this information with all people, especially all members;
- h) To organize, support, inspire and coordinate its members to take effective action on climate change, either as one global voice, or in the regions where members operate.

8. The Strategies of CAN include:

- a) Active participation in the international climate change negotiations and all other relevant



fora;

- b) Raising awareness and pushing issues onto the global agenda to influence the climate change decision-making process;
- c) Placing new climate change, equity and sustainable development issues on the global agenda;
- d) Contributing to the establishment of global, regional, national and local climate change agendas through mobilizing a genuinely inclusive civil society process at all levels;
- e) Promoting a nuclear free future;
- f) Ensuring the gains at the global level are translated into concrete benefits at the national and local level, and are implemented effectively and work to benefit of poor people and countries;
- g) Facilitating a process for developing campaigns and negotiating strategies at the global level;
- h) Holding global institutions and the private sector accountable for their actions and ensuring they respond to social and environmental concerns;
- i) Developing and disseminating knowledge that is crucial to addressing the trans-national challenges of climate change;
- j) Addressing the participatory gap through the creation of inclusive processes.

9. The Primary activities of CAN are:

- a) Information sharing;
- b) Capacity Building;
- c) Lobbying on common positions;
- d) Coordination of media messages;
- e) Coordination of research efforts;
- f) Cooperation with other NGO groupings;
- g) Mobilization of public support and awareness;
- h) Any other activities which would promote the CAN objectives.

## **B. CAN MEMBERS**

10. All non-profit organizations, including community based organisations, that do not represent

government nor industry interests and which actively promote ambitious climate action and sustainable development, are eligible to become members of CAN and may apply to do so.

11. By applying for membership the applicant organisation declares that it will respect and apply the rules of this Charter, support the vision, mission and activities of CAN, and bind itself to the CAN Code of Conduct.

12. Applicant organizations must apply for membership with the relevant National or Regional Node where the applicant is active. In case there is no Node covering the applicant's work area, or in case the applicant's work area covers several different Nodes, the applicant may apply to become a member of CAN International. In some cases applicant organisations (in particular development NGOs) may work in multiple countries or regions but have their governance and/or advocacy activities mainly based in one country or region. In those cases the applicant should apply with the relevant National or Regional Nodes as determined by their governance. Nodes (including CAN International), when rejecting an application on this basis, will refer the applicant to the correct Node.

13. Organisations with offices that are active in multiple Nodes are strongly encouraged to apply and engage both with CAN International for their coordinating office and with all the national and regional nodes their offices are active in.

14. All Nodes as well as CAN International have their own procedures for accepting, suspending, expelling and resigning of members. These procedures, while different, should all guarantee principles of trust, inclusiveness and transparency, need to be fully in line with all the principle of this Charter, and should be available on the respective Nodes' and/or CAN International's website. For Nodes where such processes are not available, the CAN International rules should be followed.

15. All Nodes may establish specific membership categories, including the categories for observer members.

16. By becoming a member of a CAN National or Regional Node, whatever the category of membership, the organisation will not only have access to the relevant membership services and engagement opportunities of this specific Node but also to those offered by CAN International. Nodes will regularly inform both new and existing members of the services and engagement opportunities offered by CAN International. Similarly, members of National Nodes should have access to the membership services and engagement opportunities of the Regional Node the National Node is member of. Nodes can also decide to provide access to a number of their membership services to members of other Nodes and/or CAN International, if they wish to do so, and depending on their own provisions. All Nodes are free to decide this independently.

17. In case an application is refused by a National or Regional Node, or by CAN International, and irrespective of any appeal procedures that may be offered by the relevant Node, the applicant may apply with a different Node or with CAN International, guided by paragraph 11 above, but must include in its

application the reasons why it is submitting a new application and why its previous application was rejected.

### C. NATIONAL AND REGIONAL NODES

18. A National Node is an association of CAN Members in a particular country. A Regional Node is an association of CAN Members, and/or CAN National Nodes, in a group of countries on an international basis. The name of any Node must adequately reflect the country/countries it represents.

19. Nodes are formed to enable members to increase their capacity to reach our common objectives and bring the change that is needed.

20. Any National or Regional Node will strive to match the minimum requirement for Node status listed in the *"Building Effective CAN Nodes"* policy. The CAN International Secretariat will, where possible, support Nodes in reaching both the minimum requirements as well as the criteria for effective Nodes, and will provide the CAN International General Assembly an annual update of the Nodes' status in reaching the different requirements. The ambition is for every Node to be an effective one. The Nodes are requested to provide all necessary information to the Secretariat well in time for this.

21. All Nodes are expected to subscribe to the provisions of this Charter, the CAN Code of Conduct and the *"Our CAN Values"* Statement, and must act on the basis of trust, inclusiveness, transparency and be accountable for this.

22. Any group of CAN members and/or organisations eligible for CAN membership can propose to establish a new National or Regional Node. Applications for establishing new Nodes must be addressed to the CAN International General Assembly and must include an overview of the proposed members of the Node (at least three), a clear strategy on how the minimum requirements for Nodes will be reached, and how the Node aims to reach the criteria for effective Nodes. The CAN International General Assembly will decide on the acceptance of new Nodes, after consulting the relevant CAN members and Nodes active in the relevant country/region on the acceptance of the new Node.

23. The CAN International General Assembly can suspend or cancel the use of the CAN name and/or logo by National or Regional Nodes, in case of breaches to the principles of this Charter, the Code of Conduct of CAN and the minimum requirements for Nodes. Any complaints about such breaches should be first raised within the Node. If no resolution can be found the CAN International Secretariat should be informed which then raises the issue with the CAN International Board. If no resolution can be found, the issue will be brought to the General Assembly.

24. In principle, any new Regional Node must include all existing National and Regional Nodes based in its territory. And any new National Node must become a member of the existing Regional Node covering its territory.

25. Once accepted the Node may carry out activities under the name of CAN. The CAN International Secretariat keeps a list of all accepted Nodes which should be available on its website.

26. The CAN International General Assembly keeps track of the demarcation of the different Nodes, identifies the countries or regions that are not covered by CAN Nodes, and together with the CAN International Secretariat develops a strategy on what to do with the countries and regions not covered. Similarly, the CAN International General Assembly may adopt a vision and strategy on how to further develop the Nodes, which may include, while respecting Nodes' autonomy, a vision on the potential needs to merge or split Nodes, and/or establish new Nodes.

27. The CAN International General Assembly must consider whether any application to establish a new Node impacts the agreed demarcation of the geographical extent of existing Nodes, and in the case of such an impact agreement must be sought first with the existing Nodes before the proposal can be considered.

28. A National or Regional Node will strive to create its own legal entity, raise its own funds, and conduct the activities it determines for the purposes of furthering the CAN vision, mission and activities in their country or region. All National and Regional Nodes shall have a proper governing body based on principles of inclusiveness, transparency and accountability.

29. National and Regional Nodes are free to set up their own rules and codes of conduct but such rules should not be in conflict with the provisions of this Charter, the CAN Code of Conduct and the "Our CAN Values" Statement.

30. Each National or Regional Node governing body is accountable to its members. In the event of a failure of this accountability, the members may report this to the CAN International Board, which may take appropriate action.

31. Each National or Regional Node must appoint a Coordinator or co-coordinators, recognizing that Nodes may designate different titles to these roles, taking into consideration geographic and gender equity.

32. The National or Regional Node may set the rules for the appointment, rotation, terms of reference, and activities of the Node Coordinator.

33. The National or Regional Node may also decide to appoint a Node focal point for its relationship with CAN International which can be the same or a different person than the Node Coordinator.

34. National and Regional Nodes may decide to set up a Node secretariat with its own staff, objectives and work programme.

35. The CAN International Secretariat will, funding permitted, organise an annual meeting bringing together representatives of the International Secretariat and the Node focal points. This meeting aims

to:

- provide a platform for Nodes to discuss cooperation and coordination;



- support Nodes in their further development;
- strengthen the cooperation between Nodes and CAN International;
- initiate, further develop and evaluate joint projects between Nodes and with CAN International.

#### **D. CAN INTERNATIONAL**

36. Members of National and Regional Nodes work together in the global CAN network to engage in global climate politics. These activities are supported by the CAN International Secretariat, which also supports the functioning and coordination of the National and Regional Nodes. CAN International has its own legal status, its own governance structure, and its own members which include all of the National and Regional Nodes of the CAN network.

37. Notwithstanding anything to the contrary in this Charter, the CAN International Board must fulfil the function of dispute resolution agency within the CAN network, including within the Nodes of organization within CAN. In the case of a dispute arising and not adequately provided for in this Charter, the CAN International Board must attempt to resolve the dispute, and CAN members agree to this role by the International Board. The CAN International Board may appoint one or more of its members to act as an intervener in disputes, or may appoint an independent third party to do so. All dispute resolution procedures will be designed by the CAN International Board, and will in all cases include an attempt at mediation. Arbitration of a dispute may only occur if the parties to the dispute agree to do so and can agree to an arbitrator, who may be a CAN International Board member. In the case of arbitration, the decisions of the arbitration will be final and binding. In all other cases where mediation has failed and arbitration is not agreed to, the matter will be referred to the next CAN International General Assembly for a final and binding decision.

#### **E. GOVERNANCE**

38. CAN is a member-driven democratic network that seeks the largest possible cooperation amongst its members. The governance of the network is the responsibility of all CAN members. Both CAN International and all National and Regional Nodes need to ensure they are governed in a transparent, inclusive and democratic way that allows all members to contribute to the decision-making processes. This includes ensuring that the General Assembly or any other form of members' meeting of each node remains the highest decision-making body of the node.

39. The respective General Assemblies of each of the Nodes and of CAN International should, autonomously, elect and give a mandate to a Board of Directors or a Steering Committee to ensure a more permanent governance in between General Assembly meetings. The election of the Board of Directors or Steering Committee shall be inclusive and transparent and their composition should reflect a balanced representation of genders, regions and interests.

40. The General Assembly of CAN International shall serve as the General Assembly of the CAN Network. Unless otherwise decided by the General Assembly, the CAN International Board of Directors shall serve as the Board of Directors of the CAN Network and fulfil the functions assigned to the Board in this Charter. The relevant provisions governing CAN International General Assembly and the CAN International Board of Directors with regards to the frequency, invitation, composition, quorum, mandate, nominations, election, decision-making, and so forth, as contained in the CAN International Statutes shall apply *mutatis mutandis*.

#### **F. CAN POSITIONS, STATEMENTS AND STRATEGIES**

41. A statement refers to a letter or a position statement for open publication. Nodes are free to make statements of their own. However both Nodes and CAN statements shall be respectful to the work of other Nodes. In seeking to achieve such goal, cooperation and consultation, among Nodes and CAN, as relevant, shall be sought for statements that may impact the work of other Nodes and/or CAN in all international, multilateral, regional, cross-national, and other processes and moment as appropriate. If a statement is relevant for multiple Nodes, preference should be given to joint or global statements.

42. Each Node has its own rules for deciding on its positions, which should be available to all its members. For all Nodes, the same principles of striving for consensus, inclusiveness, transparency and accountability apply.

43. CAN positions and statements should reflect the opinions of all Nodes and members. This also implies all relevant members and Nodes make an effort to engage in these processes.

44. Statements of members or Nodes should not be in contradiction with CAN positions. Therefore, all members or Nodes should strive to ensure that their views are reflected in CAN positions on this basis, and CAN positions should take positions of members and Nodes into account.

45. In the case of a Node releasing a statement which is made in the name of CAN, but which is in conflict with an already existing position of CAN or another Node of CAN, the CAN International Board may take the necessary steps to resolve the issues.

46. International CAN positions are developed in a transparent process involving interested CAN members and Nodes through the relevant structures, and supported by the CAN International Secretariat.

47. International CAN positions should be adopted by consensus of all Node and CAN International members, with consensus being reached if only a small minority disagrees. The relevant Working Group coordinators and the CAN International Secretariat will ensure the assessment of whether dissenting views form a small minority.

48. Any member of CAN International or of a CAN Node that has duly participated in the position development process can request to have its disagreement to a CAN position or specific elements of the

position mentioned as a footnote in the position statement. If a CAN Node formally disagrees with a CAN Statement, then the Statement cannot be adopted.

49. The CAN International secretariat may propose, establish and support working groups, task forces, coordination groups and other relevant structures. Each of these structures should have clear terms of references which articulate how members and Nodes can participate and be represented. These structures must function on the basis of legitimacy, inclusiveness, transparency, trust and accountability.

## **G. FUNDRAISING**

50. All National and Regional Nodes as well as CAN International are encouraged to raise funds to ensure they can function independently and in line with the needs and expectations of their members.

51. Funds raised by CAN International shall, depending on the conditions of the funder, and the needs of the CAN International Secretariat to provide the basic services it is expected to provide, be utilized both to fund the activities of CAN International and of the Nodes that need financial support to ensure CAN is a truly global network with adequate participation from NGOs from the South.

52. CAN International, Nodes and potentially members are encouraged to engage in funding and/or (joint) fundraising activities that can support the strengthening of all Nodes and in particular those from developing countries.

53. Any funding to assist members or Nodes may be distributed on the following conditions:

- a) The allocation of funds is based on clear, transparent and inclusive processes;
- b) The allocation has been approved by the CAN International Board as part of the general budget approval.
- c) The member or Node commits to proper regular reporting on the spending of these funds;
- d) the Node meets or is in the process of meeting the minimum requirement for Node status.

54. In the allocation of funds, special consideration will be given to members and Nodes which are short of funding to enable them to fully participate in the work of the CAN network.

55. The CAN International secretariat will regularly provide the General Assembly with an overview of funding streams, within or outside of joint projects that it manages, from CAN International to Nodes and members, as well as from Nodes to Nodes and from Nodes to CAN International. For Node to Node funding, Nodes will be urged to inform the CAN International Secretariat so that it can provide said overview.



56. Decisions on the sourcing, administration, and distribution of funds are to be made by the CAN International Secretariat under the guidance of the CAN International Board, which includes but is not limited to budget approval.

57. CAN Nodes will be free to raise funds in the name of CAN.

58. Such fundraising activities should, where relevant and possible, be coordinated between all the relevant Nodes and CAN International, to avoid competition and increase the overall chances of success. Nodes and CAN International are requested to inform the Node where a funder is hosted of their intention to make an application, in order to avoid competing demands and potentially sharing experiences to improve the application.

59. All funds raised under the name of CAN shall, to the extent that funding and resources allow, be subject to an annual audit based on generally accepted accounting principles.

#### **H. VALUES, CODE OF CONDUCT AND ACCOUNTABILITY**

60. In accordance with CAN International's mission, we are committed to mobilize our efforts to meaningful climate action and climate justice while adhering to the following fundamental values that underpin the mission and objectives of CAN and its members. We therefore commit ourselves to:

- a) Participatory, accountable and transparent decision-making;
- b) Ensuring that the Network remains true to its vision, mission and objectives, which prioritizes communities, people, and the planet;
- c) Mutual respect, cooperation, collaboration and networking internally and with other organizations around issues of mutual concern;
- d) Reject all forms of racism, sexism and any other form of discriminatory and unjust behaviour.

61. CAN recognizes that all individuals who are contributing to realizing CAN's vision and mission have a right that this work takes place in an environment that is free of harassment, sexual harassment, bullying and other similar harmful behaviour. The General Assembly shall adopt policies to give effect to this provision and shall review, and if needed revise, these policies periodically. All organs, Nodes, members of CAN, as well as their representatives, and officers and staff of CAN are responsible for ensuring the implementation of the policies.

62. CAN has adopted a series of policies forming a "Code of Conduct" for its members, Nodes, as well as a number of the organs, roles and offices described in this Charter, which shall be made available to members on the CAN website.



63. As an international network of organizations, we recognize the importance of establishing and maintaining appropriate and effective bodies that will govern the internal functioning of our Network at the global, regional, national, and sub-national levels. To this end we will:

- a) Ensure the global CAN Network has a clear vision, mission, objectives and policies, and adheres to them;
- b) Ensure all governance structures reflect the diversity of our network, including but not limited to race, age and gender as well as the various target constituencies of the Network, with regard to both their composition and their geographic spread.

64. Our commitment to promote participatory, accountable and transparent decision making is enshrined in this code of conduct. Whilst not a binding obligation on members, we aim to:

- a) Develop mechanisms to enable all our members to be involved in planning programs that directly affect them;
- b) Provide opportunities for regular evaluations and updating of programs;
- c) Hold General Assemblies with full, open and accurate disclosure of relevant information concerning goals, programs, finances and governance of the Network;
- d) Hold regular strategic planning sessions to which all CAN members are invited to contribute;
- e) Provide clear and transparent accounting on financial matters to the broader membership.

65. All Member organisations, Nodes, Staff and Board members of the CAN network are committed to the CAN "*Code of Conduct*".

66. All CAN members, Nodes, the Secretariat, Board, and individuals within the CAN Network are subject to the "*Code of Conduct*." Serious breaches of the Code include but are not limited to:

- a) Actions taken against the Network, including but not limited to:
  - (i) Misrepresenting the Network and its positions; and
  - (ii) Causing reputational damage to CAN;
- b) Deceptive actions and practices, including but not limited to: (i) Fraud or corruption; and
  - (ii) Financial embezzlement;
- (c) Actions taken in disrespect to other CAN members, Nodes, and other bodies, including but not limited to:

- (i) Publicly and actively undermining CAN positions, decision-making processes, and shared values; and
  - (ii) Failure to fulfil duties to report and be held accountable to the CAN International Board, Secretariat, Nodes or other offices as appropriate;
  - (iii) Failure to make important decisions accessible and transparent to members; and
- d) Actions taken against fellow community members in the Network, including but not limited to:
- (i) Actions reflecting racism, bullying, sexual harassment and harassment, and any other form of discrimination, which CAN takes extremely seriously as consistent with CAN's relevant policies; and
  - (ii) Actions that are violent in nature, including through communication and any other forms of violence.

67. Breaches by members or Nodes may result in disciplinary action, which may, in the most serious cases, include the expulsion of members or Nodes from the CAN Network. Nodes should adopt policies for addressing member discipline, sanctioning and redress for breaches by their members. CAN International shall similarly adopt a policy for addressing discipline, sanctioning and redress for breaches by any CAN nodes, CAN International member, or member of a CAN node in a context of work falling under the purview of CAN International.

#### **CHANGES TO THIS CHARTER**

68. This Charter may be amended or terminated by the General Assembly of CAN International.

## Schedule Three

### Te Tiriti o Waitangi

#### *Te reo Māori*

Ko Wikitoria te Kuini o Ingarani i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira - hei kai wakarite ki nga Tangata maori o Nu Tirani - kia wakaaetia e nga Rangatira maori te Kawanatanga o te Kuini ki nga wahikatoa o te wenua nei me nga motu - na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere mai nei.

Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kaua ai nga kino e puta mai ki te tangata maori ki te Pakeha e noho ture kore ana.

Na kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua aianeia amua atu ki te Kuini, e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei.

#### **Ko te tuatahi**

Ko nga Rangatira o te wakaminenga me nga Rangatira katoa hoki ki hai i uri ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu - te Kawanatanga katoa o o ratou wenua.

#### **Ko te tuarua**

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu - ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te wenua - ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

#### **Ko te tuatoru**

Hei wakaritenga mai hoki tenei mo te wakaaetanga ki te Kawanatanga o te Kuini - Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

[signed] W. Hobson Consul & Lieutenant Governor

Na ko matou ko nga Rangatira o te Wakaminenga o nga hapu o Nu Tirani ka huihui nei ki Waitangi ko matou hoki ko nga Rangatira o Nu Tirani ka kite nei i te ritenga o enei kupu. Ka tangohia ka wakaaetia katoatia e matou, koia ka tohungia ai o matou ingoa o matou tohu.

Ka meatia tenei ki Waitangi i te ono o nga ra o Pepueri i te tau kotahi mano e waru rau e wa te kau o to tatou Ariki.

Ko nga Rangatira o te Wakaminenga

### *English*

*[This translation of Te Tiriti o Waitangi was done by former Waitangi Tribunal member Professor Sir Hugh Kāwharu. It has been published in Michael Belgrave, Merata Kāwharu, and David Williams (eds) Waitangi Revisited: Perspectives on the Treaty of Waitangi (Oxford Unity Press, 1989), and it is available online at 'Translation of the te reo Māori text' Waitangi Tribunal (19 September 2016)*  
<<https://waitangitribunal.govt.nz/treaty-of-waitangi/translation-of-te-reo-maori-text/>>]

Victoria, the Queen of England, in her concern to protect the chiefs and the subtribes of New Zealand and in her desire to preserve their chieftainship<sup>1</sup> and their lands to them and to maintain peace<sup>2</sup> and good order considers it just to appoint an administrator<sup>3</sup> one who will negotiate with the people of New Zealand to the end that their chiefs will agree to the Queen's Government being established over all parts of this land and (adjoining) islands<sup>4</sup> and also because there are many of her subjects already living on this land and others yet to come. So the Queen desires to establish a government so that no evil will come to Māori and European living in a state of lawlessness. So the Queen has appointed 'me, William Hobson a Captain' in the Royal Navy to be Governor for all parts of New Zealand (both those) shortly to be received by the Queen and (those) to be received hereafter and presents<sup>5</sup> to the chiefs of the Confederation chiefs of the subtribes of New Zealand and other chiefs these laws set out here.

### **The first**

The Chiefs of the Confederation and all the Chiefs who have not joined that Confederation give absolutely to the Queen of England for ever the complete government<sup>6</sup> over their land.

### **The second**



The Queen of England agrees to protect the chiefs, the subtribes and all the people of New Zealand in the unqualified exercise<sup>7</sup> of their chieftainship over their lands, villages and all their treasures.<sup>8</sup> But on the other hand the Chiefs of the Confederation and all the Chiefs will sell<sup>9</sup> land to the Queen at a price agreed to by the person owning it and by the person buying it (the latter being) appointed by the Queen as her purchase agent.

### The third

For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand and will give them the same rights and duties<sup>10</sup> of citizenship as the people of England.<sup>11</sup>

[signed] William Hobson Consul & Lieut Governor

So we, the Chiefs of the Confederation of the subtribes of New Zealand meeting here at Waitangi having seen the shape of these words which we accept and agree to record our names and our marks thus.

Was done at Waitangi on the sixth of February in the year of our Lord 1840.

<sup>7</sup>'Chieftainship': this concept has to be understood in the context of Māori social and political organisation as at 1840. The accepted approximation today is 'trusteeship'.

<sup>8</sup>'Peace': Māori 'Rongo', seemingly a missionary usage (rongo — to hear: ie, hear the 'Word' — the 'message' of peace and goodwill, etc).

<sup>9</sup>Literally 'Chief' ('Rangatira') here is of course ambiguous. Clearly, a European could not be a Māori, but the word could well have implied a trustee-like role rather than that of a mere 'functionary'. Māori speeches at Waitangi in 1840 refer to Hobson being or becoming a 'father' for the Māori people. Certainly this attitude has been held towards the person of the Crown down to the present day — hence the continued expectations and commitments entailed in the Treaty.

<sup>10</sup>'Islands': ie, coastal, not of the Pacific.

<sup>11</sup>Literally 'making': ie, 'offering' or 'saying' — but not 'inviting to concur'.

<sup>12</sup>'Government': 'kawanatanga'. There could be no possibility of the Māori signatories having any understanding of government in the sense of 'sovereignty': ie, any understanding on the basis of experience or cultural precedent.

<sup>13</sup>'Unqualified exercise' of the chieftainship — would emphasise to a chief the Queen's intention to give them complete control according to their customs. 'Tino' has the connotation of 'quintessential'.

<sup>14</sup>'Treasures': 'taonga'. As submissions to the Waitangi Tribunal concerning the Māori language have made clear, 'taonga' refers to all dimensions of a tribal group's estate, material and non-material — heirlooms and wahi tapu (sacred places), ancestral lore and whakapapa (genealogies), etc.

<sup>15</sup>Māori 'hokonga', literally 'sale and purchase'. 'Hoko' means to buy or sell.

<sup>16</sup>'Rights and duties': Māori at Waitangi in 1840 refer to Hobson being or becoming a 'father' for the Māori people. Certainly, this attitude has been held towards the person of the Crown down to the present day — hence the continued expectations and commitments entailed in the Treaty.

<sup>17</sup>There is, however, a more profound problem about 'tikanga'. There is a real sense here of the Queen 'protecting' (ie, allowing the preservation of) the Māori people's tikanga (ie, customs) since no Māori

could have had any understanding whatever of British tikanga (ie, rights and duties of British subjects). This, then, reinforces the guarantees in article 2.

## **Schedule Four**

### **Context of Te Tiriti o Waitangi**

*[Excerpt taken from Network Waitangi Otautahi Treaty of Waitangi: Questions and Answers (7th ed, 2018) <<https://nwo.org.nz/wp-content/uploads/2018/06/QandA.pdf>>]*

...

#### **Are Te Tiriti o Waitangi and the Crown's English language version the same?**

No. Te Tiriti o Waitangi confirms Māori authority and sovereignty, while the Crown's English language version states that Māori gave their sovereignty to the Queen – this is a direct contradiction. The different texts also reflect different world views, and therefore different economic, cultural and political understandings and priorities.

#### **What are the similarities and differences between Te Tiriti o Waitangi and the Crown's English-language version?**

The Treaty consists of a Preamble and four Articles; the fourth Article was added at Waitangi on 6 February 1840. The significant differences between Te Tiriti and the Crown's English-language version are evident in Articles 1 and 2.

##### *Preamble*

The Preamble is an introductory statement, expressing the Queen's good will to the Rangatira and Hapū of New Zealand, asking them to allow a place for the Queen's governor, and committing to a peaceful future.

##### *Article 1*

Te Tiriti o Waitangi says that the rangatira and hapū agree to the Queen's governor exercising kawanatanga (a transliteration of the word governorship).

In fact, the oral discussion at Waitangi was about allowing the presence of a governor, and this was what was in the mind of the rangatira who signed Te Tiriti o Waitangi. This did not mean that the governor was to have authority over Māori but over the British subjects "living here outside the law". The Crown's English version says that the Rangatira would cede their sovereignty to the Queen, meaning the Crown would have complete power and authority over everything and everybody throughout the land.

### *Article II*

Te Tiriti o Waitangi says that the Crown recognises and upholds the paramount authority (tino rangatiratanga) of the hapū over their lands, villages and all that is precious to them (taonga). This directly contradicts the cession of sovereignty referred to in Article 1 of the Crown's English version. The Crown's English version guarantees to Māori only "the full, exclusive and undisturbed possession of their lands and estates, forest, fisheries, and other properties" as long as they wish. Many of the cases brought to the Waitangi Tribunal have succeeded because it has been shown that, following the Treaty, the Crown took actions that forced land and other properties out of Māori hands. The word taonga in te Tiriti is not limited to property and possessions, as stated in the Crown's English-language version. Understood within their cultural context, taonga as part of the natural world are recognised as living with inherent value, and also include all things held precious: for example, language, culture and health.

Article II also talks about transactions with regard to land, giving the Crown priority over others in land dealings with hapū.

**While the Treaty gave the Crown the right to form a government here for British settlers, it did not give it rights over and above other migrant groups, nor over tangata whenua.**

### *Article III*

Article III accords to Māori the rights of British people, additional to the rights they already enjoyed in their own society.

### *Article IV*

At the first Treaty signing, William Colenso (Anglican) recorded a discussion on religious freedom between Bishop Pompallier (Catholic) and Captain Hobson. In answer to a direct question from Pompallier, Hobson and the rangatira agreed to the following statement which was read in te reo to the meeting before anyone signed:

The Governor says the several faiths (beliefs) of England, of the Wesleyans, of Rome, and also Māori custom and religion shall alike be protected by him.

In looking at te Tiriti, the word ritenga is used. Rītenga, within a Māori worldview, refers to beliefs and practices of the spiritual relationship between humans and the rest of the natural world.

In summary, the Treaty confirms Māori authority and sovereignty, guaranteeing to Māori the full control and authority over their lands, settlements and all that is of value to them



– including their social, political and economic relationships and institutions. It allows a place for a governor to exercise control over the Queen’s people. The Treaty provides a framework of understanding between Māori and the Crown, to ensure peace and good order into the future.

### **Which Treaty is the right one?**

Te Tiriti o Waitangi is the only authentic text of the Treaty. It is the Treaty signed at Waitangi by Hobson and the rangatira. Hobson himself always saw the Waitangi signing as the most significant. The majority of the 534 rangatira who signed the Treaty around the country signed the Te Tiriti o Waitangi text.

As noted above a small number of rangatira signed an English-language text but their agreement would have been to what was discussed in Māori. All the discussions at the signings were in the Māori language and in Māori law the words spoken are crucial. Indeed the late Sir James Henare said that the key to the Treaty’s meaning and mana lay in the Māori text – “ko te mana te kupu, ko te kupu te mana”.

Furthermore, in both domestic and international contract law, when the intent or meaning of a legally binding contract is not clear the principle of *contra proferentem* applies. This means the interpretation of any ambiguous provision will be against the interests of the party that put forward (proffered) the wording - in this case, the British (which later became the New Zealand) Crown - and in favour of the other party or parties to the contract.

In addition, international law upholds the text with “significant signature”, i.e., the one with more signatures, and also gives weight to the oral context, i.e., what was said or promised at the time.

Moreover, in 1840, the population was something like 200,000 Māori and about 2,000 Pākehā. It is absurd to suggest that those rangatira who signed Te Tiriti would have voluntarily given up their power to a foreign entity, especially after having declared their national sovereignty and independence just five years previously. In fact, it was legally and culturally impossible for rangatira to give away the mana (sovereignty) of their hapū (B Korewha, M Jackson, *Ngāpuhi Speaks*, pp. 175–176).

The evidence given at the hearing of the Ngāpuhi Nui Tonu initial claim to the Waitangi Tribunal (2010–2011) made it clear that Te Tiriti o Waitangi is the authentic Treaty (*Ngāpuhi Speaks*, pp. 221–222, and the Tribunal’s report). It is an unfortunate legacy that legislation drawn up in 1975, without the benefit of Māori evidence and scholarship, required the Waitangi Tribunal to give equal weight to both texts – Te Tiriti o Waitangi and the English-language version promulgated by the Crown.