



# **Rules of the Neurological Foundation of New Zealand**

**Date approved:**

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# Neurological Foundation of New Zealand

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# Rules of the Neurological Foundation of New Zealand

## Introduction

- A. The Neurological Foundation of New Zealand (“**Foundation**”), under its former name “The New Zealand Neurological Foundation” was established by a declaration of trust dated 25 August 1971 (“**Declaration**”). The Declaration recorded that the then trustees held certain moneys donated for the objects and purposes recorded in the appendices to the Declaration, and provided that the Foundation should be incorporated under the Charitable Trusts Act 1957 (“**CTA**”). The Declaration also provided that upon incorporation the trustees named in that document would:
- (a) adopt the objects, powers and rules attached as appendices to the Declaration (“**Original Rules**”); and
  - (b) thereafter transfer the property held by them to the Council (as it was then constituted) for the purposes of carrying out the objects of the Foundation.
- B. The Council of the Foundation was subsequently incorporated as a trust board on 29 October 1971 (under the name New Zealand Neurological Foundation). Since that date, the Original Rules have been varied at meetings of the Foundation’s Members held on 19 June 1986, 20 July 1990 and 7 December 1997, 3 December 2009, 29 November 2012, 5 December 2013, and 3 December 2015.
- C. On 5 February 1998, the Foundation changed its name to the current name, and on 25 May 2007, the Foundation was registered with Charities Services as a charity under the Charities Act 2005.
- D. Clause 14 of the Original Rules (as varied under paragraph B) permits those rules to be altered by majority of at least two-thirds of the Members of the Foundation.
- E. Pursuant to clause 14 of the Original Rules (as varied under paragraph B), the Members have agreed to alter the Original Rules. These rules (and the terms and conditions contained herein) comprise a restatement of the Original Rules as altered.

## Operative part

### 1. Name of trust

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- 1.1 The name of the trust to which these rules apply shall continue to be known as the **Neurological Foundation of New Zealand** (“**Foundation**”) or such other name as the Members, upon the recommendation of the Council, may determine from time to time.

### 2. Definitions and interpretations

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- 2.1 **Definitions:** In these rules, including the Introduction, unless the context otherwise requires:

“**Annual General Meeting**” means the annual general meeting of Members held in accordance with section 11.

**“Appointments Subcommittee”** means the subcommittee (whether having that name or such other name) comprising members of the Council to whom the Council has delegated the power to consider applications from, and make recommendations to the Council in respect of, individuals who have applied to become members of the Council, as may be amended or replaced by the Council from time to time under clause 9.7.

**“charitable purposes”** means every purpose within New Zealand which in accordance with the law of New Zealand for the time being is charitable, whether such purpose involves the relief of poverty, the advancement of education or religion, or any other object or purpose beneficial to the community not falling under any of the preceding heads, and facilities for recreation or other leisure time and occupation that are charitable under section 61A of the Charitable Trusts Act 1957, and shall include any trust established solely and exclusively for charitable purposes.

**“Chairperson”** means the chairperson of the Council.

**“clause”** is, unless otherwise qualified, a reference to a clause of these rules.

**“company”** includes a corporation or other body corporate and a body of persons (whether incorporated or not).

**“Council”** means the governing body of the Foundation as described in section 8.

**“Council Members”** means the persons who are appointed or elected to be Council Members pursuant to clause 8.2, whether original, additional or substituted.

**“Deputy Chairperson”** means the deputy chairperson of the Council.

**“Foundation”** means the trust established by these rules.

**“Life Member”** means an individual appointed as such in accordance with clause 10.6.

**“Member”** means a person who has complied with the procedure to become a Member described in clause 10.1 and includes a Life Member.

**“person”** and words importing a person or persons include a company, firm, organisation or trust and any state government or governmental agency.

**“property”** means any real or personal property of any kind or nature and includes any right or interest therein.

**“Secretary”** means the person appointed to be the secretary of the Council pursuant to clause 9.4.

**“Trust Fund”** means all property which may from time to time be acquired by the Council from any source whatever for the purposes of the Foundation, the moneys and investments from time to time representing such property, and, unless inconsistent with the context, the income received from such property.

## 2.2 **Interpretation:** In these rules:

- (a) except as otherwise expressly provided by these rules, the powers or discretions as to the administration of the Foundation or as to the distribution of the income and the capital of the Trust Fund vested in the Council by any clause shall not in any way be limited or restricted by the interpretation of any other clause;

- (b) unless the context otherwise requires:
  - (i) words importing the singular include the plural and vice versa;
  - (ii) words importing one gender include the other genders;
  - (iii) words denoting natural persons include companies;
  - (iv) references to a statute shall be deemed to be references to that statute as from time to time amended or enacted or substituted;
- (c) headings have been inserted for guidance only and shall not be deemed to form part of the context of these rules.

### **3. Alteration and replacement**

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- 3.1 The Original Rules (as varied under paragraph B of the Introduction) are altered and replaced by the provisions of these rules which are a restatement of, and supersede, those Original Rules (as varied). These rules were approved by the Members pursuant to clause 14 of the Original Rules (as varied) at a special meeting of Members convened for that purpose on 5<sup>th</sup> September 2019.

### **4. Declaration**

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- 4.1 The Council declares and acknowledges that the Council shall continue to hold the Trust Fund upon the trusts, and with and subject to the powers and discretions, contained or implied in these rules.

### **5. Charitable purposes**

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- 5.1 **Purposes:** The charitable purposes for which the Foundation was established are as follows:
- (a) To arrange for, promote, foster, develop and assist the study of and acquisition, dissemination and application of knowledge and information concerning:
    - (i) the causes, diagnosis, prevention and treatment of diseases and disorders of the nervous system; and
    - (ii) the education of members of the public in relation to matters concerning the causes, diagnosis, prevention and treatment of diseases and disorders of the nervous system and caregiving arrangements in respect of those persons who suffer from such diseases and disorders.
  - (b) To encourage, stimulate and aid research and investigation into the causes and treatment of diseases and disorders of the nervous system.
  - (c) To encourage, arrange and assist students, medical practitioners, scientists, welfare workers and others from New Zealand and overseas to undertake research in the diagnosis, prevention and treatment of diseases and disorders of the nervous system and research into the care and rehabilitation of patients suffering from such diseases and to train them in methods of research in the fields of medical and social science.
- 5.2 **Means of achieving purposes:** The Council may, in order to achieve the purposes of the Foundation, in addition to all other powers vested in the Council, undertake such activities and enterprises as may be necessary or desirable including to:

- (a) establish, subsidise, promote, co-operate with, receive into union or affiliation, subscribe and donate to or become a member of, control, manage, superintend, lend or give monetary assistance to or otherwise aid associations, institutions and organisations incorporated or not incorporated which are within New Zealand with purposes of a charitable nature similar to the purposes of the Foundation;
- (b) promote, obtain and achieve any of the objects of the Foundation by or through the facilities available at any public or private hospital, university, veterinary, scientific or research institute, council, faculty, school or other organisation or institute and to make grants of money, apparatus and equipment and give subsidies to the same as the Council may think fit;
- (c) arrange or provide monetary assistance for and establish scholarships and make grants or otherwise to students, medical practitioners, scientists, welfare workers and others for the purpose of research and study in and knowledge of methods of diagnosis, prevention and treatment of diseases and disorders of the nervous system;
- (d) make known and further the purposes and activities of the Foundation by the publication and distribution of papers, journals and other publications and by advertising in any medium or by any other means;
- (e) as far as the law will permit and subject to the provisions of any relevant statute, rule, regulation or by-law and/or any licence issued in pursuance thereof, collect funds and to solicit, receive, enlist and accept financial and other aid, subscriptions, donations grants, subsidies, gifts, legacies, loans and bequests in money, in kind or partly in both from individuals, trusts, companies, associations, organisations, societies, institutions, local bodies, public bodies, government departments and other organisations or authorities and to conduct fundraising campaigns;
- (f) develop internal processes to identify persons or entities eligible for grants or monetary assistance;
- (g) without limiting paragraph 5.2(c), make such grants to or in aid of or to make donations or give assistance to or to make contracts with such individuals, trusts, corporations, associations, organisations, societies, institutions, local bodies, public bodies, government departments and others within New Zealand as the Council may consider necessary or desirable;
- (h) establish programmes for the assistance of eligible persons or entities;
- (i) acquire, hold, convert, lay out, improve, establish, and maintain any premises of whatever nature or tenure;
- (j) acquire, modify, improve, lease, distribute, or use in anyway plant, equipment, goods, and material of any nature;
- (k) subsidise, encourage, and co-operate with any other person, organisation, or group (whether incorporated or not) both within New Zealand and overseas having purposes in whole or in part similar to the purposes of the Foundation;
- (l) undertake such other activities and enterprises as the Council may decide will further the purposes of the Foundation.

## 6. Powers and discretions of Council

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### 6.1 Powers:

- (a) To achieve the objects of the Foundation the Council shall have in the administration, management and investment of the Trust Fund all the rights, powers and privileges of a natural person.
- (b) Subject always to the trusts imposed by these rules, the Council may deal with the Trust Fund as if it is the absolute owner of and beneficially entitled to the Trust Fund.
- (c) Accordingly, in addition to any specific powers vested in the Council by law, in dealing with the Trust Fund or acting as Council Members the Council Members may do any act or thing or procure the doing of any act or thing or enter into any obligation whatever, including, without limitation, exercising unrestricted powers to borrow and raise money, and to give mortgages, other securities and guarantees.

6.2 **Discretions:** Except as otherwise expressly provided by these rules, the Council may exercise all the powers and discretions vested in the Council by these rules in the absolute and uncontrolled discretion of the Council, at such time or times, upon such terms and conditions, and in such manner as the Council may decide.

6.3 **Investment discretion:** In exercising its powers of investment the Council may acquire any property, or retain or deal with any property which from time to time comprises the whole or part of the Trust Fund, notwithstanding that any act or omission by the Council in the exercise of those powers and discretions would be, or could be, contrary to the principles governing the investment of trust funds set out in the Trustee Act 1956. This clause expresses a "contrary intention" for the purposes of section 13D of that Act.

## 7. Application of Trust Fund

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7.1 The Council may, in any one year:

- (a) use or apply, or decide not to use or apply, the income of the Trust Fund for all or any of the purposes of the Foundation;
- (b) use or apply any capital of the Trust Fund for all or any of the purposes of the Foundation without first using or applying the whole or any portion of the income of the Trust Fund for that year;
- (c) set aside reserves or accumulations for future use or application.

## 8. Council

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8.1 **Number of Council Members:** The number of Council Members shall not be less than nine and not more than 12. Should a vacancy reduce the number of Council Members below nine, the vacancy shall be filled as soon as practicable in accordance with the terms of these rules.

8.2 **Appointment of Council Members:** Members of the Council shall be elected at an Annual General Meeting from those persons recommended for appointment by the Appointments Subcommittee. Council Members shall be elected by a resolution passed by a simple majority of the Members present and voting at the Annual General Meeting.

8.3 **Applications for appointment to Council:** The Appointments Subcommittee shall call for applications for vacancies on the Council in accordance with Council's most current policy for appointments to the Council.

8.4 **Consideration of applications and recommendation:** The following procedure shall apply to applications for vacancies on the Council:

- (a) Applications for vacancies on the Council shall be made in writing in the form approved by the Appointments Subcommittee from time to time and accompanied by such other documents or information about the applicant as may be determined by the subcommittee.
- (b) The Appointments Subcommittee shall assess the candidates who have made applications based on the Council's most current policy for appointments to the Council.
- (c) The Chair of the Appointments Subcommittee shall treat all applications as confidential and shall not review or disclose the details of such nominations or applications other than as may be required to facilitate the operation of the Appointments Subcommittee under these rules.
- (d) Where an individual is nominated by a Member or an application is submitted by a person other than that individual, the individual being nominated or applying must have agreed in writing to his or her nomination or application (and such approval must accompany the nomination or application).

8.5 **Cessation of office of Council Members:** Any person shall cease to be a Council Member if he or she:

- (a) resigns or retires as a Council Member in accordance with these rules; or
- (b) is or becomes an employee of the Foundation; or
- (c) fails or neglects to attend three consecutive meetings of the Council without leave of absence, unless it appears to the other Council Members at their first meeting after the last of such absences that there is a proper reason in each instance for such non-attendance; or
- (d) becomes of unsound mind or becomes a person in respect of whose affairs an order under the Protection of Personal and Property Rights Act 1988 is made, or otherwise becomes unfit or unable to act as a Council Member; or
- (e) becomes insolvent or commits an act of bankruptcy; or
- (f) dies; or
- (g) is removed from office by the Council in accordance with the terms of these rules.

The Council Member concerned shall cease to hold office, in a case where sub-paragraph (c) applies, from the date of the Council Member's first meeting of the Council after his or her third consecutive absence without leave, and in all other cases from the date of the event mentioned.

**8.6 Term of appointment:**

- (a) Each Council Member shall, subject to clauses 8.5, 8.6(c) and 8.7 hold office for a term that commences at the conclusion of the Annual General Meeting at which he or she was elected (“**Initial AGM**”) and ends at the conclusion of the Annual General Meeting held in the fourth calendar year occurring immediately after the calendar year in which the Initial AGM was held.
- (b) Upon expiry of that term, a Council Member shall be eligible for re-election for one further term (of the same duration as in sub clause (a)) at the expiry of his or her original term. No Council Member may serve more than two consecutive terms, but subject to that limitation a member who has previously served two consecutive terms shall be entitled to seek re-election as a Council Member provided that they have vacated the position of Council Member for a period of four years or more from their retirement at the end of their second term”.
- (c) If a Council Member is elected as Chairperson or Deputy Chairperson, that Council Member shall, subject to clause 8.5, hold office as a Council Member until the later of the following dates:
  - (i) The date on which his or her term as a Council Member ends under clauses 8.6(a) or 8.6(b), as applicable.
  - (ii) The date on which he or she ceases to hold office as Chairperson or Deputy Chairperson. For the purposes of this sub-clause, the date on which a Council Member ceases to hold office as Chairperson or Deputy Chairperson shall include the date on which the term of his or her appointment as such ends in circumstances where he or she is not re-elected to hold such office for a further term. A Council Member shall not be regarded as ceasing to hold office as Chairperson or Deputy Chairperson if, at the end of the term of his or her appointment as such, he or she is re-elected to hold office as Chairperson or Deputy Chairperson, as applicable, for a further term.

**8.7 Casual vacancies:** Where by operation of clause 8.5 or otherwise a vacancy arises in the number of Council Members in office at any time, the Council may, but shall not be required to, appoint a person to the Council to fill such vacancy. Notwithstanding the preceding, if a casual vacancy would cause the number of Council Members to fall below the minimum number specified in clause 8.1, the Council shall appoint a person or persons to fill the vacancy as soon as practicable. Any appointments made by the Council under this clause shall have regard to the Council’s current policy for appointments to the Council.

**8.8 Term of office for casual vacancies:** The term of office of any member of the Council appointed under clause 8.7 shall automatically expire at the conclusion of the next Annual General Meeting. With the prior agreement of the casual appointee, and subject to clause 8.2, such appointee may be considered as a candidate by the Appointments Subcommittee for the next round of recommendations for appointment to the Council under clause 8.4.

**8.9 Resignation of Council Member:** A Council Member may resign (or retire) by giving not less than 30 days’ (or such shorter period of notice as the Council may accept) notice in writing to the Council or to the Secretary.

**8.10 Removal of Council Member:** Notwithstanding anything contained or implied in these rules, a Council Member may at any time be removed as a Council Member by a resolution of three-quarters in number of all the other Council Members, if in the opinion of the other Council Members (other than the Council Member whose removal is being considered) the continuation in office of such Council Member is not in the best interests of the Foundation.

- 8.11 **Effect of resignation or removal of Council Member:** Upon the resignation or removal of a Council Member from office, that person shall cease to be a Council Member (and, in the case of a resignation, from the expiry of the notice of resignation), but he or she shall do all things necessary (at the expense of the Foundation) to vest the Trust Fund in the continuing Council Members.
- 8.12 **Transitional provisions:** The provisions in schedule 1 shall apply to the Original Council Members.

## 9. Management of the Foundation

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### 9.1 General:

- (a) The Council shall have the absolute management and entire control of the Trust Fund, and shall be responsible for making all policy decisions relating to the management and affairs of the Foundation.
- (b) The Council may from time to time appoint, remunerate and dismiss officers or employees of the Foundation.

### 9.2 Meetings:

- (a) The Council shall meet to conduct business at such intervals as the Council may decide but shall hold at least two meetings in each calendar year. The Council may invite to such meetings whomever other person or persons as the Council may decide will assist with the Council's deliberations (including any person or committee member to whom the Council has delegated powers under clause 9.7).
- (b) Except as expressly provided otherwise by these rules, any matter requiring decision at a meeting of the Council shall be decided by a majority of the Council Members personally present and voting on the matter. Each Council Member shall have one vote.
- (c) In the event of an equality of votes the Chairperson shall have a second or casting vote.
- (d) Except as expressly provided otherwise by these rules, a resolution in writing signed (or consented to by email, facsimile or other forms of electronic communication) by all the Council Members shall be as valid and effectual as if it had been passed at a meeting of the Council duly convened and constituted. Any such resolution may consist of several like documents each signed (or consented to) by one or more Council Members. Any such document sent by a Council Member by email or facsimile shall be deemed to have been duly signed by that Council Member.
- (e) The Chairperson or any two Council Members may, at any time, give notice convening a meeting of the Council. Such notice shall be sent by email (or such other method as the Council may determine from time to time) to each Council Member (at the address given from time to time by each Council Member to the Foundation for such purpose) within New Zealand at least 14 days before the date of the proposed meeting. The notice shall state the time and place of the meeting and, in sufficient terms, the nature of the business to be transacted.
- (f) The quorum for a meeting of the Council shall be a majority of the Council Members then holding office.
- (g) The contemporaneous linking together of the Council Members by telephone or other electronic means of communication shall constitute a meeting of the Council and the

provisions of this clause as to meetings of the Council shall apply to such meetings provided the following conditions are met:

- (i) each Council Member shall be entitled to notice of such a meeting and to be linked by the chosen electronic communication for the purposes of the meeting;
  - (ii) each Council Member taking part in the meeting must be able to hear each of the other Council Members taking part during the whole of the meeting;
  - (iii) at the commencement and conclusion of such meeting each Council Member must acknowledge the presence of that Council Member for the purpose of the meeting of the Council being held;
  - (iv) a Council Member may not withdraw from such a meeting unless that Council Member has previously obtained the express consent of the Chairperson of the meeting to do so;
  - (v) a Council Member shall be conclusively presumed to have been present and to have formed part of the quorum of such a meeting at all times during the meeting unless that Council Member has previously obtained the express consent of the Chairperson to withdraw from such a meeting.
- (h) A minute of the proceedings of any such meeting shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified to be a correct by the Chairperson.

### 9.3 **Chairperson and Deputy Chairperson:**

- (a) The Council shall elect one of its members to act as Chairperson either from year to year, or for such other period as the Council may decide. On the expiry of the relevant period of a member's appointment as Chairperson, such member will be eligible for re-election as Chairperson. Notwithstanding the preceding, no member may serve as Chairperson for more than four years in aggregate.
- (b) The Council may also appoint one of its members to act as Deputy Chairperson either as the need arises or from year to year or for such other period as the Council may decide. On the expiry of the relevant period of a member's appointment as Deputy Chairperson, such member shall be eligible for re-election as Deputy Chairperson. Notwithstanding the preceding, no member may serve as Deputy Chairperson for more than four years in aggregate. In the absence of the Chairperson the Deputy Chairperson shall have and may exercise all of the powers, and shall perform all of the duties, of the Chairperson.

9.4 **Secretary:** The Council may appoint a Secretary who may be honorary, or may be a full-time or part-time employee of the Foundation.

9.5 **Treasurer:** The Council may appoint a Treasurer who may be honorary, or may be a full-time or part-time employee of the Foundation.

9.6 **Minutes:** Minutes of the proceedings of all meetings of the Council shall be kept by the Secretary and shall be signed by the Chairperson of the meeting at which the minutes are confirmed. Copies of signed minutes shall be stored in a book or in any electronic form that enables copies of such minutes to be readily accessible. Every such minute purporting to be so signed shall be prima facie evidence of the matters recorded. If the Council does not have a secretary at any time, the Chairperson may nominate any person whether or not a Council Member to keep minutes.

### 9.7 **Delegation of Powers:**

- (a) The Council may delegate to any person or committee, whether or not a Council Member or Council Members, such of the powers of the Council as the Council may decide.
- (b) Any person or committee acting under delegated power shall act in accordance with the terms of these rules and, in the absence of proof to the contrary, shall also be presumed to be acting within the terms of the delegation.
- (c) The Council may revoke wholly or partly any delegation of the powers of the Council at any time.
- (d) Subject to any directions given by the Council, any person or committee to which any powers of the Council have been delegated may conduct that person's or the committee's affairs as that person or the committee may decide.
- (e) The Council may, in delegating the powers of the Council, provide restrictions or rules by or within which such delegated powers are to be exercised.

9.8 **Investment manager:** The Council may appoint any person as investment manager to invest and manage all or any property comprising the Trust Fund with power to invest, liquidate and re-invest or switch any assets placed under its management, appoint sub-managers and custodians and otherwise on such terms and conditions as the Council thinks fit.

9.9 **Bank account:** The Council shall keep an account or accounts at such bank or banks as the Council may decide. Cheques, withdrawals and authorities shall be signed or endorsed, as the case may be, in accordance with any delegated financial authorities established by the Council from time to time.

9.10 **Accounts and audit or review:**

- (a) The Council shall cause true accounts for each year to be kept in such manner as the Council may decide of all receipts, credits, payments, assets and liabilities of the Trust Fund and all such other matters necessary for showing the true state and condition of the Foundation;
- (b) If required by law or otherwise at the Council's discretion, the accounts of the Foundation shall be audited or reviewed once in each year by a chartered accountant (not being a Council Member) appointed in that capacity by the Council.

## 10. **Members**

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10.1 **Membership:** The Council may make rules determining the procedure to be followed by an individual to become a Member from time to time. As at the date of these rules, an individual shall become a Member by:

- (a) Completing the application form for membership registration (or renewal of membership) in force from time to time; and
- (b) Paying the applicable annual subscription fee.

10.2 **Record of members:** The Council shall keep and maintain a record of the full name and address of each Member, and any other details about the Member as agreed are to be provided. The entry of the name of a person in such records will be prima facie evidence of that person's status as a current Member.

- 10.3 **Ceasing to be a Member:** A Member (other than a Life Member) shall cease to be such if he or she:
- (a) resigns by giving written notice to the Foundation (such notice to be effective from the date such notice is received by the Foundation);
  - (b) dies;
  - (c) other than in respect of a Life Member, fails to pay the annual subscription fee or renew his or her membership in accordance with the rules of the Council from time to time; or
  - (d) is removed by the Council, if the Council believes it is not in the best interests of the Foundation that such person continues to be a Member.
- 10.4 **Annual subscription fee:** The Council shall set an annual subscription fee for membership of the Foundation. For the avoidance of doubt, persons who have not renewed their membership and paid the annual subscription fee shall not be entitled to vote at meetings of the Foundation.
- 10.5 **Term of Membership:** Subject to clause 10.3 a person's period of membership of the Foundation shall commence on the date the Council receives that person's annual subscription fee and end on the anniversary of that date, unless such membership is renewed.
- 10.6 **Life Members:** Any person (whether or not currently a Member) who has conferred special benefits upon or rendered special services for the benefit of or in connection with the Foundation or the furtherance of its purposes may be appointed as a Life Member at an Annual General Meeting upon the prior recommendation of the Council. Election as a Life Member shall not in any circumstances be granted in return for monetary consideration.
- 10.7 **Obligations of Members:** Members (including Life Members):
- (a) acknowledge and agree that they are bound by the provisions of these rules and any by-laws, regulations or similar relating to their membership and Members as may be issued (or amended) by the Council from time to time; and
  - (b) submit to the jurisdiction of the Council.

## 11. Meetings of Members

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- 11.1 **Annual General Meeting:** At least one Annual General Meeting must be held each calendar year at a time and place to be nominated by the Council.
- 11.2 **Business:** The business of the Annual General Meeting shall be:
- (a) to consider the Annual Report of the Foundation;
  - (b) to consider and receive the financial statements of the Trust for the preceding financial year and the report of the auditors thereon;
  - (c) to elect any person or persons as Council Member or Members; and
  - (d) to conduct such other business as any Member, or the Council, may properly bring forward.

- 11.3 **Special meeting:** The Council may call a Special General Meeting of Members at any time to consider any matter concerning the business or affairs of the Foundation. The Council shall call a Special General Meeting at the request of at least 10 Members.
- 11.4 **Summoning meetings:** Not less than 28 days' notice in writing must be given to each Member in respect of Annual General Meetings and not less than 14 days' notice in writing must be given to each Member in respect of a Special General Meeting as follows:
- (a) The notice of meeting provided to each Member shall state the time, date and venue of the proposed meeting and the nature of the business to be transacted at the meeting and shall be sent by email (or such other method as the Council may determine from time to time) to the Member (at the address from time to time given by such Member for that purpose); and
  - (b) By advertising the time, date and venue of the proposed meeting and the nature of the business to be transacted at the meeting in the newsletter for the time being of the Foundation (if any), where it is practical to do so.
- 11.5 **Chairperson of meetings of Members:**
- (a) If the Chairperson is present at a meeting of Members, the Chairperson shall chair the meeting.
  - (b) If at any meeting of Members the Chairperson is not present within 15 minutes of the time appointed for the commencement of the meeting or the Chairperson is unwilling or unable to act, the members of the Council present, if any, may elect one of their number to be chairperson of the meeting. If no member of the Council is willing to act as chairperson or if no member of the Council is present within 15 minutes of the time appointed for the commencement of the meeting, the Members present may choose one of their number to be chairperson.
- 11.6 **Quorum:** The quorum for all meetings of Members shall be not less than 10 Members.
- 11.7 **Voting at meetings of Members:**
- (a) Each Member is entitled to one vote on a resolution at a meeting of Members.
  - (b) Except as expressly provided otherwise by these rules any matter requiring decision at a meeting of Members shall be decided by a simple majority of the Members present and entitled to vote at a meeting of Trustees.
  - (c) In the event of an equality of votes the chairperson shall have a casting vote.
  - (d) A Member may not exercise his or her right to vote by proxy.
- 11.8 **Procedure:** A meeting of the Members may be held either:
- (a) by such number of Members, who constitute a quorum, being assembled together at the place, date and time appointed for the meeting; or
  - (b) by means of telephone, video link, skype or other electronic means of communication by which all persons participating and constituting a quorum can simultaneously hear each other throughout the meeting.

- 11.9 **Minutes:** The Council shall ensure that minutes are kept of the proceedings at all meetings of Members. Minutes which have been signed correct by the chairperson of the meeting are prima facie evidence of the proceedings.

## **12. Liability and indemnity of Council Members**

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- 12.1 **No liability of Protected Persons, with exceptions:** No Council Member or former Council Member or officer of the Foundation (each a "**Protected Person**") shall be liable for any loss to the Trust Fund not attributable to the Protected Person's own dishonesty, or to the wilful commission or omission by such Protected Person of an act known by that Protected Person to be a breach of trust. No Protected Person shall be bound to take any proceedings against a co-Protected Person or former Protected Person for any breach or alleged breach of trust committed by such co-Protected Person or former Protected Person.
- 12.2 **Indemnity of Protected Persons:** Each Protected Person shall be entitled to a full and complete indemnity from the Trust Fund for any personal liability which the relevant Protected Person may incur in any way arising from or in connection with that Protected Person acting or purporting to act as a Council Member or officer of the Foundation, as the case may be, provided such liability is not attributable to the relevant Protected Person's own dishonesty, or to the wilful commission or omission by that Protected Person of an act known by that Protected Person to be a breach of trust.

## **13. Interested Council Member**

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- 13.1 Any Council Member who is or may be in any other capacity whatever interested or concerned directly or indirectly in any property or undertaking in which the Foundation is or may be in any way concerned or involved shall disclose the nature and extent of that Council Member's interest to the Council, and, unless determined otherwise by a unanimous resolution of the remaining non-interested Council Members, such Council Member shall not take any part whatsoever in any deliberations of the Council, nor entitled to vote, on any matter in which that Council Member is or may be interested.

## **14. No private pecuniary profit for any individual, and exceptions**

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- 14.1 **No private pecuniary profit:** No private pecuniary profit may be made by any person from the Foundation, except that:
- (a) any Council Member may receive full reimbursement for all expenses properly incurred by that Council Member in connection with the affairs of the Foundation;
  - (b) the Foundation may pay reasonable remuneration to any officer or servant of the Foundation in return for services actually rendered to the Foundation;
  - (c) any Council Member may be paid all usual professional, business or trade charges for services rendered, time expended and all acts done by that Council Member or by any firm or entity of which that Council Member is a member, employee or associate in connection with the affairs of the Foundation;
  - (d) any Council Member may retain any remuneration properly payable to that Council Member by any company or undertaking with which the Foundation may be in any way concerned or involved for which that Council Member has acted in any capacity whatever, notwithstanding that the Council Member's connection with the company or undertaking is in any way attributable to that Council Member's connection with the Foundation.

- 14.2 **Council to comply with restrictions:** The Council, in determining all reimbursements, remuneration and charges payable in the terms of this clause, shall ensure that the restrictions imposed by clause 15 are strictly observed.

## 15. **Restrictions on benefits to and influence by interested persons**

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- 15.1 **Recipient not to influence benefits:** Notwithstanding anything contained or implied in these rules, any person who is:

- (a) a Council Member; or
- (b) a shareholder or director of any company carrying on any business of the Foundation; or
- (c) a settlor or trustee of any trust that is a shareholder of any company carrying on business of the Foundation; or
- (d) an associated person (as defined by the Income Tax Act 2007) of any such Council Member, shareholder, director, settlor, or trustee,

shall not by virtue of that capacity in any way (whether directly or indirectly) determine, or materially influence in any way the determination of the nature or the amount of any benefit or advantage or income or the circumstances in which it is or is to be received, gained, achieved, afforded or derived by that person.

- 15.2 **Professional account and influence:** A person who in the course of and as part of the carrying on of his or her business of a professional public practice shall not, by reason only of his or her rendering professional services to the Foundation or to any company by which any business of the Foundation is carried on, be in breach of the terms of this clause.

## 16. **Allocation of receipts**

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- 16.1 **Allocation of payments between capital and income:** If any dividend or distribution is received which in the opinion of the Council has been paid or made out of profits other than trading profits of the financial year in respect of which the dividend or distribution has been paid or made, the Council may decide how much of that dividend or distribution ought to be treated as capital and how much as income of the Trust Fund. Such decision shall be made by the Council after considering the nature of the profit used to pay or make the dividend or distribution, and the account to which the dividend or distribution has been debited in the books of the person making such payment or distribution. The Council shall not be liable to any person in respect of the payment of any moneys in accordance with any decision made by the Council under this clause.

- 16.2 **No apportionment in respect of date of payment:** There shall be no apportionment as between capital and income of the Trust Fund of rents, interest, dividends, or other periodic payments for the period current to the date of commencement of the Foundation or for any other period current at the date upon which any interest created under the terms of these rules commences or determines.

## 17. **Appointment and removal of custodian trustee**

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- 17.1 The Council may at any time by deed appoint any appropriate corporation to be the custodian trustee of the Trust Fund, or any part of the Trust Fund, upon such terms as the Council may decide, or otherwise to act pursuant to the provisions of Section 50 of the Trustee Act 1956, and the Council may at any time by deed revoke any such appointment.

## **18. Incorporation**

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- 18.1 The Foundation is incorporated under Part II of the Charitable Trusts Act 1957 under the name “**Neurological Foundation of New Zealand**” (registration number 21062), and as a result the powers and discretions conferred upon the Council by law or by these rules are conferred upon the Council as a trust board, until such time as the Foundation becomes unincorporated.

## **19. Office of the Foundation**

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- 19.1 The office of the Foundation shall be at such place as the Council from time to time may decide.

## **20. Seal**

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- 20.1 The Foundation shall have a common seal which shall be affixed by the authority of the Council previously given to any document requiring execution by the Council. Every such affixing shall be attested by two Council Members and shall be sufficient evidence of authority to affix the seal. The Council shall be responsible for the safe custody and control of the seal.
- 20.2 No person dealing with the Council shall be bound or concerned to see or inquire as to the authority to affix the seal, or to inquire as to the authority under which any document was sealed or in whose presence it was sealed.
- 20.3 The Council shall cause to be kept a register which sets out in chronological sequence the documents to which the seal has been affixed.

## **21. Winding up of Foundation**

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- 21.1 If the Council considers that it is no longer practicable or desirable to carry out the purposes of the Foundation, they may recommend to the Members that the Foundation be wound up and the Members may, with the approval of not less than three-quarters of the Members present and voting at a meeting called for that purpose, wind up the Foundation and to vest the assets of the Foundation in such one or more charitable bodies in New Zealand that have similar charitable purposes to the Foundation, in such manner, upon such terms, and in such proportions, as the Council may decide, provided that if the Foundation is then incorporated under the Charitable Trusts Act 1957 the assets of the Foundation shall be disposed of in accordance with the provisions of that Act.

## **22. Alteration of Rules**

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- 22.1 If the Council considers that any of the provisions of these rules should be revoked, varied, or added to, they may recommend to the Members that all or any of the provisions of these rules be revoked, varied or added to, and the Members may, by a resolution approved by not less than two-thirds of the Members present and entitled to vote at a meeting of the Members, revoke, vary or add to any of the provisions of this deed.
- 22.2 Not less than 28 days' notice in writing must be given to each Member in respect of the meeting referred to in clause 22.1.

22.3 The meeting referred to in clause 22.1 may amend any of the proposals in the notice of meeting to revoke, vary or add to the provisions of these rules.

22.4 Notwithstanding clauses 22.1 and 22.2, no revocation, variation or addition to these rules shall alter or affect the charitable purposes of the Foundation.

## **23. Notices**

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23.1 Notices in writing required to be given or served on a Council Member or Member under these rules may (without prejudice to any other method of delivery) be given or made by personal delivery, posting it in a prepaid envelope or package, by facsimile or by email to the postal, facsimile number or email address (respectively) of the relevant recipient last known to the sender. Any such notice shall be deemed to be received (whether received or not):

- (a) In the case of personal delivery, when received;
- (b) In the case of posting, on the fifth day following the day of posting;
- (c) In the case of facsimile, upon production of a completed transmission report by the sender's machine;
- (d) If emailed, one hour after the email is sent unless a return email is received by the sender within that one hour period stating that the recipient's email address is wrong or that the message cannot be delivered,

provided that any notice received after 5 pm on any day, will be deemed to have been received on the next day.

23.2 Notices to be given or served on the Foundation shall be in writing and may (without prejudice to any other method of delivery) be given or made by:

- (a) personal delivery to the registered office of the Foundation;
- (b) posting in a prepaid envelope or package to the registered office of the Foundation;
- (c) by facsimile to the facsimile number of the Foundation; or
- (d) by email to admin@neurological.or.nz,

and any notice shall be deemed to have been received at the corresponding time as set out in sub-clauses (a) to (d) of clause 23.1 for such notice.

## **24. Governing law**

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24.1 The Foundation is and will continue be governed by and construed in accordance with the laws of New Zealand.

## Schedule 1

### Transitional Provisions relating to Original Council Members

(Clause 8.12)

1.1 **Transitional provisions:** The following provisions shall apply to the Original Council Members:

- (a) At the Annual General Meetings held in each of 2020, 2021 and 2022 three of the Council Members shall retire as Council Members. The Original Council Members to resign each year shall be the members who have served longest (in terms of total number of years served) as Council Members (including their tenure as Council Members prior to the date of these rules) unless another Original Council Member chooses to retire at the relevant Annual General Meeting.
- (b) If there are more than three Original Council Members who have each served longest terms, a ballot (in the absence of agreement between them) shall be held to determine those of the Original Council Members who ought to retire. A declaration by the Chairperson (or, where the Chairperson is an Original Council Member who may be required to retire, the Deputy Chairperson if he or she is not subject to retirement) as to who has been selected to retire shall be conclusive.
- (c) Any Original Council Member retiring in accordance with these provisions in each of 2020, 2021 and 2022 shall be eligible for re-election, and if re-elected shall hold office as a Council Member for a term to be determined in the following manner:
  - (i) Original Members who have, by the date of adoption of these rules, served a total term of ten years or more, shall be entitled to re-appointment for one further term of office of four years. An Original Council Member, to whom this sub-paragraph (i) applies, who retires under this schedule (whether or not such retirement occurs at the Annual General Meeting in 2020, 2021 or 2022 or after he or she serves the one further term of office referred to in the preceding sentence), shall be eligible for re-election provided they have vacated the position of Council Member for a period of four years or more from their retirement. If re-elected, the Original Council Member shall, thereafter, hold office as a Council Member for the term determined by and subject to clause 8.6 of these rules.
  - (ii) Original Members who have, by the date of adoption of these rules, served a total term of less than ten years, may if re-elected hold office for a term determined by and subject to clause 8.6
- (d) Notwithstanding sub-clauses (c)(i) and (ii) above, if a retiring Original Council Member is re-elected as a Council Member (as contemplated in sub-clause (c) above) and, during the re-elected term, he or she is elected as Chairperson or Deputy Chairperson, that Original Council Member shall, subject to clause 8.5, hold office as a Council Member until the later of the following dates:
  - (i) The date on which his or her term as a Council Member ends (as determined under sub-clauses (c)(i) and (ii) above).
  - (ii) The date on which he or she ceases to hold office as Chairperson or Deputy Chairperson. For the purposes of this sub-clause, the date on which a Council Member ceases to hold office as Chairperson or Deputy Chairperson shall include the date on which the term of his or her appointment as such ends in circumstances where he or she is not re-elected to hold such office for a further term. A Council Member shall not be regarded as ceasing to hold office as

Chairperson or Deputy Chairperson if, at the end of the term of his or her appointment as such, he or she is re-elected to hold office as Chairperson or Deputy Chairperson, as applicable, for a further term.

- (e) For the avoidance of doubt, the transitional provisions in this clause shall only apply to the Original Council Members, and shall be of no further force or effect once all of the Original Council Members have retired in accordance with this clause (irrespective of whether or not any of such Council Members have been re- elected).

1.2 For the purposes of this schedule 1, "**Original Council Members**" means those individuals who held office as Council Members at the date these rules were approved by the Members (as recorded in clause 3.1 of these rules).