

DAVID MALONE

AND

THE WESTERN AUSTRALIAN
HEALTH PROMOTION FOUNDATION

DEED OF SETTLEMENT AND RELEASE

Prepared by:

State Solicitor's Office
141 St Georges Terrace
Perth WA 6000

Ref: SSO 3129/14

THIS DEED is made the 13th day of February 2015

BETWEEN:

DAVID MALONE, [REDACTED] in the State of Western Australia
("Employee")

AND

THE WESTERN AUSTRALIAN HEALTH PROMOTION FOUNDATION, of
Ground Floor, 24 Outram Street, West Perth in the State of Western Australia
("Employer").

RECITALS:

- A. The Employee is employed as the Executive Director of the Employer on a fixed term contract which expires on 24 August 2018.
- B. At the request of the Employer, the Employee has agreed to resign from his employment.
- C. The Employer and the Employee have agreed to settle all matters arising out of the Employee's employment, and its termination, on the terms set out in this Deed.

OPERATIVE PROVISIONS

Interpretation

1. In this Deed:

Execution Date means the date the Deed is executed by the Parties.

Releasees means the Employer, the Crown in right of the State of Western Australia and all their officers, members, servants and agents.

Parties means the Employee and the Employer and **Party** is a reference to either of them.

Western Australian Public Sector means the "Public Sector" as defined in section 3 of the Public Sector Management Act 1994 (WA).

2. In this Deed, unless the contrary intention appears:

- (a) words importing any gender include the other genders;
- (b) the singular includes the plural and vice versa;
- (c) "person" includes a firm, body corporate, an unincorporated association or an authority;
- (d) a reference to
 - i) a person includes that person's legal personal representatives, assigns and successors;
 - ii) a document means that document as amended or replaced;
 - iii) a statute or other law means that statute or other law as amended or replaced, whether before or after the Execution date and includes regulations and other instruments made under it;
 - iv) a clause or a schedule is a reference to a clause or a schedule in this Deed; and
 - v) a thing or an amount includes the whole or each part of it.

Settlement

3. The Parties agree to the following:

- (a) That on execution of this Deed by the parties, the Employee has tendered his resignation with the Employer and that the Employee's employment with the Employer, and any positions the Employee holds by virtue of his employment including as the Chair of the International Network of Health Promotion Foundations, will cease with effect on 13 February 2015.
- (b) Within 14 days of the Execution Date, the Employer will pay to the Employee:
 - (i) the sum of \$143,072.90 gross, from which tax will be deducted as required by law; and
 - (ii) his accrued entitlements in accordance with his contract of employment (including, but not limited to, the sum of \$23,209.68 gross representing accrued annual leave and leave loading entitlements), from which tax will be deducted as required by law.
- (c) That in addition to the sums prescribed in clause 3(b)(i) and (ii), the Employer will pay the Employee the further sum of \$60,000 gross on 1 July 2015, from which tax will be deducted as required by law.
- (d) The Employee may keep the iPhone 4S mobile phone provided to him by the Employer after the Employer has deleted all work-related information on the mobile phone.
- (e) The Employee agrees to:
 - (i) have the mobile phone number transferred into his own name as from 14 February 2015; and
 - (ii) be liable for all telephone charges (including data charges) on the mobile phone, as from 14 February 2015.
- (f) The Employer agrees to provide any authorisations, execute any documentation and do all things necessary to enable the transfer, ownership and possession of the iPhone 4S mobile phone and phone number to the Employee as from 14 February 2015.

- (g) The Employer will on or before 13 February 2015, provide the Employee with a reference signed and dated by Dr Rosanna Capolingua containing the text set out in Schedule 1.
- (h) If, following the resignation of the Employee, the Employer is contacted by any media organisation for comment regarding the Employee's resignation, the Employer agrees that its response will be limited to issuing a statement containing the text of the media statement set out in Schedule 2.
- (i) The Employee will not work, either under a contract of service or a contract for services, in the Western Australian Public Sector for a period of 12 months from the Execution date.
- (j) Both Parties will pay their own costs in connection the preparation and completion of this Deed.

No Adverse Comment

- 4. The Employee will not make adverse comment in relation to:
 - (a) the Employer (including officers, members, servants and agents of the Employer);
 - (b) the Employee's employment with the Employer; or
 - (c) the termination of the Employee's employment with the Employer.
- 5. The Employer will not make adverse comment in relation to:
 - (a) the Employee; or
 - (b) the Employee's employment with the Employer; or
 - (c) the termination of the Employee's employment with the Employer.

However, nothing in this clause prevents the Employer from providing full and frank information to Parliament, or to any Western Australian Public Sector potential employer who contacts the Employer regarding the Employee.

Release and Discharge

- 6. Subject to clause 7, the Employee releases and forever discharges the Releasees from all claims, suits, actions, causes of action and other demands whatsoever which the Employee now has or at any time in the future may have or, but for the

execution of this Deed, might have had, against any of the Releasees in respect of, arising from, or in any way relating to the Employee's employment with the Employer or the termination thereof.

7. The Employee does not release and discharge the Releasees from any rights or entitlements:
 - (a) the Employee has under this Deed; or
 - (b) to maintain or bring a statutory workers' compensation claim against the Employer.

Indemnity

8. The Employee agrees to keep indemnified the Releasees against all claims, suits, actions, causes of actions and other demands referred to in clause 6, above, which may be brought by the Employee or by any person claiming through the Employee.

Bar to Proceedings

9. Subject to clause 7, the Employee agrees that this deed may be pleaded by the Releasees as an absolute bar to all future and existing claims, suits, actions, causes of actions and other demands brought, or attempted to be brought, by the Employee in respect of, arising from or in any way relating to the Employee's employment with the Employer or the termination thereof.

Confidentiality

10. Subject to clause 11, a Party to this Deed shall not disclose any aspect of this Deed (including, without limiting the generality of the foregoing, the amount payable hereunder or the discussions leading to the making of this Deed), to any person.
11. A Party may disclose information within clause 10:
 - (a) to the Party's professional advisers and to the Party's employees or officers the performance of whose duties requires knowledge of the information;
 - (b) to Parliament;

- (c) as authorised by this Deed;
- (d) with the prior written consent of the other Party;
- (e) as required by law; or
- (f) if the information is in the public domain, other than as a result of a breach of confidence by the Party.

Governing Law and Jurisdiction

12. This Deed is governed by the law of Western Australia.

Waiver

13. The waiver by one Party of a breach by the other Party of any covenant, obligation or provision contained in this Deed does not operate as a waiver of any other breach or any continuing breach by the other Party of the same or of any other covenant, obligation or provision contained in this Deed.

Severance

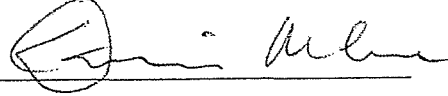
14. If a provision of this Deed is void or voidable or unenforceable or illegal but would not be void or voidable or unenforceable or illegal if it were read down, and it is capable of being read down, it shall be read down accordingly.
15. If, despite clause 14, a provision of this Deed is still void or voidable or unenforceable or illegal:
- (a) If the provision would not be void or voidable or unenforceable or illegal as aforesaid if a word or those words (as the case may be) were omitted, that word or those words are hereby severed; and
 - (b) In any other case, the whole provision is hereby severed
- and the remainder of this deed has full force and effect.

Entire Agreement

16. This Deed contains the entire agreement of the Parties and any previous agreements, representations, warranties and arrangements are superseded and are of no effect.

EXECUTED as a Deed:

SIGNED by
DAVID MALONE

)
) 

In the presence of:

Lina Barbato

Witness Signature:



Witness Address:

c/o Healthway

Witness Occupation:

Director Corporate Services

Date:

13/2/15

The common seal of the
WESTERN AUSTRALIAN
HEALTH PROMOTION
FOUNDATION was affixed in
accordance with its constitution

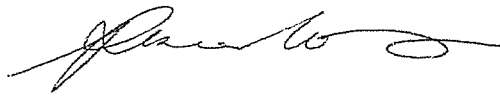
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In the presence of:

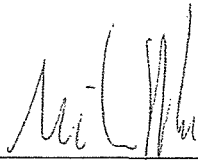
Rosanna Capolingua, Chairperson

Witness Signature



Michael Daube, Member

Witness Signature:



Date:

13/2/15

Schedule 1

David Malone

David Malone was employed as Executive Director of Healthway, the Western Australian Health Promotion Foundation, from 25 August 2008 to 13 February 2015.

Healthway is an independent statutory authority reporting directly to the Minister for Health in the Western Australian State Government. The Executive Director is responsible for the development and implementation of Healthway's strategic vision; the position requires leadership, relationship building and well developed communication skills.

During the seven years David was with Healthway, the organisation went through a period of significant growth and change with many new programs, initiatives and collaborations in sport, the arts, health, and health promotion research.

David made a wide range of contributions across all areas of Healthway's work.

The position requires high level conceptual, analytic and decision making skills with regard to complex issues at senior levels and the use of issues management skills across a range of aspects of service delivery for Healthway.

David is able to quickly understand and articulate issues and concepts that are new to him. Within a very short time of joining Healthway, he developed a general knowledge of health promotion and continued to keep informed of current state, national and international health promotion priorities and approaches. He has also played a leading role in the International Association of Health Promotion Foundations, which links the work of similar organisations and promotes the development of new Foundations.

David's term as Executive Director included oversight of implementation of a strengthened Co-Sponsorship Policy. This needed relationship management skills with a diverse range of stakeholder groups across all levels of government, health professionals and academics, sport, arts, racing and community organisations.

As Executive Director, David's role included responsibility for the development and management of the organisation's communications requirements which included managing public relations and news media on behalf of Healthway. His role has entailed promoting Board decisions by negotiating new partnerships and worked with staff and external consultants to identify and maximise opportunities to create public interest in health promotion and Healthway's role in the Western Australian community.

A significant commitment in time and energy is required of the Executive Director of Healthway. The role involves long hours and a substantial out of office hours commitment to attend a wide range of Healthway supported activities. David regularly attended after hours functions and also delivered many presentations to a diverse range of audiences and groups.

Healthway acknowledges David's seven years of service and commitment.

Dr Rosanna Capolingua
Chair of the Board of Healthway
Date 13 February 2015

"Schedule 2"



Executive Director leaves Healthway

David Malone has resigned as Healthway's Executive Director to pursue new career opportunities.

Originally from Perth, Mr Malone joined Healthway in August 2008 after being based in Melbourne for seven years where he was Chief Executive Officer of the Australian Physiotherapy Association.

He helped to steer Healthway through a period of growth and change.

During Mr Malone's time as Executive Director, Healthway's Co-sponsorship Policy was strengthened ensuring health messages are not undermined by promotion of unhealthy products and messages at Healthway sponsored events.

Healthway is continuously reviewing its policies and practices as we continue to develop new initiatives and act as an agent of change to improve community health and work towards our vision of a healthy Western Australia.

The Board of Healthway wishes to thank Mr Malone for his seven years' of service. A search for a new Executive Director will commence as soon as possible

Dr Rosanna Capolingua
Chair of the Board of Healthway

Media contact: Joanne Fowler. Telephone: 9476 7000. Mobile 0408 878 817
13 February 2015

