

Review of the *Western Australian Health Promotion Foundation Act 2016*

**Summary report
December 2021**

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1. Executive summary

The *Western Australian Health Promotion Foundation Act 2016* (the Act) provides for the establishment, objects, functions and operationalisation of the Western Australian Health Promotion Foundation, Healthway. Section 49 of the Act requires that a review of the operation and effectiveness of the Act is conducted every five years.

In accordance with this requirement, a review of the legislation was undertaken between November 2020 and November 2021. This report provides a summary of key findings that may inform possible areas for further investigation to strengthen the operation and effectiveness of the Act and the *Western Australian Health Promotion Regulations 2016* (the Regulations). The review process included:

- Open written submissions – members of the public, including targeted external stakeholders, were invited to provide written comment on the legislation to offer insight into the public's perception of the operation and effectiveness of the Act.
- Key stakeholder interviews and focus groups – an external consultant was engaged to undertake consultation with identified internal stakeholders including Healthway Board members, advisory members and staff to inform on the operational and strategic success of the Act.
- Stakeholder survey – to gauge the extent to which Healthway achieves the object of the Act and to measure health promotion outcomes achieved in the community, a survey was sent to past and current recipients of Healthway grants.
- Analysis of Healthway data – analysis of Healthway's funding allocation to programs and target groups was undertaken to inform Healthway's effectiveness in the operationalisation of the Act.

The outcomes of the review indicate that the Act and its operationalisation through Healthway are highly regarded and instrumental in facilitating a positive contribution to health promotion outcomes in Western Australia (WA). The Act's object and functions are consistently achieved, and Healthway's allocation of funding provides evidence of effectiveness in achieving the Act's obligations including statutory funding requirements.

Overall, there is considerable support from stakeholders for the legislation and the positive impacts resulting from Healthway's work. While there were some disparate views, the Act is overwhelmingly considered appropriate by stakeholders and does not require significant change. However, minor amendments may be considered to further enhance and improve the Act and align it to the current public health context in WA. Some of these possible amendments may require further investigation, consultation and analysis before a considered change could be made.

This report summarises the key outcomes of the review for reporting to each House of Parliament. It is noted that the report does not represent a comprehensive account of all review processes undertaken; nor does it provide commentary on the viability of changes suggested.

2. Background

Overview of the *Western Australian Health Promotion Foundation Act 2016*

The Act is WA's primary piece of health promotion legislation for the establishment, objects, functions and operationalisation of the Western Australian Health Promotion Foundation (referred to as either the Foundation or Healthway). The legislation was enacted in September 2016.

The object of the Act is to promote and facilitate in WA good health and activities which encourage healthy lifestyles.

The functions of the Foundation are:

- (a) to fund activities related to the promotion of good health in general with particular emphasis on young people; and
- (b) to support sporting and arts activities which encourage healthy lifestyles and advance health promotion programmes; and
- (c) to provide grants to organisations engaged in health promotion programmes; and
- (d) to fund research relevant to health promotion; and
- (e) to raise funds by soliciting donations and grants and, subject to section 7(2), engaging in the production or marketing mentioned in section 8(2)(b) in order to support the work of the Foundation; and
- (f) to evaluate and report on the effectiveness of the performance of the Foundation in achieving health promotion activities; and
- (g) generally to achieve the object of the Act.

Legislative context

Section 49 of the Act requires that the Minister for Health (Minister) reviews the operation and effectiveness of the Act every five years from the day on which Part 2 comes into operation. The review must be undertaken as soon as practicable after September 2021.

The Act also provides that the Minister must, as soon as practicable after completion of the review, prepare a report about the outcome of the review and cause a copy of the report to be laid before each House of Parliament.

3. Methodology

2021 review and consultation

The review process was undertaken between November 2020 and November 2021. In accordance with the statutory requirements, the review focussed on the two key purposes:

1. To review the *operation* of the Act in achieving its objects; and
2. To review the *effectiveness* of the Act in achieving its objects.

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The review was conducted in four parts.

Part 1: Open written submissions

Healthway launched an open written submission process on 25 June 2021 for a six-week period, inviting stakeholders and members of the public to provide written comment on the legislation. This was promoted via Healthway's website and direct electronic communications. In providing a submission, respondents were asked to consider the following key questions:

- Does the Act support Healthway to create a healthy WA through its funding of sport, arts, racing and community events, health promotion programs and research?
- The object of the Act is to facilitate good health and encourage healthy lifestyles in WA;
 - Are there barriers in the Act that prevent the achievement of its object?
 - Are there ways in which the Act supports the achievement of its object?

Respondents were asked to provide their name and contact details on the submission. Submissions have not been made publicly available, however, are subject to the Freedom of Information Act 1992 (WA).

A total of 16 open written submissions were received through the public consultation process. Respondents comprised:

- State Government departments (1);
- Public health groups (3);
- Environmental health industries (3);
- Sport organisations (7); and
- Arts organisations (2).

Part 2: Key stakeholder interviews and focus groups

Following an open procurement process, Healthway appointed Creating Communities Australia (CCA) on 28 May 2021 to develop survey tools and to conduct and report on stakeholder consultations and open written submissions.

Stakeholder interviews focussed on the object of the Act, the functions, funding and governance arrangements. The questions centred around alignment of the object with the current public health landscape, unintended impacts of the Act, Healthway's effectiveness in carrying out the legislative functions, and appropriateness of prescribed funding allocations.

Interviews were held between July and August 2021. Each confidential interview or focus group was offered in-person or via Microsoft Teams.

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A total of seven one-on-one interviews were conducted, comprising of Healthway Board members and Senior Management. Two focus groups were conducted with the Health Promotion Advisory Panel and Healthway management.

The final report from CCA was completed on 15 October 2021 and detailed the key findings of the consultation and open written submissions, and a series of recommendations for consideration.

Part 3: Stakeholder survey

Between 18 May 2021 and 7 June 2021, a health promotion survey was distributed by Healthway via electronic direct mail (EDM) to all Healthway grant recipients over the preceding two years.

To assist in reviewing the operation and effectiveness of the Act in achieving its object and functions, the survey sought information on the health promotion outcomes of Healthway funding in the community. Matters with relevance to this survey included:

- Questions around Healthway's effectiveness in relation to grant impacts;
- Questions around grant outcomes for target audiences and organisations; and;
- Broader perceptions of Healthway's impact in WA.

A total of 134 survey responses were received (25% response rate) from organisations who received a Healthway grant in 2019 or 2020.

Part 4: Analysis of Healthway data

Data from 2016 to 2021, specifically relating to functions of Healthway, was extracted from Healthway's grants management system for analysis. This included budget allocation and expenditure provided to:

- Activities related to the promotion of good health in general with particular emphasis on young people;
- Sporting and arts activities which encourage healthy lifestyles and advance health promotion programs;
- Grants to organisations engaged in health promotion programs; and
- Research relevant to health promotion.

The results of this analysis informed an assessment of Healthway's operation and effectiveness in achieving the object of the Act.

4. Key findings

With consideration to the outcomes of the various review components, a number of key findings are identified and outlined below.

Healthway is effective in achieving health promotion outcomes

Stakeholders report that Healthway is consistently effective in fulfilling its statutory obligations. Key points include:

- Interviews with stakeholders recognised that the functions enable structural changes that facilitate healthier environments and improve physical and mental health for beneficiaries of various Healthway-funded programs.
- All submissions from sport and arts groups affirmed their support for the legislation with most identifying the positive health outcomes achieved in their community through their work with Healthway.
- Written submissions from health agencies acknowledged Healthway's contribution towards the development of a strong evidence base for health promotion action and the role the legislation has played in supporting policy and legislative changes in relation to tobacco, alcohol, road safety, sun protection and environmental influences on health.
- Results from the health promotion survey indicated that over 90% of respondents agree that Healthway and its activities encourage more Western Australians to live healthy lifestyles, and that their grant contributed towards increased knowledge, understanding and attitudes of health behaviours.

The Act's statutory funding requirements are consistently being met

Healthway's annual grants expenditure is in line with the current legislative requirements outlined in the Act. Of note:

- Over the past five years, aligned to functions of the Act (Section 7(1)(a)), Healthway has consistently directed funds to activities promoting good health with an emphasis on children and young people (Table 1).
- Over the past five years Healthway has distributed grants consistent with the Act's functions and to organisations consistent with Sections 7 and 8(2) of the Act through allocation of funding to sport, arts, health and research organisations (Table 1).
- Consistent with Section 43(4), Healthway has distributed funding to sports of not less than 30%, and funding to arts of not less than 15%, over the past five years (Table 1).
- Consistent with Section 43(4), Healthway has not distributed more than 50% of funding in any one financial year to any one kind of organisation.

Table 1: Healthway's statutory funding allocations 2016-2021

Year	Children and young people (%) (s 7(1)(a))	Sports (%) (s 43 (4)(a,b))	Arts (%) (s 43(4)(a,b))	Health Promotion programmes	Research relevant to health promotion
2020-21	38%	36%	20%	24%	12%
2019-20	50%	34%	17%	27%	11%
2018-19	49%	35%	18%	24%	11%
2017-18	39%	35%	19%	24%	10%
2016-17	40%	35%	16%	28%	10%

The Act's object and functions remain relevant

There is strong support for the object and functions of the Act. Of note:

- The majority of stakeholders are supportive of the object, reporting its ongoing appropriateness in the current public health landscape and aligned with the intended purpose of Healthway. While some stakeholders in the interviews suggested 'streamlining' the wording of the object, describing it as a 'broad' or 'wordy' statement, there was a high level of overall support.
- There is considerable support for the function focusing on funding research relevant to health promotion with several stakeholders noting the importance of this function as one that plays a unique role in WA. There is support for the recent focus on translation that has resulted in an acceleration of research into practice in WA. This included the importance of building research capacity through project and research funding, scholarships and training programs and creating a strong public health workforce dedicated to prevention.
- The evaluation and reporting function makes a positive contribution through generating literature which analyses the impact of health promotion activities.
- The majority of sport and arts stakeholders were supportive of the function for provision of funds to support sporting and arts activities which encourage healthy lifestyles and advance health promotion programs, reporting that it encourages these sectors to identify and pursue health promotion opportunities through their work.

The Foundation is highly valued in the WA community

The legislation and Healthway are highly regarded in the community and instrumental in facilitating a positive contribution to health promotion outcomes in WA. Of note:

- All written submissions indicated their support of the Act and the need for this type of legislation to improve community health outcomes in WA.
- Respondents to the health promotion survey agreed that Healthway benefits the WA community, with 92% of respondents in agreement of Healthway's impact on and contribution to increasing awareness of healthy behaviours and encouraging healthy lifestyles, including being mentally healthy.
- 94% of respondents to the health promotion survey strongly agreed or agreed that Healthway is important to the WA community, and 92% strongly agreed or agreed that Healthway affects positive change in the community.

Minor amendments to the Act or incorporation in Regulations may further enhance its effectiveness

The consultation process with stakeholders identified potential improvements within the legislation to optimise Healthway's effectiveness and operations. These improvements included:

- Inclusion and/or refinement of key definitions, such as including a clear definition of health promotion, adjusting definitions of eligible racing organisations and clearly defining a material personal interest.
- Inclusion of contemporary public health issues with some stakeholders recommending the strategic priorities of the health promotion landscape be included in the wording of the legislation.
- Amending the delegations such as raising the CEO delegation limit.
- Introducing clarity around Board member composition and skill set.
- Reviewing the requirements relating to caretaker provisions during a Federal Election.
- Considering the percentage allocations to sports and arts activities.

Each of these improvements is explored further in the next section of this report.

5. Suggestions for legislative amendments

The consultation process, undertaken by CCA, highlighted areas for potential improvements of the Act. The suggested improvements identified by stakeholders are summarised below with reference to the relevant section of the legislation.

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Part 1 – Preliminary s. 1-4*Object (s4)*

The majority of stakeholders endorsed the object on the basis that it remains appropriate within the current public health landscape, being broad yet simple enough for practical interpretation. Should the object be amended, some recommendations were made for consideration of culture, land and knowledge of the Aboriginal and Torres Strait Islander peoples; the needs of vulnerable and disadvantaged communities; impact of climate change on public health; and incorporation of holistic health.

Part 2 – Western Australian Health Promotion Foundation s. 5-9*Functions (s7)*

Most stakeholders recommended no changes to the functions recognising the alignment of these with the object of the Act.

Of note was confirmation of Healthway's operational focus on funding activities related to good health, particularly for young people, and enabling structural changes that facilitate healthier environments and improved physical and mental health.

Recommended amendments to the functions included: emphasis on Aboriginal and Torres Strait Islander peoples; people living in low socio-economic circumstances; incarcerated populations; people living in rural and remote areas; and other groups experiencing disadvantage. Several submissions also recommended incorporating climate change.

It was noted that the object can only be achieved when functions are based on scientific evidence. Stakeholders identified a missing function which they propose should read 'to synthesise and apply scientific evidence of what programmes and activities are likely to be most effective in achieving the object of this Act'.

Stakeholders in the interviews and focus groups had clear perspectives on how the functions could be strengthened or amended, either by procedural or legislative changes to address areas they deemed critical public health priorities, noting that priorities may be better addressed through agency strategic policy or through Regulations.

Powers (s8)

A number of health organisations raised concerns with the inclusion of racing organisations (s8(2)), specifically with regards to animal welfare practices and saturation of unhealthy brands and practices associated with this industry.

While this is the case, the Act does not require that funding be allocated to racing, and it was noted that Healthway introduced a policy in 2010 that ceased funding of animal racing activities. The Act may be improved through alignment with this policy.

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Delegations (s9)

Many stakeholders recognised the value of s9(2), indicating the \$5,000 delegation to Chief Executive Officer facilitates a more timely response for grant funding outcomes and subsequently benefits the local community. However, it was noted that the \$5,000 amount was set a number of years ago with the creation of Healthway and has not been updated since. Several stakeholders were supportive of this delegation limit being reviewed.

Two organisations that provided written submissions supported the current governance structure, noting the ability for Healthway to delegate, under certain circumstances, its powers or duties to a member, CEO, staff member, committee, or officer or agent, is a positive feature of its governance structure that should remain.

Part 3 – Administration of Foundation s. 10-34*Foundation membership, presiding member (s11(1))*

There was discussion by stakeholders on s11(1) of the Act, specifically the nomination of a seven-person board and the difficulties associated with maintaining a quorum at each meeting.

A number of stakeholders provided input regarding s11(2) and the optimum levels of both required skills and diversity; indicating these were not always represented on the Healthway Board. Strengthening policies and procedures around Board selection was suggested to ensure adequate representation from experts in public health, Aboriginal and Torres Strait Islander peoples and socio-economic diversity.

One submission recommended minimising political interference including for the appointment of members.

Term of office (s14(2))

Those stakeholders that made mention of the period of term of office agreed that members should not be able to hold office for longer than nine years, with some indicating the period of nine years is too long.

Misconduct (s15(1))

Regarding detailing grounds for removal from the Board, the majority of stakeholders indicated 'misconduct' should be separated from 'incompetence', as they are different indiscretions.

Disclosure of material personal interest (s30)

The requirement for committee members to disclose any material personal interests was lauded as a key feature of the Act that should be retained. One written submission

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identified the need for a clearer definition of a 'material personal interest' in s30(1). This definition would be included in Part 3 s15.

Part 5 – Accountability s. 39-40

Noting s39(2), which states 'the Minister must not under subsection (1) direct the Foundation with respect to the provision of funds or grants', one submission identified this as integral to avoid undue political influence on funding decisions by the Minister. They also raised the inclusion of s43(5) which mandates approval by the Minister for disbursement of funds as contrary to s39(2). The submission suggested reviewing the use of s43(5) over the past five years to ensure transparency is upheld.

Part 6 – Financial provisions s. 41-44*Federal election (s43(3))*

The requirement for Healthway to make no decisions or announce any decision to disburse funds/grants during the caretaker period, from the issue of the writ for a federal election until the closing of voting in that election, was viewed as unnecessary by stakeholders and an impediment to Healthway's operations as a State-funded entity.

Allocation to sports and arts groups (s43)

Feedback on the appropriateness of the statutory grant requirements to sporting (30%) and arts (15%) organisations was mixed. Some stakeholders saw the percentage requirements as removing a level of autonomy from Healthway's operations to assess grants purely on need. However, most saw the inclusion of some distribution requirements as necessary to ensure balance in grants provision.

Many stakeholders saw the percentages as historically derived and not necessarily appropriate in the present context. This was echoed in the open written submissions, with some organisations suggesting that the percentage thresholds may no longer be relevant to meeting the object of the Act.

Five organisations put forward recommendations to address the unequal funding disbursement between sport and the arts to better promote the value of arts and culture. Additional comments from the stakeholders focused on the suggestions to cease funding for horse racing, horse pacing and dog racing, although it has been stated earlier in this report that this has already occurred via an internal Healthway policy position.

6. Other considerations

The consultation process focused on the Act, its object and functions. However, there were several non-statutory suggestions which are listed below. These may be considered at an operational level.

Strategic priorities

Most stakeholders made recommendations around Healthway's strategic focus on vulnerable communities, particularly Aboriginal and Torres Strait Islander peoples. While noting the importance of focusing on at-risk populations, stakeholders acknowledged that these may change over time and may be reasonably addressed through Healthway's strategic priority documents and policies. Five written submissions advocated for the inclusion of climate change as a health risk factor within the legislation with one also calling for the inclusion of safety.

Unhealthy marketing

Although outside the scope of the legislation, Healthway's position on challenging and prevailing commercial interests in recreational settings through the co-sponsorship policy was identified as a significant strength of Healthway's operations. The co-sponsorship policy, now referred to as co-supporter policy, ensures funded groups are not also supported by other organisations that result in the promotion of unhealthy brands and undermine Healthway's objectives.

Transparency of funding

Some stakeholders raised historical funding arrangements with the same organisations being funded over time. There were perceptions that the funding allocation was due to a reliance on Healthway funding and concerns that some programs or events are not strictly aligned to health promotion.

Relationship with Lotterywest

There was considerable discussion on the relationship between Healthway and Lotterywest, and stakeholders were prompted on this with the view of informing potential improvements.

Some stakeholders identified differences in culture, function and operation between the two organisations, and some expressed concern with Lotterywest's functions of conducting a lottery being contrary to Healthway's health promotion priorities.

One stakeholder raised issues around duplication; stating that Lotterywest delivers Healthway's functions; highlighting there is an unnecessary level of duplication between the two bodies.

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Stakeholders discussed the degree to which the two organisations should amalgamate, with some arguing for more integration which would allow for Healthway to maintain its identity while embedded within Lotterywest.

To this end, other suggestions included maintaining separate compliance frameworks and ensuring there are separate auditors. Some stakeholders felt very strongly that retaining the Act and re-establishing separate CEOs would be in the best interest of Healthway and the WA community, and that a potential repeal of the Act was damaging to the relationship between Lotterywest and Healthway.

Finally, one stakeholder suggested that in order to better perform the functions of the Act, the Director of Health Promotion should remain independent from Lotterywest, reporting only to the Healthway Board.

Alignment with other government legislations

Some stakeholders noted barriers to achieving the object of the Act regarding a lack of cohesion with other legislation and/or policy that impacts public health. It was observed that there were opportunities to better design and implement other legislation to achieve better health outcomes. The stakeholders noted that the absence of mandatory public health considerations and principles in WA land use and planning, transport, education, marketing and advertising is a regulatory deficiency that should be addressed.

7. Next steps

Information gathered from this review has identified possible areas for further investigation to strengthen the operation and effectiveness of the *Western Australia Health Promotion Foundation Act 2016* and its functions.

Following the development of options for improvements, further consultation will be undertaken to inform a more comprehensive review in 2026-27, for the second anniversary of the legislation.