



Category: Governance

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Purpose

Under section 131(a) of the *Health Services Act 1988* (the Act), Health Purchasing Victoria (HPV) has a function to 'supply or facilitate access to the supply of goods and services to public hospitals* and other Health or Related Services on best value terms'.

Public hospitals and public health services (as named in schedules 1 and 5 respectively of the Act) are known collectively to HPV as Health Services (HS).

Other health or related services (as named in schedules 2, 4 and 6 of the Act or entities which meet the definition of *Health or Related Service* in the Act) are known collectively to HPV as Health or Related Services (HRS).

Public health services named in schedule 3 are now superseded by the health services in schedules 1 and 5 of the Act.

This policy defines the circumstances in which:

1. HPV will consider requests by Health or Related Services for direct access to HPV Collective Agreements.
2. Those Health or Related Services which meet the eligibility requirements of this policy are deemed to be Eligible Services.
3. HPV will permit Participating Health Services to extend access to HPV Collective Agreements, to other Participating Health Services or Health or Related Services by on-selling or other arrangements as per HPV's Health Purchasing Policy 5 – Collective Purchasing.

Definitions

The Act	Health Services Act 1988 (Vic)
*Public hospital (as in section 131(a) of the Act)	a) a <i>hospital</i> listed in Schedule 1; or b) except in Division 4 of Part 3 and Parts 12 and 13, a <i>public health service</i> c) premises occupied by a hospital listed in Schedule 1 or, except in Division 4 of Part 3 and Parts 12 and 13, by a public health service
Health Services	Public hospitals and public health services as listed in Schedules 1 and 5 of the Act required to comply with HPV purchasing policies; also known as <i>mandated health services</i> .

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<p>Health or Related Services</p>	<p>As listed in schedules 2, 4 or 6 of the Act or as defined in section 3 of the Act as a <i>Health or Related service</i>; also known as <i>non-mandated health services</i>:</p> <p>(a) a registered funded agency, multi-purpose service or health service establishment; or</p> <p>(b) a registered community health centre; or</p> <p>(c) a women's health service listed in Schedule 6; or</p> <p>(d) any other person, body or organisation that provides, delivers, funds, facilitates access or provides insurance in relation to health services, being services that include, but are not limited to:</p> <p>(i) aged care services; or</p> <p>(ii) palliative care services; or</p> <p>(iii) disability services; or</p> <p>(iv) pharmaceutical services; or</p> <p>(v) ambulance services; or</p> <p>(vi) health services in association with correctional services; or</p> <p>(vii) residential care services; or</p> <p>(viii) the Victorian Institute of Forensic Mental Health; or</p> <p>(ix) any other prescribed health or related service.</p>
<p>Eligible Services</p>	<p>Health or Related services as described in the Act which meet the eligibility requirements for 'Direct Access' under this policy, notwithstanding that an application to access a collective agreement may be declined by HPV after assessing the 'materiality' as defined in this policy.</p>
<p>Participating Health Services</p>	<p>Collectively refers to health services (mandated to participate in all HPV Collective Agreements at HPV's direction) and Eligible Services which meet HPV's criteria for direct access and are approved access to one or more HPV Collective Agreements.</p>
<p>HPV Collective Agreement</p>	<p>A Collective Agreement, referred to in the HPV Health Purchasing Policies as a Collective Agreement or Collective Purchasing Arrangement, is a contract for the purchase of goods or services for the benefit of two or more entities. A HPV Collective Agreement may be established by HPV on behalf of Participating Health Services.</p>
<p>Direct access</p>	<p>Direct access to goods or services contracted under HPV Collective Agreements is mandated for Schedule 1 and 5 public hospitals and health services under the Act. Direct access may also be extended to health or related services in accordance with the <i>HPV Health Purchasing Policy 5. Collective Purchasing</i> and the criteria set out in this policy.</p>
<p>On-selling</p>	<p>Occurs if an entity purchases goods or services under a HPV Collective Agreement and then re-supplies/sells the goods or services to another legal entity (e.g. to another health service, health or related service or non-health entity) through the provision of warehousing and logistics services or otherwise, including where goods or services are provided at no cost, possibly under the terms of another agreement (e.g. provision of</p>

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	clinical or non-clinical services, tenancy, public private partnership (PPP), etc.
Material or Materiality	<p>This definition is introduced for the purposes of this policy to assist in making decisions on the circumstances in which HPV may allow:</p> <ul style="list-style-type: none">• direct access to Health or Related Services to access HPV Collective Agreements• on-selling of HPV contracted goods or services under HPV Collective Agreements by Participating Health Services <p>Materiality will be assessed on a case-by-case basis for each HPV Collective Agreement in which access is sought taking into consideration a number of factors to ensure that extending access does not adversely impact on the HPV Collective Agreement in question. These factors may include:</p> <ul style="list-style-type: none">• factors set out in section 133 of the Act, in particular the effect on price and supplier capacity• the proportion of the contract represented by the value of the goods or services on sold to the buyer• specific terms and conditions of HPV Collective Agreements (i.e. restrictions on the part of certain suppliers)• market dynamics that arise from granting direct or indirect access• unusual demand characteristics or potential variation in demand (both up and down)• supply chain efficiencies inherent in the access arrangement• ability for HPV to maintain adequate control over the Collective Agreement• reputational risks to HPV or the Health or Related Service involved• risks to the confidentiality of HPV or supplier information• the ability of the Health or Related Service to manage the recall of goods on-sold

Policy Approach

1. Direct Access

Clause 2.2 of the *HPV Health Purchasing Policy 5. Collective Purchasing* provides that Health or Related Services which meet HPV's defined direct access criteria may request to participate in HPV Collective Agreements or arrangements in accordance with clauses 2.8 to 2.11 of the policy.

All Health or Related Services as defined in the Act are eligible to apply for access to a HPV Collective Agreement in accordance with HPV's application process.

Applications for Direct Access to HPV Collective Agreements

All applications for direct access to HPV Collective Agreements by Health or Related Services should be directed to the HPV Customer Access Manager and must address the requirements and criteria set out in this policy.

Entities requesting direct access must provide sufficient information to address each of the Access Criteria for Direct Access set out below.

Where insufficient information is provided, HPV may request that the entity submit additional information prior to processing the application for access.

Criteria for Direct Access

Eligibility for direct access to HPV Collective Agreements will be assigned at the discretion of the HPV Chief Executive (or their delegated authority) on a case-by-case basis on an assessment of the following criteria:

- whether the entity meets the definition of 'Health or Related Service' as defined in the Act
- whether the entity is in receipt of Victorian Government Appropriations and carrying on business in Victoria
- whether the entity is able to establish a direct financial or non-financial benefit to the Victorian public health system in the delivery of their services by allowing the entity to access the HPV Collective Agreement to which access is sought.
- An assessment of the factors set out in section 133 of the Act (with reference to the HPV Collective Agreement to which access is sought):
 - the clinical needs of patients and other users of the Health or Related Service
 - the ability of suppliers to supply goods and services required by Health or Related Services
 - the price, quality and accessibility of goods and services supplied or proposed to be supplied to the Health or Related Services
 - the individual conditions and requirements of the Health Related Service
 - the effect of sourcing and contracting processes on the viability of small and medium-sized businesses
 - local employment growth or retention
- whether the grant of access will have a 'material' impact on the HPV Collective Agreement(s) for which access is sought (determined in accordance with the 'materiality' test set out in the definitions section of this policy)

The decision to grant access will be subject to any number of conditions set by HPV to manage any actual or perceived risks to HPV's operations or any other factors considered relevant at HPV's discretion.

Access to a HPV Collective Agreement may be at the discretion of HPV contracted suppliers where factors exist such as the Health or Related Service's national procurement policies or any procedures are considered as posing a potential risk to the confidentiality of supplier information.

The approval of access to one or more HPV Collective Agreement has no bearing on access to any other HPV Collective Agreement.

Decision on Direct Access

HPV will notify the applicant on whether the application for access has been approved or declined and will provide reasons for its decision.

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In the event that an entity disagrees with a decision, the entity may request that HPV reviews the decision, submitting the reasons for review and any new information not submitted with the original application. HPV will acknowledge the request for the review of a decision within 21 working days. The decision whether to overturn the original decision will be at HPV's discretion.

Access Deed

Where, at the discretion of HPV, direct access is granted to a Health or Related Service, the entity (Eligible Service) must enter into an agreement (Access Deed) with HPV to comply with:

- all the requirements of the *HPV Health Purchasing Policy 5 - Collective Purchasing* for the HPV Collective Agreement(s) in which access has been granted, including the rules of use established by HPV for purchasing and reporting; and
- any other terms and conditions in the agreement.

Once the terms of access are established by agreement between HPV and the Eligible Service, the Access Deed may be executed, the operative date of access to the Collective Agreement(s) being the date of execution by HPV's Chief Executive.

Other Rights of Access

After an Eligible Service is granted access to a HPV Collective Agreement, the entity may:

- apply for representation on a Reference Group relevant to the HPV Collective Agreement(s) to which it has received access (noting that HPV is responsible for decisions on reference group composition)
- 'opt out' of a re-sourcing event for a HPV Collective Agreement to which they have received access (noting that in the case that an 'option period' is exercised by HPV, access is deemed to be continual)

2. On-selling of HPV contracted goods and services

The *HPV Health Purchasing Policy 5. Collective Purchasing* sets out the circumstances in which Participating Health Services are permitted to extend access, by on-selling or other arrangements, to HPV contracted goods and services to:

- other Participating Health Services
- Health or Related Services (with or without an HPV Access Deed in place to access the relevant HPV Collective Agreement)

Participating Health Services are not permitted to on-sell HPV contracted goods or services to *non-health entities* unless there is an approved exemption from HPV granting permission for the arrangement.

On-selling to Health Services and Health or Related Services

Participating Health Services must request approval from HPV to on-sell HPV contracted goods and services to Health or Related Services not currently approved to access the relevant HPV Collective Agreements.

Participating Health Services when requesting approval to on-sell HPV contracted goods or services to other Health or Related Services (buyer) must provide HPV with the following information:

- names of HPV Collective Agreement(s) affected
- estimated value of the goods or services to be on sold for each Agreement involved

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- name, address and contact details of the buying organisation
- reason for the service being provided
- a copy of the agreement between the Health Service and the buyer with adequate inclusions to protect the confidentiality of HPV contract information

In assessing a request for on-selling, HPV will undertake an assessment of whether the on-selling is material to the relevant HPV Collective Agreement(s) in accordance with the materiality test set out in the definitions section of this policy.

- Where HPV determines that the on-selling is material, the buyer (Health or Related Service requesting access) will need to apply to HPV to request they be granted direct access to the HPV Collective Agreement(s) in accordance with HPV's application process and criteria for direct access set out above.
- Where HPV determines that the on-selling is immaterial, the on-selling arrangement may continue subject to the execution of a formal confidentiality agreement between the parties and the requirement for the seller to report to HPV (when requested to do so) on the specifics of the arrangement through the submission of an on-selling register.

On-selling to non-health entities

Participating Health Services are only permitted to on-sell HPV contracted goods or services to *non-health entities* in exceptional circumstances. Factors that may be taken into account when considering on-selling to non-health entities may include:

- factors set out in section 133 of the Act, in particular the effect on price and supplier capacity
- impact on the supplier and market dynamics; including whether there is supplier consent to continue the arrangement
- specific terms and conditions of HPV agreements (i.e. restrictions on the part of certain suppliers)
- reputational risks to HPV or the health service involved

Requests from a Participating Health Service for HPV approval for on-selling of HPV contracted goods or services to non-health entities will be assessed with reference to all the circumstances at hand on a case-by-case basis.

HPV may approve the application for an exemption to allow on-selling to a non-health entity subject to any number of conditions. Where an application for an exemption is declined, the health service must cease the on-selling arrangement.

Register of on-selling activities

Participating Health Services are required to submit a register of all on-selling activities involving HPV contracted goods and services to HPV when requested to do so using the HPV mandated template, or, in the event that they do not on-sell any HPV contracted goods or services, a declaration to this effect.

Review

This policy may be superseded by a revised policy prior to the Review Date above in order to address the changing environment of the health sector.

Related Documentation

- HPV Health Purchasing Policy 5. Collective Purchasing
- HPV Access to HPV Contracts Procedure
- HPV Form: Consideration of Factors pursuant to s133 of the Health Services Act
- HPV Access Deed
HPV Confidentiality Agreement