

Access to HealthShare Victoria Collective Agreements (Contracts)

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1 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'. HPV, a body incorporated pursuant to section 129 of the *Health Services Act 1988 (Vic)* (the Act), undertakes its statutory functions as HealthShare Victoria ('HSV')¹.

This policy outlines the considerations for health-related entities in being regarded as HSV customers and access to HSV Collective Agreements.

- Public hospitals and public health services (as named in schedules 1 and 5 respectively of the Act) are known collectively to HSV as **Health Services**.
- Other health entities (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 HSV as **Health or Related Services**.
- (Public health services named in schedule 3 are now superseded by the health services in schedules 1 and 5 of the Act).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:

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

2 Definitions

- The Act** is the *Health Services Act 1988 (Vic)*
- Health Services** are **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 mandated health services).
 - *Public hospital** (as in section 131(a) of the Act) is:
 - a hospital listed in Schedule 1; or
 - a public health service (except in Division 4 of Part 3 and Parts 12 and 13);
 - premises occupied by a hospital listed in Schedule 1 or, by a public health service (except in Division 4 of Part 3 and Parts 12 and 13).
- Health or Related Services** are as listed in schedules 2, 4 or 6 of the Act or as defined in section 3 of the Act as a Health or Related service (also known as non-mandated health services):
 - a registered funded agency, multi-purpose service or health service establishment; or
 - a registered community health centre; or
 - a women's health service listed in Schedule 6; or
 - 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:

¹ HealthShare Victoria is the assumed trading name for Health Purchasing Victoria that remains as an independent public entity incorporated under the *Health Services Act 1988 (Vic)*.

- A. aged care services; or
 - B. palliative care services; or
 - C. disability services; or
 - D. pharmaceutical services; or
 - E. ambulance services; or
 - F. health services in association with correctional services; or
 - G. residential care services; or
 - H. the Victorian Institute of Forensic Mental Health; or
 - I. any other prescribed health or related service.
- d. **Eligible Services** are **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 HSV after assessing the 'materiality' as defined in this policy.
- e. **Participating Health Services** collectively refers to health services (mandated to participate in all HSV Collective Agreements at HSV's direction) and Eligible Services which meet HSV's criteria for direct access and are approved access to one or more HSV Collective Agreements.
- i. **HSV Collective Agreement** is 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 HSV Collective Agreement may be established by HSV on behalf of Participating Health Services.
 - ii. **Direct access** occurs when an HSV customer, as a Participating Health Service, purchases contracted goods or services directly from a supplier under an HSV Collective Agreement.
 - iii. **On-selling** occurs if a Participating Health Service entity purchases goods or services under a HSV 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 clinical or non-clinical services, tenancy, public private partnership (PPP), etc.)
- f. **Materiality test** is a definition introduced for the purposes of this policy to assist in making decisions on the circumstances in which HSV may allow:
- i. direct access to Eligible Services to access HSV Collective Agreements
 - ii. on-selling of HSV contracted goods or services under HSV Collective Agreements by Participating Health Services

Materiality will be assessed on a case-by-case basis for each HSV Collective Agreement in which access is sought, taking into consideration several factors to ensure that extending access does not adversely impact on the HSV Collective Agreement in question. These factors may include:

- iii. factors set out in section 133 of the Act, in particular the effect on price and supplier capacity
- iv. the proportion of the contract represented by the value of the goods or services on-sold to the buyer
- v. specific terms and conditions of HSV Collective Agreements (i.e., restrictions on the part of certain suppliers)
- vi. market dynamics that arise from granting direct or indirect access
- vii. unusual demand characteristics or potential variation in demand (both up and down)
- viii. supply chain efficiencies inherent in the access arrangement
- ix. ability for HSV to maintain adequate control over the Collective Agreement
- x. reputational risks to HSV or the on-selling entity
- xi. risks to the confidentiality of HSV or supplier information
- xii. the ability of the on-selling entity to manage the recall of goods on-sold

3 Policy Approach

1. Eligible Service Determination

- 1.1 All Health or Related Services as defined in the Act are able to request an eligibility assessment to determine status as an Eligible Service under this policy. Once determined as an Eligible Service, entities may then apply for access to a HSV Collective Agreement in accordance with HSV's application process.

- 1.2 The status as an Eligible Service will be assigned at the discretion of the HSV Chief Executive (or delegated authority) on a case-by-case basis in consideration of the following criteria:
- meeting the definition of 'Health or Related Service' as defined in the Act
 - being in receipt of Victorian Government Appropriations
 - carrying on business in Victoria
 - ability to establish a direct financial or non-financial benefit to the Victorian public health system in the delivery of their services via access to the nominated HSV Collective Agreement for which access is being sought).
- 1.3 The status of an Eligible Service, to be determined by HSV, may change over time according to any variation in the above criteria.

2. Direct Access to HSV Collective Agreements

- 2.1 Clause 2.2 of the HPV Health Purchasing Policy 5 - Collective Purchasing (HPP 5) provides that "Health or Related Services which meet HPV's defined access criteria (i.e. being determined as an Eligible Service), may request to participate in any Collective Agreements or arrangements entered into by HPV, in accordance with clauses 2.8 to 2.11 of HPP 5."
- 2.2 All applications for direct access to a HSV Collective Agreement by Eligible Services should be directed to the HSV Customer Access Manager and must address the requirements and criteria set out in this policy.
- 2.3 Entities requesting direct access must provide sufficient information to address each of the criteria for Direct Access set out below.
- 2.4 Where insufficient information is provided, HSV may request that the entity submit additional information prior to processing the application for access.

Criteria for Direct Access

- 2.5 Once determined as an Eligible Service, the entity may apply to HSV for direct access to an HSV Collective Agreement.
- 2.6 Direct access to any HSV Collective Agreement will be assigned at the discretion of the HSV Chief Executive (or delegated authority) on a case-by-case basis, in consideration of the following criteria:
- an assessment of the factors set out in section 133 of the Act (with regard to the HSV Collective Agreement to which access is sought):
 - the clinical needs of patients and other users of the Eligible Service
 - the ability of suppliers to supply goods and services required by the Eligible Service
 - the price, quality and accessibility of goods and services supplied or proposed to be supplied to the Eligible Service
 - the individual conditions and requirements of the Eligible Service
 - the effect of sourcing and contracting processes on the viability of small and medium-sized businesses
 - local employment growth or retention
- 2.7 whether the granting of access will have a 'material' impact on the HSV Collective Agreement(s) for which access is sought (determined in accordance with the 'materiality' test set out in the definitions section of this policy). Access to an HSV Collective Agreement may be at the discretion of HSV (or HSV contracted suppliers) where factors exist such as the Eligible Service's (or associated entity's) national procurement policies or any procedures or practises being considered as posing a potential risk to the confidentiality of supplier information. The decision to grant access may be subject to any number of conditions set by HSV to manage any actual or perceived risks to HSV's operations or any other factors considered relevant, at HSV's discretion.
- 2.8 The approval of access to any HSV Collective Agreement has no bearing on future approval to access any other HSV Collective Agreement.

Decision on Direct Access

- 2.9 HSV will notify the applicant entity on the decision as to whether it is to be regarded as an Eligible Service and whether the application for direct access has been approved or declined, providing an explanation for its decision.
- 2.10 If an applicant entity disagrees with a decision, the entity may request that HSV reviews the decision, submitting the reasons for review and any new information not submitted with the original application.
- 2.11 HSV 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 HSV's discretion.

Once granted direct access to an HSV Collective Agreement, all sites within the legal entity of the Eligible Service must transition to the Agreement, unless HSV has pre-approved otherwise. **Access Deed**

- 2.12 Where, at the discretion of HSV, direct access is granted to an Eligible Service, the entity must enter into an agreement (Access Deed) with HSV and comply with:
- all the requirements of the HPV Health Purchasing Policy 5 - Collective Purchasing for the HSV Collective Agreement(s) in which access has been granted, including the rules of use established by HSV for purchasing and reporting; and
 - any other terms and conditions in the agreement.
- 2.13 Once the terms of access are established by agreement between HSV and the Eligible Service, the Access Deed may be executed. The operative date of access to the Collective Agreement(s) is the date of execution of the Access Deed (or revised Schedule to the Access Deed) by HSV's Chief Executive, unless HSV has pre-approved otherwise.

Other Rights of Direct Access

- 2.14 After an Eligible Service is granted access to a HSV Collective Agreement, the entity may:
- apply for representation on a Reference Group relevant to the HSV Collective Agreement(s) to which it has received access (noting that HSV is responsible for decisions on reference group composition)
 - 'opt out' of a re-sourcing event for a HSV Collective Agreement to which it has received access (noting that in the case that an 'option period' or extension is exercised by HSV, access is deemed to be continual)

3. Indirect Access: On-selling of HPV contracted goods and services

- 3.1 The HPV Health Purchasing Policy 5 - Collective Purchasing sets out the limited circumstances in which participating Health Services are permitted to extend access to HSV contracted goods and services to other entities. Participating health services may be able to on-sell or provide other supply arrangements to:
- Other Participating Health Services
 - Eligible Services with an HSV Access Deed in place to access the relevant HSV Collective Agreement(s)
 - Eligible Services without an HSV Access Deed in place to access the relevant HSV Collective Agreement(s), with HSV's approval
- 3.2 Participating Health Services when requesting approval to on-sell HSV contracted goods or services (seller) to other Health or Related Services (buyer) must provide HSV with the following information:
- names of HSV Collective Agreement(s) affected
 - estimated value of the goods or services to be on sold for each Agreement involved
 - name, address and contact details of the buyer 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 HSV contract information
- 3.3 In assessing a request for on-selling, HSV will undertake an assessment of whether the on-selling is material to the relevant HSV Collective Agreement(s) in accordance with the materiality test set out in the definitions section of this policy.
- Where HSV determines that the on-selling is material, the buyer (Health or Related Service requesting indirect access) will need to apply to HSV to be assessed for direct access to the HPV Collective Agreement(s) in accordance with HSV's application process and criteria for direct access set out above.
 - Where HSV 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 HSV (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

- 3.4 Participating Health Services are not permitted to on-sell HSV contracted goods or services to non-health entities unless HSV has granted permission for the arrangement.
- 3.5 Factors that may be taken into account when HSV is considering granting permission of on-selling to a non-health entity 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 HSV agreements (i.e., restrictions on the part of certain suppliers)
 - reputational risks to HSV or the health service involved

- 3.6 Requests from Participating Health Services for HSV approval for on-selling of HSV contracted goods or services to non-health entities will be assessed on a case-by-case basis, with reference to all the circumstances at hand.
- 3.7 HSV may approve a request to allow on-selling to a non-health entity subject to any number of conditions. Where a request for on-selling to a non-health entity is declined, the health service must cease the on-selling arrangement.

Register of on-selling activities

- 3.8 Participating Health Services are required to submit a register of all on-selling activities involving HSV contracted goods and services to HSV when requested to do so. 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.

4 Related Documents

- a. PRO130.1 Access to HPV Collective Agreements (Contracts) Procedure
- b. HPV Health Purchasing Policy 5. Collective Purchasing
- c. HSV Form: Consideration of Factors pursuant to s133 of the Health Services Act
- d. HSV Access Deed
- e. HSV Confidentiality Agreement