

Guide to On-selling Products and Services

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Introduction

The purpose of this guidance note is to provide health services with an overview of the changes to the HSV Purchasing Policies in relation to the on-selling of products or services under HSV Collective Agreements / Arrangements and Supply Chain.

Background

Under section 131(a) of the *Health Services Act 1988* (Vic) (the Act) HealthShare Victoria (HSV) 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”.

Health services may access HSV products or services directly through purchasing from HSV contracted suppliers, or indirectly through on-selling, or other access arrangements, through another health service. HSV has a legislative mandate to establish HSV Collective Agreements for the benefit of health services under Schedule 1 and 5 of the Act (mandated health services).

On-selling to health or related service

Health services who wish to on-sell HSV products or services to other health mandated health services or health related entities (i.e. private entities) are required to seek approval from HSV for these arrangements. HSV may at its discretion approve these arrangements if they are local and are not pursued with a view to profit and where a community or related benefit is established.

Health services that on-sell to other ‘health or related services’ that have not been approved to access the relevant HSV Collective Agreement (buyer) are mostly affected. Health services are required to notify HSV of any current or proposed arrangements involving on-selling to ‘health or related services’ and access must be approved by HSV, subject to an assessment of whether the on-selling is ‘material’ to the relevant HSV Collective Agreement.

Material On-selling

Where HSV determines that the on-selling is ‘material,’ the buyer will need to apply to HSV for direct access to the HSV Collective Agreement in accordance with the Access to HSV Collective Agreements Policy. The proposed buyer will be required to meet the requirements set out in Access to HSV Collective Agreements Policy to be granted direct access by HSV.

Immaterial On-selling

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 participating health services to report to HSV annually on the specifics of the arrangement.

Materiality Test

Materiality will be assessed on a case-by-case basis for each of the HSV Agreements affected, taking into consideration a number of factors to ensure extending access does not adversely affect the Agreement.

Where there is a ‘material’ impact, the buyer (health or related services requesting access) will be required to apply directly to HSV for access to the HSV contract.

Materiality will differ for each agreement, so it is proposed that it be assessed on a case-by-case basis for each of the HSV Agreements affected, taking into consideration a number of factors which may include:

- factors set out in section 133 of the Act, in particular the effect on price and supplier capacity;
- the proportion of the agreement represented by the value of the goods or services on sold to the buyer;
- specific terms and conditions of HSV agreements (i.e. restrictions on the part of certain suppliers);
- the impact on demand including potential variation in demand (both up and down);
- supply chain efficiencies inherent in the on-selling arrangement;
- ability for HSV to maintain adequate control over it's agreement;
- reputational risks to HSV or the health service involved; and
- the ability of the health service to manage the recall of goods on-sold.

On-selling to a non-health entity

Health services will not be permitted to on-sell goods or services under HSV Collective Agreements to non-health entities unless there is an exemption granted by HSV for the arrangement.

HSV's collective purchasing powers under the Act do not extend to procuring on behalf of non-health entities. Where an exemption is sought, HSV will assess the merits of the particular application on a case-by-case basis. If an exemption application is declined by HSV, the on-selling activities will need to cease.

Exemption

A health service may apply for an exemption to allow the on-selling of goods or services under a HSV Collective Agreement to a 'non-health entity' on the grounds of 'exceptional circumstances.'

HSV will assess the application in its absolute discretion. This is likely to involve a consideration of

- 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); and
- reputational risks to HSV or the health service involved.

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

Transition Arrangements

Where health services are required to cease on-selling arrangements, provision can be made for a transition period of up to three months, where required, on terms and conditions agreed between HSV and the health service.

HSV On-selling Oversight

Health service will still be able to on-sell products and services under a HSV Collective Agreement to other participating health services (mandated health services and non-mandated health services approved to access one or more HSV Collective Agreement) and will be required to inform HSV of these arrangements through the annual submission of an on-selling register. This will enhance HSV's oversight of the supply arrangements relating to HSV Collective Agreements and Supply Chain.

Application to on-sell

All health services that wish to on-sell or apply for an exemption are required to submit an application.. Please use the following form for this application (Appendix 1: Application for On-selling).

More Information

Related documents and templates are available on the HSV website.

Disclaimer

The information presented in this document is general in nature and based on HealthShare Victoria's interpretation of the *Health Services Act 1988 (Vic)* and any ancillary legislation and regulations in effect at the time and should not be relied upon as legal advice. Please consider seeking professional and independent advice from your legal representative as to the applicability and suitability of this information and the legislation to your own business needs or circumstances.

Appendix 1: Application for On-selling

Health Service Details:

Name of Health Service:

Requesting Officer and Position:

Contract Details:

Please provide details of the HSV Contract/s for which the on-selling is being sought.

HSV Contract Name and Number:	Name, address and contact details of the buying organisation	What products are going to be offered?	Estimated value of the products to be sold for each Collective Agreement involved

On-selling Details:

Please provide details of the entity for which the application is sought.

Legal Name:

Address:

Primary Contract Name and Position:

Primary Contact Details (Phone, Email):

Delivery Address:

Details of On-selling

Please detail what on-selling will be taking place, specifying the product(s) and/or service(s).

1. *What is the reasoning for the on-selling*
2. *What are the impacts on the health service/hospital?*
3. *What are the benefits from this exemption for both the health service/hospital in question and also any other related health services?*

Please specify the duration of on-selling that you are seeking:

- Less than 12 months
- 12 months to 3 years
- On-going (the term of the collective agreement)

Confidentiality Agreement

By putting forward the request to on-sell goods or services from a HSV Collective Agreement we confirm to establish a confidentiality agreement with the purchasing entity to protect the HSV suppliers' rights.

- Agree
- 12 Do not agree

Additional Supporting Information

Health services requesting approval from HSV to on-sell HSV contracted products and services to other health services or related services must provide HSV with a copy of the draft confidentiality agreement between the health service and the buyer with adequate inclusions to protect the confidentiality of HSV contract information.

Financial Impact

Will the on-selling of the goods and/or services be charged at a margin to the receiving entity?

- Yes
- No

If yes, please provide details of what margin is to be applied:

List of margin to be applied:

Conflict of Interest

A Conflict of Interest (Col) exists when it is likely that a person influencing the decision to on sell to a local business instead of from the HSV contract has an actual, perceived or potential opportunity to favour their own interest or the interest of a third party. A declared Col does not mean that the application will be rejected. However, a Col Management Plan must be attached with the application for HSV to review on a case by case basis.

Have you assessed if there is any Conflict of Interest within your health services with regards to this application?

- Yes – Actual Col Yes – Potential Col Yes – Perceived Col
- No Col Exists Not Assessed

If you answered Yes (whether Actual, Potential or Perceived), please provide details below and attach your Col Management Plan.

Health Service Accountable Officer Authorisation

Authorised by Accountable Officer: Please print completed form for authorisation. Once signed, please return to compliance@healthsharevic.org.au.

Signature	Name:
	Date:

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