

OFFICIAL

COMMERCIAL ACTIVITIES POLICY

Title: Commercial Activities Policy

1. Background

Section 35(1) of the *Health Services Act 2016* (HS Act) provides that a Health Service Provider (HSP) may earn revenue by engaging in Commercial Activities that are not inconsistent with and do not have an adverse effect on the performance of its other functions. This section of the HS Act allows Commercial Activities to be carried on with a view to profit. The scope of activities that may be described as Commercial Activities is wide.

Activities that qualify as Commercial Activities for which a fee or charge is to be imposed may be qualified by section 59 of the Act.

As an agent of the State, HSPs are required to comply with the provisions of Part IV of the *Competition and Consumer Act 2010* (Cth) in respect of its business activities. Part IV contains provisions which deal with restrictive trade practices and prohibit conduct relating to anti-competitive agreements and or arrangements, the misuse of market power, exclusive dealing and cartel conduct.

2. Scope

This policy is binding on each HSP to which it applies or relates.

3. Policy statement

The purpose of this policy is to ensure that HSPs seek legal advice from Legal and Legislative Services (LLS) or the State Solicitor's Office (SSO) prior to engaging in a Commercial Activity pursuant to section 35 of the HS Act.

The HSP is to undertake appropriate financial due diligence in respect of the proposed Commercial Activity prior to seeking legal advice.

4. Definitions

<p>Commercial Activity / Commercial Activities</p>	<p>Not defined in the Act, however, the expression expressly includes providing any facility under the HSPs control or management for the use of a health professional to carry out a health service or other service. The scope of activities that may be described as a commercial activity is wide and may also include (but is not limited to):</p> <ul style="list-style-type: none"> • a café open to the public, retail catering • vending machines • leasing of floor spaces for shops, ATMs, kiosks, newsagents • rental of roof locations for satellite receivers and mobile telephone equipment • use of patient entertainment systems • rental of telecommunication and television equipment • manufacturing of drugs • services for commercially sponsored clinical trials • external hire of seminar rooms and lecture theatres
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5. Roles and responsibilities

HSPs and Chief Executives are responsible for ensuring that HSPs seek legal advice from LLS or SSO prior to engaging in a Commercial Activity pursuant to section 35 of the Act.

6. Compliance

This policy is binding on those to whom it applies or relates.

7. Evaluation

Performance measures of this mandatory policy are to be carried out by the mandatory policy owner.

8. Relevant legislation

Health Services Act 2016

Competition and Consumer Act 2010 (Cth)

9. Related documents

The following document supports and informs the implementation of this mandatory policy:

- [Request for Legal Advice Form](#)

10. Authority

This policy has been approved and issued by the Director General of the Department of Health as the System Manager.

Title:	Commercial Activities Policy		
Contact:	Director, Legal and Legislative Services Tel: 9222 4038 Email: legal.services@health.wa.gov.au		
Directorate:	Legal and Legislative Services		
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