

For all Training Provider staff

Contract Notification

CN No.	2018-21	Date:	24 August 2018
To:	Chief Executive Officer or equivalent		
Purpose:	General Information		
Scope:	All 2018-19 VET Funding Contracts		
Subject:	Revised Records and Record Keeping Requirements Fact Sheet		

Purpose

- This Contract Notification is to advise training providers that the *Records and Record Keeping Requirements* fact sheet published on SVTS on 31 May has been removed, and a revised version of the fact sheet, titled *Records and Record Keeping Requirements V2.0* is now available in the 'Documents' section of SVTS.

Background

- The Department of Education and Training (the Department) is committed to supporting training providers in maximising voluntary compliance with their contractual obligations, including by providing information about the policy rationale or reasons that underlie various aspects of the 2018-19 VET Funding Contracts (the Contracts).
- In light of our commitment, the Department regularly issues fact sheets about various aspects of the Contracts.

Main Points

- Following feedback from training providers, the Department has revised the Records and Record Keeping fact sheet to provide further detail regarding contractual settings for electronic actions equivalent to a signature, and to clarify the circumstances under which an electronic action equivalent to a signature cannot be used.
- The revision has been made in the form of two questions titled 'what is an electronic action equivalent to a signature' and 'are there any circumstances where an electronic action equivalent to a signature cannot be used'. These questions have been marked in grey.
- Please formally disregard the older version of the Records and Record Keeping Requirements fact sheet, which was published on 31 May 2018, in favour of this newer version.

Resources

- Refer to the following publication in the 'Documents' section of SVTS:
 - *'Records and Record Keeping Requirements (V2.0)'*

David Barron
A/ Executive Director
Training Market Services

Records and Record Keeping Requirements

Guide to requirements in 2018-19 VET Funding Contracts

VET FUNDING CONTRACT REQUIREMENTS

The 2018-19 VET Funding Contracts (the 2018-19 Contracts) contain a range of record-keeping requirements to ensure contracted training providers maintain high standards of probity and accountability when using public funding. This fact sheet provides an overview of these requirements, which are detailed in Clause 10 of the 2018-19 Contracts.

Records

A Record refers to any 'document' within the meaning of the Evidence Act 2008 (Vic) that a training provider or Training Provider Personnel produces, creates or gains possession of in the course of that training provider performing its obligations under the 2018-19 Contract.

Training providers are required to keep complete Records of all dealings connected with the 2018-19 Contracts, including Records relating to Funds, Training Services delivered, and relevant to determining the quality of Training Services. This includes but is not limited to:

- Evidence of Eligibility, Evidence of Participation and Evidence of Concession/Waiver/Exemption;
- Evidence of Pre-Training Review;
- Quotations, invoices and receipts made by the training provider to subcontractors and other third parties; and
- Invoices or statements provided by the training provider to Eligible Individuals, and bank generated transaction statements to confirm when fees were paid or received.

The Department may also direct training providers to maintain or retain Records it is not already retaining if the Department considers the Records necessary to confirm compliance with the VET Funding Contract.

Record Keeping Systems

Training providers are required to implement and administer a record keeping system for hard copy and/or electronic Records to enable the Department to determine compliance and the accuracy of reports and claims for payments. These record keeping systems must include effective security measures to safeguard the Records from unauthorised access or use including to ensure that Records are not amended such that they are not accurate.

If a training provider identifies the need to amend a Record, the amendment must be documented in sufficient detail to allow the Department to ascertain the nature and rationale for the amendment.

Access to Records for Audit/Review Purposes

If directed to do so by the Department, a training provider must provide the Department or any person authorised by the Department with all assistance needed to locate, access and view Records. This includes, but is not limited to, taking copies of Records and responding promptly to requests for access.

Failure to provide or make available Records within a reasonable or specified time will result in the Department considering the Record and relevant information to not exist and/or to not have occurred. The Department may then exercise all its rights on this basis.

FOR FURTHER INFORMATION

Training providers can refer the Questions and Answers below.

Training providers can also refer to the following resources available on SVTS:

- *CN 2018-03 Making and/or amending Records*

Or submit an enquiry via SVTS.

QUESTIONS AND ANSWERS

Q: Do record keeping requirements under the VET Funding Contract limit other applicable record keeping obligations (e.g. obligations in *the Standards for Registered Training Organisations 2015*)?

A: No. training providers are expected to comply with all applicable Laws and standards relating to record keeping.

Q: How long must Records be retained for?

A: Under the 2018-19 Contracts, Records must be retained until three years after the Eligible Individual to whom the Record relates completes or withdraws from the relevant course or qualification.

For example, if a student commenced training under a 2018-19 Contract and completed training in 2020, their Records for the relevant training cannot be disposed of until 2023.

However, training providers may be required to retain Records for longer if mandated to do so by any applicable Law or standard.

Q: Can Records be created and maintained in an electronic form?

A: Yes, Records may be created and maintained in an electronic form provided the training provider:

- does not breach its obligations under any applicable Law by doing so;
- ensures its systems, processes and practices demonstrate to a reasonable standard that the Record is complete, accurate and authentic;
- demonstrates with supporting documentation that the Records are safe from unauthorised access, loss or damage; and
- demonstrates with supporting documentation that the Record can only be accessed and amended with appropriate authorisation.

Q: What is an electronic action equivalent to a signature?

A: Where a training provider is required to procure and keep a document signed by any person in order to comply with its contractual obligations, the document can be signed by way of an electronic action equivalent to a signature.

An electronic action equivalent to a signature is an action that identifies a person and indicates the person's agreement to the relevant information and/or matters. It is the training provider's responsibility to ensure an electronic action is reliable enough to demonstrate an individual's agreement specific to the context to which it is being applied (including so that the Department could rely on it in the event of an audit or review).

Documents related to the 2018-19 Contract that can be signed by way of an electronic action include those signed by a training provider itself, a person employed or engaged by a training provider or a third party. For example, Training Plans, the *Evidence of Student Eligibility and Student Declaration* form, and Evidence of Participation.

Q: Are there any circumstances where an electronic action equivalent to a signature cannot be used?

A: Some exceptions do apply where an electronic action cannot be used to sign a document, in recognition of the degree of legal formality of the document or decision that requires signed agreement.

These exceptions are where the signature belongs to a training provider or any person signing on behalf of it, or a representative of a training provider on a Peer Review Panel, and if that signature:

- binds that person to a contract with the Department or an amendment to such a contract; or
- is on a Notice.

(this includes where a training provider is signing for the purpose of executing an acceptance of a VET Funding Contract offer).

Training providers should be aware that where a communication is identified in the 2018-19 Contract as a 'Notice', additional contractual requirements apply to the manner in which it is made and delivered. These requirements are that the Notice is in writing, is signed by a Party to the Contract and is delivered by hand or by prepaid priority post.

Training providers also need to be aware that the ability to use an electronic action equivalent to a signature under the 2018-19 Contract does not limit any obligations for obtaining and keeping signatures under any other applicable Laws and standards.