

CHANGE IN CONTROL AND OTHER SIGNIFICANT CHANGES

This fact sheet provides information about requirements under the *Skills First* program to notify the Department of Education and Training (the Department) about a Change in Control and other significant changes, such as changes to CEO, ownership or operations.

BACKGROUND

Under the VET Funding Contract (the Contract) you must notify the Department of certain events, so that we can manage the risks that may arise in different circumstances.

We also want to make sure that training providers do not use their Contract as an asset to trade with someone else without us having the opportunity to evaluate them against our stringent criteria for entering the Victorian government-subsidised VET market.

NOTIFYING US ABOUT A CHANGE IN CONTROL

What is 'Control' of a training provider?

Control has a specific definition in the Contract, but in simple terms it means when a person (which can be either an individual or another organisation) has sufficient capacity to have overall control of your training provider. 'Control' is demonstrated when a person and/or organisation has:

- legal, financial or equitable ownership (either directly or indirectly) of 50 percent or more of share capital (or an equivalent level of other ownership interest if there are no shares)
- significant capacity to control or influence either:
 - the composition of a board or other decision-making body (for example, having the right to add or remove someone from a Board or governance committee, without involving other Board or committee members)

- decision making about financial or operating policies in their own right, without seeking involvement or approval of a Board, committee or other governing body
- 'effective control' of the training provider.

How do I know who has 'Control' at my training provider?

Whether a person and/or organisation has 'Control' will depend on the company structure or governance arrangements you have in place.

You will need to decide who meets this definition. If you are in doubt, you should seek legal advice about your own circumstances.

However, in general:

- These descriptions apply to people or organisations who have the highest level of influence over your training provider. A position or job title alone doesn't necessarily mean a person has Control – it depends on how much overall influence they have in practical terms. Conversely, just changing a person's position title to imply a lower level of influence would not change whether or not they meet the definition of Control.
- Individual members of Boards, committees of management or similar governance structures, or individuals who hold high level executive positions such as a CEO, do not usually have the level of influence that meets the definition of Control. While these people can have voting rights or can contribute to decisions, they usually can't make decisions entirely on their own.

- In corporate environments where there are shareholders, Control is usually obtained by having ownership of a majority of shares, where a person or entity will be able to make major decisions in their own right. For example, about things like appointing or removing directors.
- Other than through holding a majority of shares, there may be other ways a person or organisation may have Control. For example, if someone doesn't have a majority of shares but they have rights to company profits, or there are agreements in place between individual shareholders to be able to exert a certain level of control or exercise proxy rights.

What is a 'Change in Control'?

A Change in Control means that any person or organisation will start to have, or will finish having, Control over your training provider.

This does not include changes from transferring shares or other securities on a stock exchange.

When do I have to notify a Change in Control?

You must notify us via the SVTS of any Change in Control immediately when you become aware of it, and at least 20 business days before it takes effect.

When you tell us about a Change in Control, you need to:

- tell us when the change will take effect
- explain any changes it makes to the information you gave us when you first applied for your Contract.

What happens when I notify a Change in Control?

We will review what you tell us and consider the circumstances. We may take no further action, or we may write back and ask you for more information.

We may inform you that we don't approve of a Change in Control. This doesn't mean that we are making a judgement about the merits of the business decision itself. Instead, it means that we might determine that the Change in Control has had such a significant effect that we can no longer rely on the information we used to decide to give your training provider a Contract.

Importantly, if we do not approve the Change in Control, or if you don't inform us of a Change in Control in the way you are required to do under the Contract, we have the right to take enforcement action, including terminating your Contract.

Examples of when a training provider may need to notify a Change in Control

- It sells 50 per cent or more of its shares (or equivalent ownership interest).
- Its shareholders make a new agreement about voting rights or other control of the company. For example, a shareholder is given a proxy right or other right that gives them a majority vote on questions about the company (even if they don't hold 50 per cent or more of the shares).
- There is a holding company that exists between the training provider and its shareholders, and the shareholders of that holding company change.

NOTIFYING OF OTHER SIGNIFICANT CHANGES

As well as notifying us of a Change in Control, you also need to notify us via the SVTS of any significant changes to:

- ownership
- who is your CEO (or any other person who holds an equivalent position to a CEO)
- your operations (including your financial viability, or if you've decided to stop operating as a registered training organisation in Victoria).

What is the difference between a significant change in ownership and a Change in Control?

A significant change in ownership is where the change has a substantial impact on your training provider, but it doesn't result in any person or organisation gaining an amount of influence that meets the definition of 'Control'.

This may be where you make a change to your corporate structure that doesn't result in a company or person gaining 'Control', but still results in them gaining a significant and new level of influence. For example, a significant change to your governance structure that might impact your ability to deliver training services.

There may be times when a significant change in ownership is also a Change in Control, in which case you need to notify the Department of it in advance.

When do I have to notify significant changes?

You need to tell us immediately.

If you are not sure whether an event constitutes a significant change, then submit an enquiry via SVTS and we will tell you.

What happens when I notify significant changes?

When you tell us about significant changes, we may simply note the information and use it to update our records about your training provider, or we may contact you to ask for more information.

We may consider whether the significant changes represent any risk from the Department's perspective, but under the Contract we don't include a right to not approve a significant change in the way we can if you were notifying us of a Change in Control.

Examples of when a training provider may notify significant changes

- The CEO (or equivalent, for example a Managing Director at a Learn Local Organisation (LLO)) leaves their position and a new person is appointed to the role.
- The Board or Committee of Management decides it will completely disband and reform, or it decides to establish an entirely new governance model.
- A new owner acquires an amount of shares that doesn't meet the definition of Control, but they will be given a significant role in the company structure.
- A training provider with a company structure splits its training function into a different part of the organisation under different governance arrangements.
- It experiences, or expects that it will experience, a significant issue with its financial operations.
- It decides it doesn't want to continue being a registered training organisation.
- The training provider is an LLO and decides it will give up its registration with the ACFE Board.

FURTHER INFORMATION

Submit an enquiry via SVTS.