

Change in control and other significant changes

This fact sheet provides information about requirements under Skills First to notify us about a change in control and other significant changes

Background

Under the VET Funding Contract (the contract), you must notify us 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 don't use their contract as an asset to trade with someone else without us evaluating them against our stringent criteria.

Change in control

What control means

In simple terms, it's when a person (an individual or organisation) has sufficient capacity to have overall control of your organisation. Control is demonstrated when a person or organisation has:

- legal, financial or equitable ownership (directly or indirectly) of 50 percent or more of share capital (or an equivalent ownership interest if there are no shares)
- the ability to cast, or control the casting of, a majority of votes at a membership meeting
- significant capacity to control in their own right either:
 - the composition of the board or other decision-making body (for example, the individual right to add or remove someone)
 - decision making about financial or operating policies without additional approval.

Knowing who has control

Whether a person or organisation has control depends on your company structure or governance arrangements.

You'll need to decide who meets the definition of control. If in doubt, seek legal advice about your circumstances.

In general:

- A position or job title alone doesn't necessarily mean a person has control – it depends on how much practical control they can exercise by themselves. Conversely, changing a person's position title to imply a lower level of control won't change whether they have control or not.
- Individuals on boards, committees of management or similar governance structures, or individuals who hold high level executive positions such as a CEO, usually don't have the level of control that meets the definition. They may have voting rights or contribute to decisions, but they usually can't make decisions entirely on their own.
- In corporate environments where there are shareholders, control is usually obtained through majority share ownership. Control would mean a person or entity can make major decisions in their own right, for example, about things like appointing or removing directors.
- Other than through a majority shareholding, there may be other ways a person or organisation has control. For example:
 - having rights to company profits rather than a majority of shares or
 - having agreements in place between shareholders to be able to exert a level of control or exercise proxy rights.

When control changes

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 to notify us

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 next

We'll 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 we're making a judgement about the merits of the business decision itself. Instead, it means that we might determine that the change in control has such a significant effect that we can no longer rely on the information we used to offer you a contract.

Importantly, if we don't approve the change in control, or if you don't inform us of a change in control in the way you are required to under the contract, we have the right to take enforcement action, including terminating your contract.

Examples of when you may need to notify a change in control

- You sell 50 per cent or more of your shares (or equivalent ownership interest).

- Your 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 you and your shareholders, and the shareholders of that holding company change.

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 your CEO is (or 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).

How a significant change is different to a change in control

A significant change is where it has a substantial impact on your training provider, but it doesn't result in any person or organisation gaining the amount of practical control that meets the contract 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 us in advance.

When to notify us

You need to tell us about significant changes immediately.

If you're not sure whether an event is a significant change, submit an enquiry via SVTS and we will tell you.

What happens next

When you tell us about significant changes, we may simply note the information and use it to update our records.

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

Examples of when you may need to notify a significant change

- Your 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.
- Your board or committee of management decides to completely disband and re-form, or to establish a new governance model.
- A new owner acquires a number of shares that doesn't meet the definition of control but does give them a significant role in the company structure.
- Your company structure splits its training function into a different part of the organisation under different governance arrangements.
- You experience, or expects to experience, a significant issue with your financial operations.
- You decide you don't want to continue being a registered training organisation.
- You're an LLO and decide to give up your registration with the Adult, Community and Further Education (ACFE) Board.



Further information

Submit an enquiry via [SVTS](#).