

# Change in control and other significant changes

This fact sheet provides information about when you must tell us about a change in control and other significant changes.

## Background

Under the VET funding contract (the contract), you must tell us of certain events. We can then manage any risks that may arise from them.

## Change in control

### What control means

Control is when an individual or organisation has sufficient capacity to have overall control of your training provider. Control is demonstrated when a person or organisation has any one of these things:

1. 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)
2. the ability to cast, or control the casting of, a majority of votes at a membership meeting
3. significant capacity to control, in their own right:
  - who is on the board or other decision-making body
  - decision-making about financial or operating policies, without additional approval.

### Knowing who has control

If someone has a majority shareholding, or equivalent ownership interest, then it's easy to identify that they have control.

But if there's no majority ownership, whether someone has control may depend on your company structure or governance arrangements.

Someone with control can make major decisions on their own, such as appointing or removing directors, or about the finances or operations of your training provider.

If in doubt about whether a person or organisation meets the definition of control, seek legal advice about your circumstances.

In general:

- A position or job title alone doesn't 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 remove control.
- 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.
- Someone may have control without a majority shareholding. For example, having:
  - rights to company profits rather than a majority of shares or
  - agreements between shareholders to be able to exert a level of control or exercise proxy rights.

### When control changes

A change in control happens when any individual 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 tell us

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

## What to tell us

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 write back and ask you for more information.

We may inform you that we object to a change in control.

We can also object to a change in control if you haven't notified us, but we've learned about it another way, such as viewing the Australian Securities and Investment Commission (ASIC) register.

If we object, it doesn't mean we're making a judgement about the merits of the business decision itself. Instead, it might mean that the change is so significant that we can no longer rely on the information we used to offer you a contract.

If you go ahead with a change in control that we object to, we can take enforcement action including terminating your contract.

## Examples of when you might need to tell us about 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 telling us about a change in control, you also need to tell us via SVTS of any significant changes to:

- ownership
- who your CEO is (or equivalent position to a CEO)
- your operations.

## How a significant change is different to a change in control

A significant change is something that has a substantial impact on your training provider but doesn't result in a change in 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 will result in a change in control, in which case you need to tell us in advance.

## When to tell 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'll 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 we see the changes as a risk, but we can't object to the change in the same way we can for a change in control.

## Examples of when you may need to tell us about 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 reform, 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 expect to experience, a significant issue with your financial operations.
- You no longer have a principal place of business in Victoria that's your base for administering training.
- You're a non-Victorian training provider and no longer have a commercial property in Victoria from which you deliver training.
- 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](#).