

Skills Assure Supplier Change in Control obligations

Introduction

Skills Assure Suppliers (SAS) are registered training organisations (RTOs) approved by the Department of Employment, Small Business and Training (DESBT), and issued a Vocational Education and Training (VET) SAS Agreement (SAS Agreement) to deliver publicly funded training and assessment services within Queensland for specific programs.

It is the obligation of the SAS to obtain the written consent of DESBT prior to proceeding with any change in Control in accordance with clause 28.1 of the SAS Agreement.

Under Clause 30.9 of the SAS agreement, a SAS cannot assign or novate its interest in the SAS Agreement without prior written consent of DESBT.

The SAS cannot appoint or revoke directors, secretaries, Key Personnel; change shareholdings; or company constitution, without prior written consent of DESBT.

What is a change of Control?

In accordance with clause 28.1 of the SAS Agreement, a SAS must obtain the written consent of the Department **prior** to any:

- a) change in Control of the SAS;
- b) transfer of any legal or beneficial interest in any shares of the SAS;
- c) change to the SAS' director/s or secretary;
- d) change to Key Personnel; or
- e) change to the SAS' Constitution

Definitions provided in the SAS Agreement

“Control” has the meaning given to it in the [Corporations Act 2001 \(Cth\)](#).

“Key Personnel” means an individual:

- a) who is concerned in or takes part in the management of the SAS;

- b) who is an employee or agent of the SAS with duties of such responsibility that his or her conduct may fairly be assumed to represent the Supplier in relation to its business;
- c) who exercises a degree of Control or influence over the management or direction of the SAS including those who participate in making decisions that affect the business of the applicant or who has the capacity to significantly affect the future operations and financial standing;
- d) who has the ability or capacity to determine the outcome of decisions about the financial and operating policies of the SAS.

Example of types of change in Control

Examples include but are not limited to:

- any changes to the legal name of the entity
- the sale of the business
- any changes to ABN/ACN
- any conversion of legal entity from an Incorporated Association to a Company
- any changes to Directors or Secretaries
- any changes to shareholdings, including sale of shareholdings, changes to share structure and issuance of new shares
- any changes in management that fall into the definition of *Key Personnel*
- Any changes to company Constitution

If you are in doubt as to whether you need to seek the consent of DESBT regarding a change, please contact your contract manager

at ContractManagement@desbt.qld.gov.au

What information do I supply to DESBT?

The SAS **must** complete a *Skills Assure Supplier Request for Consent* form, providing details of the proposed change/s and seeking DESBT's consent in accordance with the SAS Agreement. To obtain a copy of the form or if



you have any questions about the change in Control process, please contact your contract manager at ContractManagement@desbt.qld.gov.au

Depending on the nature of the change in Control, the *Skills Assure Supplier Request for Consent* form will specify supporting documentation that must also be submitted, along with the completed form.

Change in Control exemptions

Clause 28.4 of the SAS Agreement provides exemptions to the requirement to seek DESBT's consent prior to a change in Control. Exempt SAS are still required to immediately notify DESBT in writing of any change of Control including full details of the change.

Clause 28.4 applies if the SAS is:

- a) a company listed on the Australian Stock Exchange
- b) both before and after a change in Control, the wholly owned subsidiary of a company listed on the Australian Stock Exchange; or
- c) another entity to which the Department has given notice in writing that it is not required to comply with clause 28.1.

How to notify DESBT

SAS need to submit the required information by email to Contract Management at contractmanagement@desbt.qld.gov.au.

Please be aware that notification to DESBT of changes to a legal entity is not an automatic guarantee that consent will be provided. More information may be requested, or conditions imposed on the provision of consent, depending on the circumstance.

Please be reminded that you must wait until you have received the written consent of DESBT before proceeding with relevant changes.

Following consent of the changes by DESBT, the SAS may be required to amend their Electronic Funds Transfer details through lodgement of the form available online at <https://desbt.qld.gov.au/training/providers/SAS/contract>.

Following consent of the changes by DESBT, the SAS may be required to update their contact details by completing a *Skills Assure Supplier Contact Information* Form, available online at

<https://desbt.qld.gov.au/training/providers/SAS/contract>.

What happens if a Change in Control occurs without the prior consent of DESBT?

If DESBT's consent is not obtained prior to a change which falls within the definition of clause 28.1 or 30.9 of the SAS Agreement, you may have committed an Event of Default under your agreement in accordance with clause 20.2(b)(ii)I and 20.2(b)(ii)K, respectively. Clause 21.3 of the SAS Agreements provides that *"If the Department reasonably suspects that an Event of Default has occurred, the Department may Suspend Funding for the Suspension Period and/or issue a directive to the Supplier under clause 21.1(c) to cease enrolments for the Suspension Period to allow the Department to investigate and make a determination as to whether there has been an Event of Default."*

In summary, if a change in control occurs without the consent of DESBT, you may be issued with a Notice of Default and your funding suspended until such time as the suspicion of Event of Default has been investigated and consent has been provided by the Department.

More information

For help with this process, please email the Contract Management team at contractmanagement@desbt.qld.gov.au or phone (07) 3025 6689.

For more information, including SAS and funded program policies, visit <https://desbt.qld.gov.au/training/providers>.