



Australian Government

About the BSWAT Payment Scheme:

Helping people with intellectual impairment
to make informed decisions –
Information for legal advisors and
financial counsellors



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About this document

This document has been written by the Australian Government to help you support a person with intellectual impairment (the participant) to make an informed decision about the BSWAT Payment Scheme (the scheme).

This document has information to help you prepare for your meeting with a participant and their support people and to help you communicate effectively and respectfully.

This information is a companion to the documents about the scheme specifically for legal advisors and financial counsellors. These documents are available on our website at www.dss.gov.au/bswat-payment-scheme-resources

The BSWAT Payment Scheme Handbook is a resource to explain what the scheme is. The handbook has been written in Easy Read. It is written in a way that is very easy to understand and uses images to help explain the information. You can refer to the handbook when you are helping the participant.

The handbook, titled *About the BSWAT Payment Scheme: Information for supported employees – Easy Read Handbook*, is available on the website at www.dss.gov.au/bswat-payment-scheme-resources

Acknowledgments

This document has been written by the Australian Government.

Editing and design by the Information Access Group.

Specialist communication consultation by Dr Sheridan Forster.

Important update

On 16 December 2015, the Minister for Social Services, the Hon Christian Porter MP, made an announcement.

The Government is currently in the process of seeking to change the law about the BSWAT Payment Scheme. Under the current law, payments are half (50 per cent) of the difference between what a person was paid and what they would have been paid if their wages had been assessed using only the productivity component of the BSWAT. If the law is amended, this payment will be increased to 70 per cent.

We will update this resource when the law is amended. For now, the information remains useful and relevant. The steps for registering and applying for a payment haven't changed. However, if the changes to the law are passed in Parliament, people will have more time to register and apply as the deadlines will be extended by 12 months.

Further, under the proposed changes to the law:

- people who accept an offer under the scheme before the law has passed will not be disadvantaged – they will receive a top-up payment if the changes to the law are passed
- changes may be made to the requirement that all people receive legal advice before they can accept an offer.

If you'd like more information about these changes, please visit our website at www.dss.gov.au/changes-to-the-BSWAT-Payment-Scheme

Four essential details about the BSWAT Payment Scheme

1 BSWAT stands for the Business Services Wage Assessment Tool. This tool has been used to calculate the wages of some people who work in Australian Disability Enterprises (ADEs). The BSWAT assessment has two parts. One measures a person's competency in doing a job, how well a person understands and does a job or part of a job. The other measures a person's productivity in doing a job, how much work someone does during a period of time.

2 The scheme will offer eligible supported employees a one-off payment. Broadly, payments for eligible participants are 50 per cent of the difference between (a) what would have been paid if only the productivity score had been used to work out the person's wages; and (b) what the person was actually paid. Indexation will be added to this amount.

There is information about how the payments will be worked out in the documents about the scheme for legal advisors and financial advisors which can be found on the website at www.dss.gov.au/bswat-payment-scheme-resources

These documents are called About the BSWAT Payment Scheme: Information for financial counsellors and About the BSWAT Payment Scheme: Information for legal advisors. In addition to explaining how the payments will be calculated, they explain the proposed changes to the law about the scheme. If the changes to the law are passed by Parliament:

- the scheme will pay eligible people 70 per cent of that difference, and
- if a person accepts an offer of 50 per cent before the changes are passed, they will subsequently receive top-up payments so they get the full 70 per cent.



3

To be eligible for the scheme, people must, for at least one day in the period starting on 1 January 2004 and ending on 28 May 2014, have:

- had an intellectual impairment as defined in the legislation
AND
- worked in an ADE
AND
- had their wages worked out using the BSWAT or been paid a training wage while waiting for a BSWAT assessment to be completed
AND
- received employment support from the ADE.

A participant must also have:

- required ongoing daily support in the workplace to maintain their employment in the ADE
AND
- not accepted an amount of money in settlement of a claim made relating to the use of the BSWAT to assess the person's wage (or a court must not have ordered payment of an amount of money to the person in connection with such a claim).

Accepting an offer from the scheme means that the participant can no longer take part in any other legal proceedings about the BSWAT.

4

The BSWAT class action is a representative proceeding currently underway in relation to the use of the BSWAT. An ADE worker with disability, Tyson Duval-Comrie, has started proceedings against the Australian Government on behalf of all people with intellectual disability employed in ADEs on 22 October 2013 who have had their wages assessed using BSWAT.



Taking part in the scheme

Emma can take part in the scheme

Emma is a 38-year-old woman with intellectual impairment. Since 1 October 2005, she has worked at her local ADE as a packaging assistant. The Australian Government funds her local ADE to support Emma in her daily work activities.

In March 2006, Emma had her first BSWAT assessment to determine her pro rata wage. She had two further BSWAT assessments in February 2009 and January 2012. Emma's minimum wage was based on these assessments. Emma is **eligible** for the scheme.

Mark cannot take part in the scheme

Mark has autism and has worked in an ADE as a warehouse assistant since 2007. The Australian Government funds Mark's ADE to support him in his daily work activities. His wages were worked out using a tool called the Supported Wage System. Mark is **not eligible** for the scheme because his wages were not assessed using the BSWAT.

The decisions participants need to make

People who are eligible for the scheme can choose:

- not to participate in either the scheme or any legal proceeding about the BSWAT
- to take part in the representative proceeding or go to Court independently about the BSWAT
- to accept a payment from the scheme – which means they cannot take part in any legal proceedings about the BSWAT.

Participants will need to make the decision that is best for them. Everyone's personal and financial situation will be different.

Intellectual impairment – what does it mean?

Every person is unique and there is no single, agreed definition of intellectual impairment. For the purposes of the scheme, intellectual impairment means a person who has:

- intellectual disability
- autism spectrum disorder
- dementia
- acquired brain injury.

There are many different types of intellectual impairment. A person's impairment can be caused by a genetic disorder, an illness or an accident. Some people may have more than one type of impairment, for example, someone who has Down syndrome might also have autism.

We use the term intellectual impairment for the purposes of the scheme to include the range of impairments listed above. When talking about the class action we use the term intellectual disability because Mr Duval-Comrie's claim is made on behalf of people with intellectual disability.





The role of the support person

When meeting with and advising or counselling a participant, it is important to understand the role of the support person and their level of involvement in the decision-making process.

The participant might be accompanied by a support person such as a family member, friend, advocate or nominee.

Nominees are the only support people who can make decisions about the scheme for the participant and are appointed by the Department of Social Services (the Department).

What is the role of an advocate?

An advocate is a person from an organisation that provides disability advocacy to ensure people's rights are promoted and protected.

What is the role of a nominee?

A nominee is a trusted relative, friend, associate or legal guardian of the participant who has a legal role under the BSWAT legislation. They must have agreed to be appointed under legislation to make decisions about the scheme for the participant.

They must understand the participant's views and act according to the participant's preferences.

Under the *Business Services Wage Assessment Tool (BSWAT) Payment Scheme Act 2015* and the *Business Services Wage Assessment Tool (BSWAT) Payment Scheme Rules 2015*, a nominee must promote and safeguard the participant's human rights. A nominee must act in a way least restrictive of those rights when making decisions relating to the scheme.

The nominee needs to be familiar with the participant's financial affairs and must also avoid any conflicts of interest.

Participants who receive an offer of \$1,000 or less do not have to seek financial counselling and can sign the Financial Counselling Certificate themselves. However, free financial counselling is available to them in the same way as any other participant in the scheme.



A participant's guardian, who has responsibility for the participant's financial affairs and has been appointed as their nominee under the scheme, can sign the Financial Counselling Certificate on behalf of the participant without seeing a financial counsellor. However, if they wish to, they can still attend a financial counselling session with the participant.

Nominees **cannot** be:

- under 18 years of age
- employed by the Department of Social Services, unless they are related to the participant or other exceptions apply
- a person who works at an ADE, or certain advocacy organisations, unless they are related to the participant or other exceptions apply.

One or more independent nominees can be appointed to help a participant who needs support to make a decision.

Detailed information about nominees is included in the guides for legal advisors and financial counsellors. You can find these guides on our website at www.dss.gov.au/bswat-payment-scheme-resources

Interacting with the participant and their support person

General points to remember:

- Always address the person with intellectual impairment first. It may be more intuitive to ask the support person questions, but it is more respectful to interact directly with the participant where possible. You can always ask them if they would like their support person to assist throughout the meeting.
- When you treat the participant with respect, you will be seen in a positive light by all involved. It will also build trust, inspire confidence and encourage collaboration.
- You will have a much better understanding of the participant's situation and preferences when you interact with both the participant and their support person.



Preparing for your meeting

When preparing to meet someone with intellectual impairment, consider how you can create a positive experience. Before your meeting, contact the participant (or their support person) to find out as much as you can about:

- the type of intellectual impairment they have
- their level of intellectual impairment – for example, a person with cerebral palsy might have a physical disability but only a mild intellectual impairment
- the person's living arrangements – for example, do they live with family or in supported accommodation?
- the relationship between the participant and their support person, including the support person's level of involvement in the decision-making process
- how they will be travelling to the meeting – for example, if they are travelling via public transport, they might prefer to avoid peak travel times
- their level of speech – for example, do they have limited to no speech or do they use and understand speech?
- their ability to comprehend information and make basic or complex decisions
- their level of concentration and likely behaviours – for example, will they need a longer meeting with a break in the middle to avoid fatigue or do they have any behaviours of concern?
- what puts them at ease – for example, being on time for the meeting
- whether they are able to access your premises.



Effective communication

Effective communication is built on trust and respect. You can help create a positive relationship by adjusting your communication style to meet the needs of the participant and their support person.

Greeting

- Greet the participant by saying their name and introducing yourself by name.
- Introduce yourself to the support person and ask the participant if they would like their support person to assist throughout the meeting.
- Be friendly and open.
- Use positive facial expressions such as smiling.
- Have warm and engaging body language.

Approach

- Approach the participant from the front at eye level.
- Sit next to the participant, rather than standing near them, especially if they use a wheelchair.
- Modify how close or far away you position yourself based on the participant's response.

Conversation

- Involve everyone in the conversation.
- Maintain good eye contact – unless you sense the participant is uncomfortable making eye contact.
- Give the participant enough time to understand and respond to your comments or questions.
- Repeat information where necessary.
- Use the participant's words where appropriate.
- Use everyday gestures, or simple sign language, to explain something.
- Offer assistance if required – but ask first.

Tone of voice

- Use a normal tone of voice – for example, a high-pitched voice can be viewed as condescending and a frustrated tone may cause agitation.
- Speak at an appropriate volume – for example, raising your voice, in the absence of hearing loss, can be viewed as disrespectful.

Engagement

- Have good inflection in your voice to maintain interest.
- Watch for signs of agitation and find ways to re-engage the participant – you can always ask them if they want to take a break.

Communication devices

The participant might have their own communication book or device to express themselves. In this situation, you should:

- ask them if they would like to use their communication device
- write the messages down as they are ‘speaking’ if you think it may be difficult for you to recall a message that takes a long time to prepare
- wait for them to finish preparing their whole message before responding
- give them enough time to respond to your questions
- take turns in the conversation
- encourage them to ask questions
- watch for visual clues – for example, the participant might express themselves by using gestures or pointing to pictures.



Easy Read handbook

The handbook, titled *About the BSWAT Payment Scheme: Information for supported employees – Easy Read Handbook*, has images to help explain the key points about the scheme. Using a copy of the handbook during your meeting as a visual guide will help you to explain the decisions a participant needs to make. The handbook is available at www.dss.gov.au/bswat-payment-scheme-resources.

Communication about money

People with intellectual impairment have different understandings about money and financial matters. You may need to work out with an individual participant and their support people how well they understand money matters and the payment offer being made through the scheme. You will need to help participants understand:

- Wages:
 - ▶ that they have been paid wages which were assessed under the BSWAT for work they have undertaken. And, because they were paid such wages, they are eligible for a payment under the scheme.
- The scheme:
 - ▶ that the scheme will pay them 50 per cent of the difference between what would have been paid if only the productivity score had been used to work out a person's wages and what the person was actually paid.
- If the changes to the law about the scheme are passed by Parliament (see *About the BSWAT Payment Scheme: Information for financial counsellors* or *About the BSWAT Payment Scheme: Information for legal advisors*):
 - ▶ the scheme will pay eligible people 70 per cent of that difference, and
 - ▶ if a person accepts an offer of 50 per cent before the changes are passed, they will subsequently receive top-up payments so they get the full 70 per cent.
- Tax and Disability Support Pension
 - ▶ that they may not have to pay tax on the BSWAT payment and if they do have to pay tax the Government will pay them extra to help meet the cost
 - ▶ that the BSWAT payment is unlikely to affect their Disability Support Pension, although some people will need to have an asset test.

There is detailed information about each of these points in the handbook and booklets. You may like to refer to the content in the handbook as you work through the issues with your client.

Using positive and inclusive language

It's important to use positive and inclusive language when you are speaking to a person with intellectual impairment and their support person. For example:

Don't say	Say
handicapped people	people with disability
normal or able-bodied people	people without disability
suffering from	a person with
someone who is wheelchair-bound or crippled	someone who uses a wheelchair or mobility aid
disabled toilet	accessible toilet

Example

David Nelson, a legal advisor, was contacted by Steve to provide legal advice about the scheme. Steve has intellectual impairment and uses a wheelchair. His comprehension is good, but his speech can be difficult to understand, so he prefers to use a speech device. Steve lives at home but is quite independent. His mum, Julie, supports Steve by coming to important appointments, but she has not been appointed in the legal role of nominee under the scheme.

Before the meeting, David contacted Steve and Julie to go over some important background questions. During the conversation, Julie made it clear that she would be at the meeting to provide support but Steve would make the decisions. David organised to meet them at a suitable time and accessible premises. During the meeting, David was able to create a positive environment by treating Steve and his mum with respect and by involving everyone in the conversation. They worked through the legal implications of accepting or declining a payment from the scheme and Steve was able to make a decision that was right for him.



How can you help with the decision making process?

The purpose of your meeting is to help the participant make an informed decision.

Make sure you have read and understood key information about the scheme before your meeting.

Remind the participant to bring important paperwork to the meeting, including their handbook and any information they have received from the Government, such as their Letter of Offer.

It will be useful to plan your meeting around three of the most important considerations:

1. What do we need to discuss?
2. What does it mean to the participant (how will it affect them)?
3. What do they need to do now?

Assisting with comprehension and decision making

Be careful not to make assumptions about someone's level of comprehension. Some people with intellectual impairment find it hard to express themselves but they may have good comprehension. Others can communicate clearly but have limited comprehension. Subtle or unspoken messages can also be difficult to understand, particularly for people with autism.

You can help the participant understand important information and make an informed decision by:

- clearly explaining what you will be covering in the meeting
- involving both the participant and their support person (where applicable) in the conversation
- using simple language in a normal tone of voice
- using single sentences with occasional pauses
- using pictures, diagrams or writing to explain concepts
- sitting next to them when explaining something, especially if they are using a wheelchair
- honouring their preference to use a communication book or device
- asking open-ended questions to track their understanding – for example ‘How do you think the payment will affect your pension?’
- avoiding closed questions that require a yes or no answer as the answer may be an automatic, socially acceptable response rather than a true response
- rephrasing information, or using different words, and trying again if they have not understood something
- encouraging them to ask questions
- letting them know if you have not understood something and give them time to explain
- using everyday gestures, or simple sign language, where appropriate
- watching for signs of agitation and finding ways to re-engage the person, or take a break
- providing important information, including any pictures or written explanations from the meeting, to take away
- concluding with a clear action plan that reflects the discussions in the meeting.

Did the participant understand?

If you are unsure about whether the participant understood the discussions in the meeting, it is better to ask them, or their support person, rather than making an assumption.

You may like to ask open-ended questions to make sure they’ve understood like ‘Tell me what you think’ or ‘What do you think you should do?’

Legal advisors and, in some cases, financial counsellors need to provide a certificate before someone can expect a payment from the scheme.

You can state on the certificate that you do not believe the participant or their nominee understood the issues. The Government will resolve this situation on a case-by-case basis. For example, the participant may be required to meet with a financial counsellor and legal advisor again, but this time with a nominee, a new nominee or an additional nominee. They can also ask for an extension of time by contacting the Government on the number listed in the Letter of Offer.



Other concerns

Current employment

The scheme will not affect a participant's current job or their wages.

No one will lose their job for taking part in the scheme.

Receiving the disability pension

The scheme's one-off payment is unlikely to affect a participant's disability pension. Most people will continue to receive the Disability Support Pension in the usual way. Some people will need to have an asset test.

Child support payments

If a participant pays child support or receives Family Tax Benefit they will need to talk to the Department of Human Services in case their payment is affected.

Tax

The Government has made changes to the law to reduce the amount of tax on any money paid through the scheme.

Participants may not have to pay any tax on the one-off payment from the scheme.

If a participant does have to pay tax, the Government will increase the amount of money they pay to help meet the costs of the tax. We will calculate this at the time of the offer. Also if tax is to be paid, the lump sum amount will be taxed over the period the person was paid wages under the BSWAT, meaning tax owed will be minimised.

Death during the process

If a participant should pass away after they have made an application for the scheme, a person nominated to represent them can accept a payment offer on their behalf. The payment would then be made to the deceased person's estate.

If changes to the law for the BSWAT Payment Scheme are introduced, it will allow a deceased person's legal personal representative to engage with the payment scheme on their behalf.

Fraud, or taking advantage of the scheme

If a participant is found to have deliberately provided incorrect information to apply for the scheme, they will be required to pay back any money they were given. The Government will collect any debts for incorrect payments.



Checklist

Understand key information about the scheme.	<input type="checkbox"/>
Understand your role in the process.	<input type="checkbox"/>
Contact the Government if you need more information (see details on page 22).	<input type="checkbox"/>
Prepare for your meeting by asking the participant, or their support person, important background questions.	<input type="checkbox"/>
Remind the participant to bring important paperwork to the meeting.	<input type="checkbox"/>
Plan the structure of your meeting.	<input type="checkbox"/>
Organise your meeting at an appropriate time and place.	<input type="checkbox"/>
Create a positive environment for everyone involved in the meeting.	<input type="checkbox"/>
Learn about how you can communicate effectively with the participant and their support person.	<input type="checkbox"/>
Use positive and inclusive language.	<input type="checkbox"/>
Help the participant to understand the information and make an informed decision.	<input type="checkbox"/>
Explain that there is a review process if the participant wants the offer amount to be reviewed.	<input type="checkbox"/>
Provide information to take away.	<input type="checkbox"/>
Provide a clear action plan based on discussions in the meeting.	<input type="checkbox"/>
Take note of the participant's acceptance deadline and send their certificate in a timely manner if they decide to accept the payment offer.	<input type="checkbox"/>
Explain that no further action is required if they decide to decline the offer.	<input type="checkbox"/>

Where can you get more information?

If you need more information about the scheme please contact the Department by:

- phoning the BSWAT Hotline on 1800 880 052
- phoning the BSWAT Payment Scheme information line on 1800 799 515
- emailing **BSWATPayments@dss.gov.au**
- visiting the website at **www.dss.gov.au/bswat-payment-scheme**

We have created a number of documents about the scheme for different audiences. They are available online at **www.dss.gov.au/bswat-payment-scheme-resources**

The titles are:

- *About the BSWAT Payment Scheme: Information for supported employees – Easy Read Handbook*
- *About the BSWAT Payment Scheme: Information for Australian Disability Enterprises (ADEs)*
- *About the BSWAT Payment Scheme: Information for families, advocates and nominees*
- *About the BSWAT Payment Scheme: Information for legal advisors and financial counsellors – Helping people with intellectual impairment to make informed decisions about the scheme*
- *About the BSWAT Payment Scheme: Information for financial counsellors*
- *About the BSWAT Payment Scheme: Information for legal advisors*

The comprehensive Easy Read handbook is written in a way that is very easy to understand and use images to help explain the information.

