



Australian Government

About the BSWAT Payment Scheme:

Information for legal advisors



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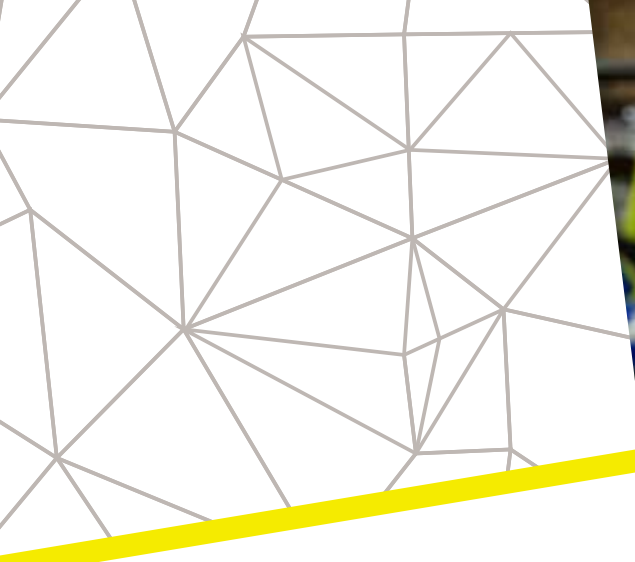
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About this document

This document has been written by the Australian Government to explain the Business Services Wage Assessment Tool (BSWAT) Payment Scheme (the scheme) and your role in the process.

As a legal advisor, your role is to help a person with intellectual impairment (the participant) make an informed decision about taking part in the scheme.

When you are helping participants you can refer to the comprehensive Easy Read handbook about the BSWAT Payment Scheme. It is written in a way that is very easy to understand and uses images to help explain the information. This will be a key communication tool to help you discuss important legal and financial information about the scheme.

The handbook is available on the website at www.dss.gov.au/bswat-payment-scheme-resources

It is called *About the BSWAT Payment Scheme: Information for supported employees – Easy Read Handbook*.

There is also a document to help you communicate effectively and respectfully with participants. This document, titled *About the BSWAT Payment Scheme: Information for legal advisors and financial counsellors – Helping people with intellectual impairment to make informed decisions about the scheme*, is available on the website at www.dss.gov.au/bswat-payment-scheme-resources

Acknowledgments

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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



What is the BSWAT Payment Scheme?

BSWAT stands for the Business Services Wage Assessment Tool. This tool was used to work out the wages of supported employees who work in Australian Disability Enterprises (ADEs).

Using the BSWAT, people's wages were worked out based on competency and productivity.

The productivity assessment looked at how much work a person did during a period of time. The competency assessment looked at how well a person understood and did their job, or parts of their job.

The results of these two assessments were then combined to give the person a score. The score was used to work out the person's wages.

The scheme was established by the Australian Government following the Federal Court finding in December 2012 that two supported employees, with intellectual disability, were unlawfully discriminated against by their employing ADEs because their wages were worked out based on BSWAT assessments.

In particular, the Court found that the use of the competency assessment to assess the wages of those two supported employees was discriminatory.

Since the Australian Government owns the BSWAT, the Court also found that the Australian Government unlawfully discriminated against the two supported employees.

A copy of the judgement of the Full Federal Court in those legal proceedings (the *Nojin & Prior* proceedings) is available at

www.judgments.fedcourt.gov.au/judgments/Judgments/fca/full/2012/2012fcafc0192

The High Court refused the Commonwealth's application for special leave to appeal the judgement of the Full Federal Court. A copy of the High Court's decision is available at

www.hcourt.gov.au/registry/special-leave-applications-results-2013

Under the *Business Services Wage Assessment Tool (BSWAT) Payment Scheme Act 2015* (the Act), the scheme will offer eligible supported employees a one-off payment. The scheme is only for people who had their pro-rata or training wages worked out using the BSWAT and have an intellectual impairment. You can find more information about eligibility on page 13.

The Australian Government Department of Social Services (the Department) will run the scheme's application and payment process.

The Department can answer any questions you have about the scheme through the BSWAT Payment Scheme information line on 1800 799 515 or email BSWATPayments@dss.gov.au

What is being offered?

Broadly (see section 8 of the Act), the scheme will pay eligible people 50 per cent of the difference between:

- the amount that the person would have been paid if their wage had been assessed only using the productivity component of the BSWAT assessment

AND

- the amount the person was in fact paid based on their BSWAT assessment or assessments, which included both the competency and productivity components.

If the changes to the law about the scheme are passed by Parliament (see page 10):

- 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.

The government will make payments quickly and directly to the participant, once they have accepted their offer.

The participant may not have to pay tax on this money. If they do have to pay additional tax, the Government will pay the participant an extra amount with their payment to help meet the cost. If tax is to be paid, the lump sum amount will be taxed over the period the supported employee's wages were earned, meaning tax owed will be minimised.

The payments will also be indexed to account for the rising cost of living.

A payment under the scheme is unlikely to affect a participant's Disability Support Pension. Most people will continue to receive the Disability Support Pension in the usual way. Some people will need to have an asset test.

There is detailed information about how the payments are worked out on page 23.

Participants cannot take part in any legal proceedings about the BSWAT if they accept a payment from the scheme.

You may be aware that there is a class action court case currently underway about the BSWAT (more information, including the settlement reached in this class action, is found on page 10). There is important information about accepting a payment offer from the scheme for group members in the class action on page 11.

If a participant is not offered a payment through the scheme, or if they decide not to accept a payment that is offered to them through the scheme, they can still take part in other legal proceedings about the BSWAT, including the class action (if it continues).

What are the roles of legal advisors and financial counsellors?

If a participant is considering accepting the payment that they have been offered through the scheme, they will need to discuss their options with a legal advisor and a financial counsellor.

A participant's legal advisor and financial counsellor will sign a certificate to confirm that they've discussed the payment offer under the scheme.

After the meeting, it is the role of the financial counsellor and legal advisor to lodge the signed certificates with the Department.

It is the participant's role to send in the acceptance form to the Department.

The Government wants to make sure that participants and their nominees have received independent advice and help about their individual situations, and that they understand the consequences of a decision to accept or decline a payment offer.

You can find detailed information about your role as a legal advisor on page 15.



Legal proceedings about the BSWAT

As you may know, some legal proceedings about the BSWAT have commenced and some have already taken place – see *Nojin & Prior* proceedings referred to on page 6.

On 20 December 2013, an ADE worker with disability, Mr Tyson Duval-Comrie started a representative proceeding (also called a ‘class action’) against the Australian Government.

The class action is on behalf of all people with intellectual disability employed in ADEs as at, or before 22 October 2013, whose wages had been assessed under BSWAT or whose wages, as at 22 October 2013, were proposed to be assessed under BSWAT. People can sometimes be a group member in a class action without being aware they are involved.

More people are in the class action now than when it started.

In the past, the class action only applied to people who were working in an ADE on 22 October 2013. Now, the class action may also apply to people who were working in an ADE on or before 22 October 2013.

A person is now automatically a group member of the class action if they:

- have an intellectual disability
AND
- were working in an ADE on, or before, 22 October 2013
AND
- had their wages worked out using the BSWAT.

A person will not be a group member if they have opted out of the class action. This is a formal court process which requires the submission of a specific form to the Federal Court by a particular date.

Original group members were given an opportunity to opt out by 11 June 2015 but that date was then extended to 16 October 2015. If a group member did not submit the specific form to the Court by 16 October 2015, they remain a group member.

People who have recently become group members as a result of the change to the rules (see above) are being given an opportunity to opt out of the class action by 23 April 2016. Those people will be sent information about the opt out process including the specific form, in February 2016.

The official name of the proceeding is Tyson Duval-Comrie v Commonwealth of Australia VID 1367 of 2013 and you can access information about the class action at:

www.comcourts.gov.au/file/Federal/P/VID1367/2013/actions

In the class action, Mr. Duval-Comrie has said to the court that:

- Under BSWAT, people with an intellectual disability are paid less for the same work than people who do not have an intellectual disability.
- This is not fair. In the law, this is called discrimination and it is not allowed to happen.
- Other people like him should get more money because the BSWAT was used to work out their wages.

The Government does not agree with what Mr. Duval-Comrie says. The Government has said to the Court that using the BSWAT to work out the wages of people with intellectual disability was not discrimination because:

- Using the BSWAT to work out wages for people with intellectual disability was a fair way to work out their wages.
- ADEs have done nothing wrong by using BSWAT to work out wages for people with intellectual disability.

Settlement of the class action

Mr. Duval-Comrie and the Government have recently agreed to settle the class action instead of asking the Court to decide who should win the case.

As part of the settlement, the Government has agreed to seek to change the law about the scheme so that, amongst other things, people get more money from the scheme – the proposed changes to the law are discussed below.

If the proposed changes to the law are passed by Parliament, Mr. Duval-Comrie and the Government will ask the Court to end the class action.

The Court still needs to approve the settlement. The Court will only approve the settlement and end the class action if it thinks the settlement between Mr. Duval-Comrie and the Government is fair and reasonable for the group members.

If the Court thinks the settlement is fair and reasonable:

- group members may get more money from the scheme
- they won't be able to take part in any other court case about the BSWAT.

What if the law is not changed or the settlement is not approved by the Court?

If the Government does not get the law changed, or the Court does not think the settlement is fair and reasonable:

- the class action will continue; and
- the Court will decide whether the BSWAT was a fair way to assess wages.

If the Court decides that using the BSWAT to work out Mr. Duval-Comrie's wages was not fair and reasonable, group members may get compensation. Any compensation paid might be more or less than a payment offered through the scheme. Any compensation paid through a legal proceeding (including the class action) could be taxed and may affect the person's Disability Support Pension.

If the Court decides that using the BSWAT to work out Mr. Duval-Comrie's wages was fair, group members won't get compensation.

If the Court decides that a group member did not lose any money when their ADE used the BSWAT to work out their wage, they will not get compensation.

Important information for group members about accepting payment offers

If a group member accepts a payment offer from the scheme, they will not be able to be part of any legal proceedings about the BSWAT.

If a group member accepts a payment offer from the scheme before the class action ends, they will automatically be excluded from the class action.

If the changes to the law about the scheme are passed by Parliament and the Court approves the settlement:

- The class action will end.
- If group members want a payment, they will need to register and apply to the scheme for a payment – as discussed above, if the Court approves the settlement, group members will not be able to be part of any other legal proceedings about the BSWAT.
- Group members will need to register by 30 April 2017, apply by 30 November 2017 and accept any payment offer from the scheme by the important dates referred to on page 18 as extended by 12 months.
- The scheme will pay the increased payment of 70 per cent – see page 5.

If the changes to the law about the scheme are **not** passed by Parliament:

- The class action will continue.
- Group members will still be able to accept payment offers from the scheme so long as they have registered for the scheme by 30 April 2016, apply to the scheme by 30 November 2016 and accept any payment offer by the important dates on page 18.
- The payment offer will be the current offer of 50 per cent.
- As discussed above, if a payment offer is accepted, the group member will be automatically excluded from the class action and will not be able to be part of any other legal proceedings about the BSWAT.

OR

- Group members can decide to not accept a payment offer from the scheme and stay part of the class action where they may receive compensation if Mr Duval-Comrie wins the class action. Group members can stay in the class action if they have registered and applied for the scheme but not if they have accepted a payment offer from the scheme.

Making a decision

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

Any decision a person makes will not affect their current job or wages.

If a person accepts an offer under the scheme, they will not be able to take part in any legal case about the BSWAT.





Who is eligible for the BSWAT Payment Scheme?

The *Business Services Wage Assessment Tool (BSWAT) Payment Scheme Act 2015* sets out the eligibility criteria a person must satisfy and the definition of intellectual impairment to be used in relation to the scheme in Part 2, subclauses 6(1) and 6(2).

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

- an intellectual impairment
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).

For the purposes of the scheme, intellectual impairment means a person who has:

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

To receive a payment offer, participants must follow the steps of the process and meet all of the deadlines. You can check the important dates on page 18.

Examples

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 prorata 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.



What do legal advisors need to do?

To provide legal advice to a participant, you must be enrolled as a legal practitioner of the High Court, of another federal court or the Supreme Court of a state or territory, and hold a practising certificate.

It is important for legal advisors to thoroughly understand the scheme and help participants – most of whom will have intellectual impairment – to understand the legal and financial implications of accepting or declining a payment under the scheme.

It is expected that legal advisors will review the *Business Services Wage Assessment Tool (BSWAT) Payment Scheme Act 2015*, the *Business Services Wage Assessment Tool (BSWAT) Payment Scheme (Consequential Amendments) Act 2015*, the *Explanatory Memoranda* and the *Business Services Wage Assessment Tool (BSWAT) Payment Scheme Rules 2015*, which are available on the website at www.comlaw.gov.au/Details/C2015A00111

When providing advice you should consider the participant's individual legal situation and their options, including:

- what the participant has been offered;
- whether the participant is a group member of the class action;
- the progress of the class action; and
- any other relevant legal proceedings the participant may be involved in or have the opportunity to be involved in.

You can help a participant by:

- ensuring they have all the information they need to make a decision that is right for them
- having a clear understanding of the scheme so you can answer any questions they have about legal implications – you can use parts of the Easy Read handbook to explain concepts in a way that is easy to understand
- providing a signed Legal Advice Certificate to the Department
- reading the document called *About the BSWAT Payment Scheme: Information for legal advisors and financial counsellors – Helping people with intellectual impairment to make informed decisions about the scheme* – this document is available on our website at www.dss.gov.au/bswat-payment-scheme-resources

The *Helping people with intellectual impairment to make informed decisions* document offers you information about:

- preparing for your meeting
- creating a positive environment for everyone involved in the meeting
- communicating effectively with the participant and their support person
- using positive and inclusive language
- providing a clear action plan for the participant.

Certificate requirements

If a participant chooses to accept their payment offer, the Department must be provided with a Legal Advice Certificate and a Financial Counselling Certificate. This will demonstrate that the participant (or their nominee) has received independent advice and help, and that they have understood all the implications before making a decision about the scheme.

The Legal Advice Certificate must:

- be in an approved form (supplied in the participant's Letter of Offer)
- certify the matters specified in the approved form
- be signed by you, the advisor.

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, funded financial counselling is available to them in the same way as any other participant in the scheme.

If a participant's nominee for the scheme is also the person's financial guardian or administrator under state or territory law, the guardian is able to sign the Financial Counselling Certificate. However, if they wish to, they can still attend a financial counselling session with the participant.

Deadlines

The Legal Advice Certificate needs to be supplied to the Department by the date written on the participant's Letter of Offer. It is important that you supply the approved and signed certificate to the Department. We need to receive both the Legal Advice Certificate and the Financial Counselling Certificate before we can make a payment to the participant

Participants can ask for more time to return the certificates to the Department. They will need to do this by the date on their Letter of Offer.

Example

Charlie lodged an acceptance that was not accompanied by a Legal Advice Certificate and a Financial Counselling Certificate. Charlie stated that he didn't have time to see a legal advisor or financial counsellor, but he really wanted to accept the offer. Charlie has already received an extension of 28 days to the acceptance period. Unless Charlie receives legal advice and financial counselling and they lodge both certificates by the end of the acceptance period, he will not receive a payment through the scheme.

How will you be paid?

The Department will pay a flat fee of \$850 for your services.

You need to apply with the Department to provide legal advice under the scheme. An online application form is available on the Department website at

www.dss.gov.au/bswat-advisors-counsellors

In the application form, you can choose to be included on the Department's list for participants to contact. Once you have applied, the Department will provide you further information on, how to claim a payment via the online BSWAT Vouchers Provider Portal. When you make an electronic payment claim, you must upload a copy of the signed certificate via the online portal. You must do this prior to the participant's acceptance deadline.

Once the Department receives the signed certificate, it will refund a flat fee of \$850 for legal advice.

This amount will be paid by the Department regardless of the participant's decision to accept or decline the payment offer.

How does a participant choose a legal advisor?

Participants can choose their own legal advisor, or they can choose one from the list on the website at

www.dss.gov.au/bswat-advisors-counsellors



How does the BSWAT Payment Scheme work?

Important dates

Activity	Date
Registrations	By 30 April 2016
Applications	From 1 July 2015 to 30 November 2016
Acceptances	By the date in the Letter of Offer (and not past 31 December 2017)
Offers end (unless under review)	31 August 2017
All offers and refusals end	30 November 2017
Extensions	Must be sought by the date in the Letter of Offer

If the changes to the law about the scheme are passed by Parliament (see page 10), the important dates referred to above will be extended by 12 months.

Receiving an offer

When the Department receives an application, it will carefully review all the information provided by the participant. The Department will also review the available wage records. The Department will work out if the participant is eligible to receive a payment and how much that payment will be.

The participant will then receive a letter from the Department with the decision. This is called the Letter of Offer.

Some people will be told that they will **not** receive a payment because:

- they aren't eligible for the scheme
- the actual wage they received was more than what they would have received if only the productivity component of the BSWAT was used to assess their wages (see the formula underneath the heading 'What is being offered?' on page 7 above).

If the participant is not happy with the decision, they can ask for a review.

The participant can also ask for a review of the payment amount if they are unhappy with what has been offered. You can read about the review process on page 20.

Accepting an offer

If a participant is happy with their payment offer, they need to formally accept the offer by filling in the acceptance form and sending it back to the Department.

Once the Department has received the acceptance form and certificates, the Government will pay the offer amount directly into the participant's bank account.

The payment will be made as soon as possible after the Department receives the acceptance information.

Accepting the offer from the scheme means that the participant can no longer take part in any legal proceedings about the BSWAT. There is important information about accepting payment offers for group members in the class action on page 11. Further information about the class action is available on page 9.

Declining an offer

If a participant decides that they do **not** want to accept the offer, they can decline it.

They don't need to do anything to decline the offer. If the Department does not receive their acceptance information by the due date, the Department will assume that the participant has declined the offer.

If a participant declines an offer from the scheme they will still have the right to take part in other legal proceedings about the BSWAT.

If the participant is a group member of the class action court case and declines the offer from the scheme they will still be part of the class action. Information about the class action is available on page 9.





Asking for a review

If a participant is not happy with a decision that has been made about the scheme they can ask for a review. A participant can access an internal and external review process, and we explain these processes below.

They can ask for a review about:

- the decision that they are not eligible for the scheme
- the payment amount they have been offered (including if a determination is made that the payment amount is nil).

If a participant asks for a review after being told they are not eligible for the scheme, the Department will look at their information again. The request for a review of this decision must take place within 21 days of the decision being made.

If a participant is not happy with the amount of money that they have been offered they must ask for a review before the acceptance date on their Letter of Offer. A participant cannot ask for a review after an offer has been accepted.

To ask for a review, the participant needs to contact the BSWAT Payment Scheme information line on 1800 799 515 or email BSWATPayments@dss.gov.au

An internal review

An internal review will be done by the Department. The Department will look at the participant's information again.

The participant will need to provide:

- the reason they think the decision wasn't right
- paperwork that supports their case
- if it is a payment review, the reference number on their Letter of Offer.



The Department will then review the information as soon as possible and write to the participant with the results.

If the participant is still not happy with the decision they can ask for an external review.

An external review

An external review will be done by someone who is independent from the Department or the Government.

This person can be a retired judge or a senior lawyer with extensive experience. They will review all the information that the participant has provided and the decisions that have been made.

The external reviewer will then make a decision about what should be done next and a letter will be sent to the participant with the results of the review.

This will be the final decision. There will be no more reviews after this decision.

What if a participant changes their mind?

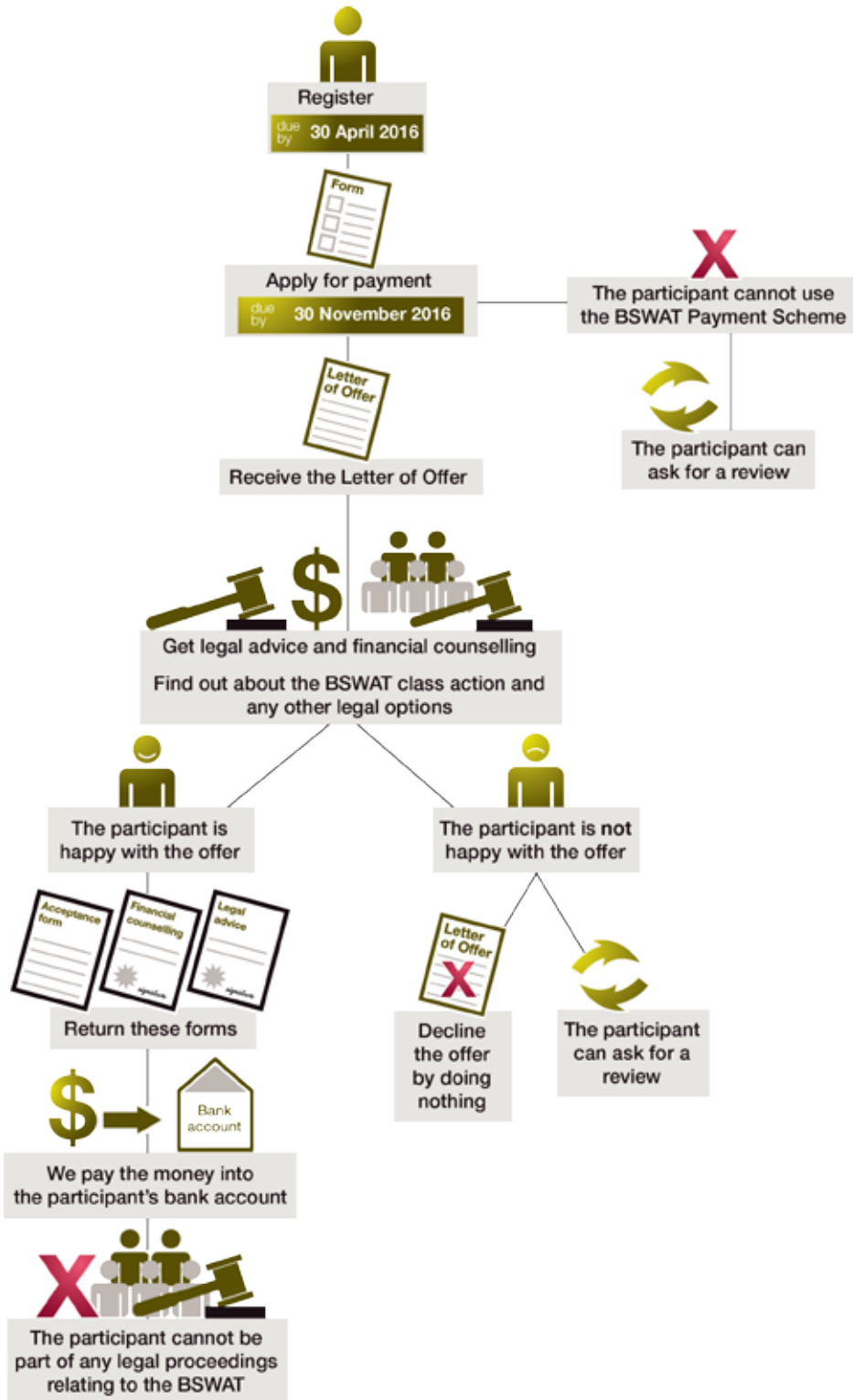
Participants can change their mind about applying for the scheme or about accepting or declining an offer. They just need to make their final decisions or take the action they need to by certain dates.

All the important dates are listed on page 18.

Participants need to accept their offer by the date included in their Letter of Offer. They won't be able to change their mind about accepting or declining the offer after this date.

A summary of the scheme process

If the changes to the law about the scheme are passed by Parliament (see page 10), the dates will be extended by 12 months.





How will the payments be calculated?

The BSWAT was used to work out how much supported employees should be paid based on two different assessments:

1. productivity
2. competency.

The productivity assessment looked at how much work a person did during a period of time.

The competency assessment looked at how well a person understood and did their job, or parts of their job.

The results of these two assessments were then combined to give the person a score. This score was used to work out the person's wages.

Under the scheme, the Department will work out how much someone would have been paid if only the productivity assessment was used to work out their wages. The Department will then look at how much the person was actually paid in wages. This amount will be subtracted from the amount that would have been paid had the productivity assessment only been used to work out the wage.

The Government will offer the person 50 per cent of this amount. If the changes to the law about the scheme are passed (see page 10), we will offer 70 per cent of this amount.

If a person's wages were worked out with the BSWAT several years ago, indexation will be applied to account for the rising cost of living.

Other benefits to accepting an offer for payment under the scheme

Some other benefits include:

- if offered a payment, the Department will pay the money quickly
- if participants have to pay additional tax on the payment, an extra amount will be provided to minimise the expected tax that the participant would be required to pay on the payment
- for most people, any payment they receive under the scheme will not reduce the amount of money they receive in Disability Support Pension.

How much will people be paid?

Everyone's situation is different and each participant's payment will depend on a variety of factors.

The lowest payment eligible participants will receive is \$100. Some participants may be paid several thousand dollars. Some won't be offered anything if their payment amount is nil.

The role of the support person

When meeting with and advising 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.

You can find out more about interacting with the participant and their support person by reading the *Helping people with intellectual impairment to make informed decisions* document. You can find the document on the website at www.dss.gov.au/bswat-payment-scheme-resources

What is the role of an advocate?

Many organisations in the community provide disability advocacy to ensure people's rights are promoted and protected. An advocate may support a participant to ensure their rights are respected.

What is the role of a nominee?

For the scheme, a nominee is a person who is 18 years of age or older. They must have agreed to be appointed to make decisions about the scheme for the participant, and they must be able to fulfil the duties and responsibilities of a nominee.

A nominee has a duty to find out and understand what the views of the participant are, and to 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 that is least restrictive of those rights when making decisions relating to the scheme

A nominee will often be a trusted relative, friend, associate or guardian of the participant.

One or more independent nominees can be appointed.

Under the Act, a nominee cannot be held criminally liable for anything done in good faith in their role as nominee, or for any act or omission of the participant.



A nominee:

- helps the participant to understand the application process and what the scheme is offering them
- helps the participant to understand their options and the decisions they need to make
- considers the participant's opinions and preferences when helping them to make a decision
- helps the participant to communicate their decisions and any questions they have
- is familiar enough with the participant's finances to be able to fulfil their duties as a nominee for the scheme
- respects the participant's human rights
- consults with the participant's family where appropriate, any court-appointed decision makers and the legal advisor and financial counsellor.

A participant, their family or network of supporters can ask the Department for a nominee to be appointed.

The Department can also appoint a nominee during the scheme if the Department considers that the participant needs a nominee to assist them.

Nominees for the scheme may already have a decision-making relationship with the participant.

A nominee can also be someone who:

- is a formal guardian for the participant under state or territory law
- has a financial management or administration role for the participant under state or territory law
- is a nominee for the participant for social security purposes.

If a nominee has court-appointed responsibility for managing the participant's finances, the nominee doesn't have to see a financial counsellor. The nominee can decide to sign the financial counselling certificate themselves. This includes State or Public Trustees who are the nominees for participants.

Suspending or cancelling a nominee appointment

The Department can suspend or cancel a nominee appointment at the request of a participant or a nominee. The Department can also suspend or cancel a nominee appointment if the nominee is unable to fulfil the duties or role of a nominee.

Participants can ask for a review of any decisions made by the Department about nominees. To support someone to do this, please call the BSWAT Payment Scheme information line on 1800 799 515.



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

A payment under the scheme is unlikely to affect a participant's Disability Support 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 during which the participant was paid wages using 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.





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 uses images to help explain the information.

