

# About the BSWAT Payment Scheme:

## Information for financial counsellors

February 2017



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ISBN: 978-1-925318-34-0

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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 financial counsellor, 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](http://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 also available on the website at [www.dss.gov.au/bswat-payment-scheme-resources](http://www.dss.gov.au/bswat-payment-scheme-resources)

The Department has contracted Financial Counselling Australia (FCA) to raise awareness of the scheme among financial counselling agencies and to support financial counsellors to undertake their role in the scheme effectively.

Further information and resources can be found on the FCA Toolkit website at [www.financialcounsellingaustralia.org.au](http://www.financialcounsellingaustralia.org.au)

### Acknowledgement

This document has been written by the Australian Government.

Editing and design by the Information Access Group.

Specialist communication consultation by Dr Sheridan Forster.

## 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). This tool is no longer used.

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. And the score was used to work out the person’s wages.

In 2012, the Federal Court determined that the BSWAT indirectly discriminated against two ADE employees with an intellectual disability. In particular, the Court found that the use of the competency assessment to assess the wages of those two supported employees was discriminatory.

Following that decision, the Australian Government set up the BSWAT Payment Scheme.

The scheme provides a one-off payment of $100 or more to eligible supported employees with intellectual impairment.

To receive a payment, a person must register with the scheme by 30 April 2017.

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 11.

The Australian Government Department of Social Services (the Department) is managing 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](mailto:BSWATPayments@dss.gov.au)

### What is being offered?

The scheme will pay eligible people 70 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 test

AND

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

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 them 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 20.

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

You may be aware that there was a class action court case about the BSWAT (more information, including the settlement reached in this class action is found on page 9). There is important information about accepting a payment offer from the scheme for group members in the class action on page 10.

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 in the future.

**When is financial counselling required?**

Participants are required to receive financial counselling before they can accept an offer if their offer of payment is at least $1,000.

If a participant has an offer of payment of less than $1,000, they are not required to receive financial counselling.

If a participant has a court-appointed financial decision-maker, administrator or guardian, they are not required to receive financial counselling, even if their offer   
of payment is more than $1,000.

The Government will pay for participants to receive counselling even if it is   
not required.

### What are the roles of financial counsellors?

The role of financial counsellors is to act as an independent source of information and to assist participants in understanding how an offer of payment can affect their financial situation.

If a participant is required to, or chooses to, work with a financial counsellor, the financial counsellor will sign a financial counselling certificate, included in the Letter of Offer package, to confirm that they’ve discussed the payment offer under   
the scheme.

After the meeting, it is the role of the financial counsellor to lodge the signed certificate with the Department.

It is the participants’ role to send the acceptance form to the Department.

You can find detailed information about your role as a financial counsellor on   
page 13.

### How will financial counsellors be paid?

The Department will pay a flat fee of $435 (GST inclusive) to a financial counsellor for each valid certificate that they sign and lodge with the Department. This payment is in addition to any funding you may receive for the provision of financial   
counselling services.

To claim a payment for providing financial counselling services under the scheme, you should apply as an official provider with the Department. An online application form is available on the Department’s website at   
[www.dss.gov.au/bswat-advisors-counsellors](http://www.dss.gov.au/bswat-advisors-counsellors)

In the application form, you can also choose to be included on the Department’s list of financial counsellors for participants to contact. Once your application has been approved, the Department will provide you further information on how to claim a payment via the online BSWAT Vouchers Provider Portal.

When financial counsellors make an electronic payment claim, they must upload a copy of a valid financial counselling certificate via the online portal. You must do this prior to the participant’s acceptance deadline.

Once the Department receives a valid signed certificate, it will refund a flat fee   
of $435.

This fee 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 financial counsellor?

Participants can choose a financial counsellor from the list on the website at [www.dss.gov.au/bswat-legal-financial-register](http://www.dss.gov.au/bswat-legal-financial-register), or they can see a qualified financial counsellor of their own choosing even if they are not on the list.

Financial counsellors not on the list should register with the Department before they claim a payment for the financial counselling fee.

## Legal proceedings about the BSWAT

Some people have taken part in legal proceedings about the BSWAT. For example, some people took part in a class action about the BSWAT.

A class action is a case started in court by one person for a group of people who have the same problems. This is sometimes called a representative proceeding.

In 2013, an ADE worker with intellectual disability, Mr Tyson Duval-Comrie started a class action against the Australian Government.

He was paid using the BSWAT.

He sought compensation for himself and other people who were paid using   
the BSWAT.

The class action was 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.

When you are part of a class action you are called a ‘group member’.

A person was 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 was not a group member if they opted out of the class action. This was a formal court process, which required the submission of a specific form to the Federal Court by a particular date.

The official name of the class action 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](http://www.comcourts.gov.au/file/Federal/P/VID1367/2013/actions)

**Settlement of the class action**

In February 2016, Mr. Duval-Comrie and the Government agreed to settle the class action instead of asking the Court to decide who should win the case.

As part of their agreement, the Government changed the law so that people will get more money from the BSWAT Payment Scheme. Now, people will get about 70% of the money that was claimed in the class action. Before the law was changed, they would have received about 50%.

Once the law was changed, Mr Duval-Comrie and the Government agreed that the class action should end.

On 16 December 2016, the Federal Court of Australia approved the settlement   
of the BSWAT representative proceeding *Tyson Duval-Comrie v Commonwealth   
of Australia* (VID 1367 of 2013).

The Judge ruled that the settlement terms were fair and in the interests of   
group members.

This decision means that the class action has now ended.

**Important information for participants**

Now that the class action has been settled, the scheme is the only way for group members to receive a payment.

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

**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 in the future.

## 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) and section 7.

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; or
* 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 15.

### 

### 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 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.

## What do financial counsellors need to do?

To provide financial counselling to a participant, you must be a fully accredited member of a state or territory association of financial counsellors.

It is important for financial counsellors to thoroughly understand the scheme   
and help participants to understand how an offer of payment can affect their   
financial situation.

Please read this document thoroughly and contact us if you have any questions.

The Department has contracted Financial Counselling Australia (FCA) to raise awareness of the scheme among financial counselling agencies and to support financial counsellors to undertake their role in the scheme effectively.

FCA will provide information; training and support to assist financial counsellors understand the scheme and receive support to work with people with   
intellectual impairment.

Telephone or online support is available through FCA’s BSWAT Hotline for Financial Counsellors: 03 8692 7205 or [rita.battaglin@financialcounsellingaustralia.org.au](mailto:rita.battaglin@financialcounsellingaustralia.org.au). Further information and resources will be available on the FCA website at [www.financialcounsellingaustralia.org.au](http://www.financialcounsellingaustralia.org.au)

You can also call the BSWAT Payment Scheme information line on **1800 799 515** or email [BSWATPayments@dss.gov.au](mailto:BSWATPayments@dss.gov.au)

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 financial implications – you can use parts of the Easy Read handbook to explain concepts in a way that is easy to understand
* checking if they have any financial obligations, such as child support payments, that could be affected by a BSWAT payment – you may need to refer them to the relevant agency, such as Centrelink, for specific advice
* providing a signed Financial Counselling 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](http://www.dss.gov.au/bswat-payment-scheme-resources)

The *Helping people with intellectual impairment to make informed decisions* document will help you to:

* prepare for your meeting
* create a positive environment for everyone involved in the meeting
* communicate effectively with the participant and their support person
* use positive and inclusive language
* provide 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 Financial Counselling 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 counsellor.

#### ****Dead****l****ines****

The Financial Counselling 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 does the BSWAT Payment Scheme work?

### Important dates

|  |  |
| --- | --- |
| **Activity** | **Date** |
| Register for the scheme | By 30 April 2017 |
| Apply for a payment | By 30 November 2017 |
| Accept a payment offer | By the date in the Letter of Offer  (and not past 31 December 2018) |
| Extensions of time | Must be sought by the date in the Letter  of Offer |

### Receiving a payment 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; or
* 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 6).

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 17.

### 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 in the future. There is important information about accepting payment offers for group members in the class action on page 10. 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.

## 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](mailto: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.

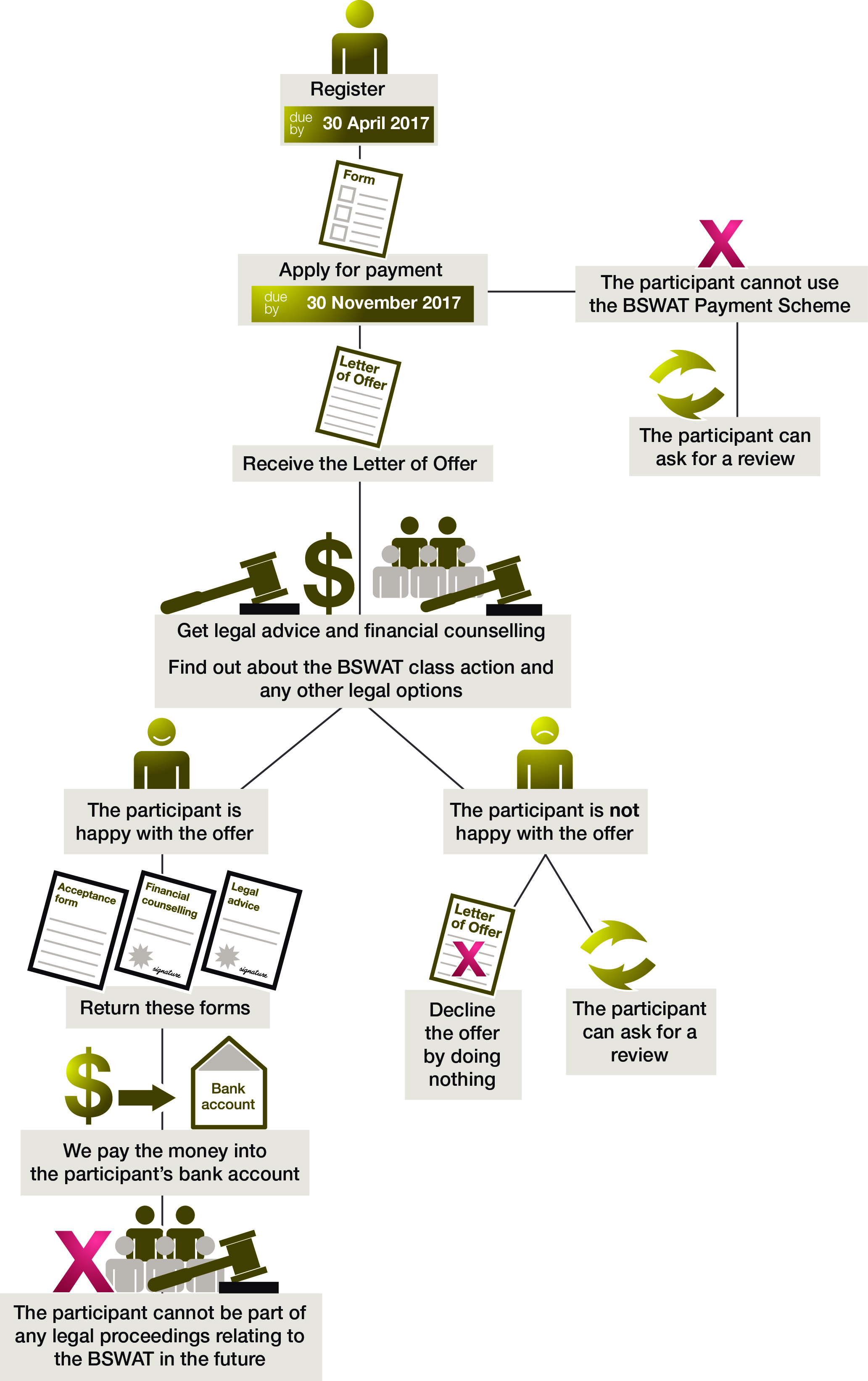
### What if a participant changes their mind?

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 15.

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



## 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. And the 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 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 their 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 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.

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](http://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.

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.

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. However, if they wish to, they can still attend a financial counselling session with the participant.

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.

#### 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 Support 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.

### 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 Payment Scheme information line on **1800 799 515**
* emailing [BSWATPayments@dss.gov.au](mailto:BSWATPayments@dss.gov.au)
* visiting the website at [www.dss.gov.au/bswat](http://www.dss.gov.au/bswat)

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](http://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
* *Information for medical practitioners*

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

The Department has also developed a series of short videos that can be played for participants and their family members or supporters.