# Part 1 – background and eligibility

## Shot of presenter talking

Hi.

This video will provide you with information about the BSWAT Payment Scheme. Throughout the video, I’ll call it the *Scheme* for short.

The purpose of this video is to tell you:

* What the Scheme is
* Why the Scheme is being offered
* Who can apply for the Scheme
* How you can apply for the Scheme and
* Where you can go if you need further information

## Slide 2:

There are different ways to work out how much people in supported employment should be paid. One of the tools that was used was called the Business Service Wage Assessment Tool, or the BSWAT for short.

There was a court case that decided that the BSWAT was not the best way to work out the wages of 2 people who have an intellectual disability. Following this court case, the Scheme has been set up by the Australian Government to give eligible people a one-off payment.

## Slide 3:

Some people are taking part in a legal case about the BSWAT.

For example, some people are currently taking part in a class action about the BSWAT.

A class action is a case started in court by 1 person for a group of people who have the same problems.

In 2013, a man named Tyson Duval-Comrie started a class action against the Australian Government.

Tyson is a supported employee with an intellectual disability. He works for an ADE and he was paid using the BSWAT.

Tyson is seeking compensation for himself and other people who were paid using the BSWAT.

Anyone who had their wages worked out using the BSWAT on or before 22nd October 2013 and who has an intellectual disability is automatically part of the class action unless they have “opted out”. This means that they have sent a form saying that they do not want to be part of the class action.

Recently, Tyson and the Government came to an agreement about what should happen in the class action. Together, they decided to settle Tyson’s case out of court.

This means that they won’t ask the court to decide who should win the case.

This is called a **settlement.**

Tyson and the Government have agreed to several things in the settlement.

Tyson and the Government agreed that the Government would try to change the law so that people get more money from the Scheme. This has now happened.

Now, people will get about 70 per cent of the money that was claimed in the class action.

Before the law was changed, they would have received about 50 per cent.

Now that the law has been changed, Tyson and the Government agree that the class action should end.

The Judge still needs to agree to this settlement. The Judge will need to say it’s fair to everyone in the group.

If the Judge agrees with the settlement, the class action will end.

Group members will be able to register and apply to the Scheme to get a payment. This will be the only way to get a payment.

Group members won’t be able to take part in any other legal case about the BSWAT in future. People can seek legal advice if they are concerned.

If the Judge says the settlement is not fair, the class action will continue.

This means that the Judge will then still need to decide who wins the case.

The Judge might say that the BSWAT was not a good way to work out Tyson's wages, and that Tyson should win.

Or, the Judge might say that the BSWAT was a good way to work out Tyson's wages and that the Government should win.

If Tyson wins, group members may get money from the class action.

If the Government wins, group members won’t get money from the class action.

In the court case we were just telling you about, a legal company called Maurice Blackburn Lawyers have been representing Tyson in the class action. You can read about this on Maurice Blackburn Lawyers’ website.

Don’t worry if you don’t understand everything we have said about the law and the class action – if you need help in understanding it, or in making a decision there are people who can help. If someone applies for the Scheme and is offered a payment, they can ask someone who knows about the law to explain it to them before they decide whether to accept a payment. I’ll tell you about this later.

## Slide 4:

Payments will be offered to some people who work, or who have worked, in an Australian Disability Enterprise, or ADE for short.

The amount of money that people will receive is different for each person. Some people may not get any money, as they may not be able to apply or because of the way they were paid in the past. Other people may be paid an amount that will be worked out by the Government.

It is *really* important to know that people’s jobs are safe. *No one* will lose their job because they apply for a payment, and it will *not* affect the money they are currently paid.

## Slide 5:

The Scheme is being offered to people who have an intellectual impairment. The Government has said that this means someone who has an intellectual disability, autism spectrum disorder, dementia, or an impaired intellectual functioning as a result of an acquired brain injury.

If you're not sure if someone meets this requirement, you can ask someone to help you, or you can apply and the Government can help you to work this out.

## Slide 6:

If a person has an intellectual impairment, there are some other things you need to be eligible to apply. These things are:

* They must have worked at an ADE for at least 1 day between the 1st of January 2004 and the 28th of May 2014. This can include an ADE they currently work at or an ADE they might have worked at before
* They must have had support to do their job each day at the ADE. This means that the supervisors or other staff at the ADE helped them with their work.
* They must have had their pay worked out at some point using the BSWAT. Most people will have recently been assessed using a different assessment tool, and that’s okay, as long as at some time before that, they have had an assessment using the BSWAT. If you’re not sure, you can ask an ADE manager or supervisor about this.
* If they have been part of a legal case about the BSWAT, they cannot have accepted any money from that legal case. If they are part of the court case at the moment, they can apply for a payment. But, if they get offered and accept a payment from the Scheme, they then can’t be part of any court case in the future.

So if the answer is yes to all of these things then a person is able to apply. If you are not sure, you can still apply and the Government will help to work it out.

# Part 2 – How payments are worked out and impact on DSP and tax

## Shot of presenter talking

So what does all of this mean so far?

* If someone is eligible for the Scheme, they can put an application in. The Government will look at your application and work out if you will receive a payment, and if you do, how much that payment will be.
* If someone is not sure if they are eligible, they can still put an application in. The Government will look at your application and work out if you are eligible or not. If you're not eligible, they'll send you a letter to explain why. If you are eligible, they'll have a look to see if you receive a payment, and if you do, how much that payment will be.

It’s important to remember that not everyone will receive a payment:

* Even if someone is eligible for the Scheme, they may not be made a payment offer. I'll tell you more about that soon.
* I'll now tell you a bit about how the payment is worked out. I'll do this by first telling you about the BSWAT assessment and how that was used to work out wages and then this will help to explain the payment.

## Slide 7:

The BSWAT tested productivity and competency.

Productivity means how *fast* someone did their job. Competency means how well someone *understood* and did their job.

## Slide 8:

To work out how much a payment amount is, the Government will work out how much a person would have been paid if *only their productivity score was used*. So, how much someone would have been paid if they only looked at how quickly they worked. They will then look at how much someone has *actually* been paid. If they have been paid *less* than their productivity score says they should, *and* they meet the eligibility criteria, then they will receive a payment. If they have been paid the same or more than their productivity score says they should, then they will not receive a payment.

## Slide 9:

The example on the screen gives an example of how someone’s BSWAT score will be used to work out how much they will be paid.

In this example, the person’s BSWAT assessment gave them an overall score of 40 per cent. In that same assessment, their productivity score was 60 per cent. So the difference between the productivity score of 60 per cent and the overall score of 40 per cent, is equal to 20 per cent. So this means that if only productivity was used, the person should have been paid 20 per cent more.

## Slide 10:

If someone has been paid an amount less than the productivity score amount, and they are eligible for the payment, the Government will pay 70 per cent, or 70c for every $1 of difference between the two amounts.

Originally the Scheme paid 50 per cent. The Government and Tyson agreed to increase the Scheme to 70 per cent.

The Government will also pay extra money for indexation. Indexation relates to the way the cost of everyday expenses goes up over time. For example, in 2005, it may have cost $250 per week to rent an apartment or a house. But in 2015, it may have cost $300 per week.

Also, to make sure that people keep the money that the Government has worked out that they should receive, they will also pay extra money if tax might have to be paid on that payment.

## Slide 11:

Some people have asked if the payment will affect their Disability Support Pension, or other payments they receive like Family Tax Benefit or Child Support. The one-off payment is unlikely to affect Disability Support Pension because it’s not counted as income.

But, for some people who have a lot of assets (like a house or a lot of money in the bank) the payment might be included in the assets test. This might affect other payments they receive. Anyone who is offered a payment will be able to talk to someone who can help them understand if this will affect them.

## Slide 12:

The Government wants to make sure people keep the full amount of their payment after tax.

If you receive a one-off payment from the Scheme, you may not have to pay tax on that money. But, if you do, the payment will include an extra amount of money to help meet the expected cost of that tax.

Most people have to lodge a tax return if their taxable income for the year (which includes the BSWAT lump sum payment) exceeds $18,200. Although the payment may be for more than one year of supported employment, it is taxed in the financial year it is received.

But, people can claim what is called a ‘lump sum in arrears tax offset’ when they lodge their tax return. This could reduce the amount of tax that may need to be paid. More information about this is available at the Australian Taxation Office website. Also, if you are offered a payment, you can go to financial counselling to help you to understand what it will mean for your tax.

# Part 3 – Seeking advice, appointing a nominee and how applications are processed

## Slide 13:

There are 6 steps in the Scheme. It is important to follow every step.

You need to:

* Register
* Apply for a payment
* Receive a letter of offer
* Get financial counselling if your offer is over $1,000
* Get legal advice if that’s right for you; and
* Say yes or no to the offer

## Slide 14:

Financial counselling is provided by a **financial counsellor**. Financial counselling can be accessed once a payment offer is made. This can help people to understand how a payment will affect their financial situation.

Some people will be able to choose whether or not they want to speak to a financial counsellor. Other people will have to speak to a financial counsellor before being able to accept a payment offer.

If you receive a payment offer of more than $1,000, you must see a financial counsellor before accepting the offer. The exception to this is if you have a financial decision maker such as a nominee or guardian who legally acts on your behalf. In this case your nominee can choose not to receive financial counselling if they don’t feel that it is needed.

If a payment offer is less than $1,000 you can choose whether to see a financial counsellor or not.

The Government will pay up to $435 for you to speak to a financial counsellor.

## Slide 15:

Legal advice is provided by a **legal advisor**.

Legal advisors can help people understand what it will mean if they say yes to accepting a payment. If a person says yes to accepting a payment, they can’t take part in any legal proceedings about the BSWAT in the future.

When you receive a payment offer, you have the option to seek legal advice about the offer. If you don’t want legal advice, you don’t have to get it. But, if you do want it, the Government will pay up to $850 for you to see a legal advisor.

## Slide 16:

Remember that not everyone has to see a financial counsellor or legal advisor – the letter of offer will tell you if you need to or not.

When you meet with a financial counsellor or legal advisor, they will discuss what the payment offer means for your legal or financial situation. This can help you decide whether or not to accept the payment offer.

After the meeting, the financial counsellor and legal advisor sign the certificate that came with your letter of offer and they send this to the Government. This is how they get paid for their help.

If you decide to accept a payment but you do not see a financial counsellor or legal advisor you will need to sign a form to say that you decided you did not want this advice. This form will come with the letter of offer and needs to be returned with the payment acceptance form.

For people who have a financial decision maker as their nominee, the nominee can sign the financial counselling certificate if they do not feel that advice from a financial counsellor is needed. This certificate is sent back with the acceptance of a payment offer.

## Slide 17:

By getting independent financial counselling and legal advice, the Government will know that:

* everything has been explained to you by people who understand the law and money, and that
* You have been able to make a decision that’s right for you.

 If you decide not to accept an offer from the Scheme, you don’t need to see a legal advisor or financial counsellor. But, it can be a good idea to get this advice before making this decision.

## Slide 18:

You can choose your own legal advisor or financial counsellor. If you already have a legal advisor or financial counsellor that you like working with, you can ask them to help.

Or, the Department of Social Service’s website has a list of advisors and counsellors that can help. None of these people work for the Government. We’ll provide you with the Government’s website address at the end of this video.

If you do choose your own financial counsellor or legal advisor, the Department’s website contains information on what they need to do as part of providing advice on the Scheme, including how they register to ensure they are paid by the Government for the advice they provide.

## Slide 19:

So who else can help you?

You can seek advice from anyone you trust:

* to help you to decide whether you should apply for the Scheme,
* to help you complete the application form, and
* to understand any letters that you are sent about your application or payment offer.

These people can include adult family members or friends, or someone you already use as an advocate, guardian or nominee.

If you want someone to make decisions for you, you can write the name of this person on your application so that the Government knows who they should talk to. This person would be called a nominee.

## Slide 20:

A nominee can be a family member, a friend or other person who you trust.

All nominees must be more than 18 years old.

A nominee can’t be someone who works for the Department of Social Services or someone who works at an ADE, unless they are related to you.

## Slide 21:

So what does a nominee do?

A nominee has a duty to find out *your* preferences in relation to the Scheme, and to act on those preferences.

If a nominee is listed, any letters or notices that would be normally be sent to you will be sent to your nominee.

The nominee is responsible for making sure the application and all documentation is sent to the Government. They also have to make sure that any letters that are sent by the Government are responded to on time. This may include providing more information that the Government says they need to be able to process your application.

## Slide 22:

What happens if you apply for the Scheme?

The first thing that happens is the Government will read all the information in your application.

They will follow a set of rules to work out if you can take part in the Scheme and be made an offer.

They will then send you a letter with their decision.

* For some people, they will receive a letter telling them they are not able to take part in the Scheme, either because they are not eligible or that they are not entitled to any money. The letter will say why the Government has decided this.
* Other people might receive a letter telling them that they need to provide more information before their application can be processed – the letter will say what information needs to be provided and how to do this.
* Other people will receive a letter of offer telling them how much money they can be paid. The letter will say all the things the Government thought about when they worked out how much could be paid. The letter will also include an acceptance form and other documents that need to be completed – the letter will say how to do this.

All of the letters that are sent will say what date things need to be done by.

If you don’t agree with a decision the Government has made, you can ask for a review.

# Part 4 – How to apply, how to accept a payment offer, and how to get more information

## Shot of presenter :

I’ll now tell you what needs to happen if the Government offers you a payment and you want to accept it.

If the Government offers you a payment but you have changed your mind and you don’t want to accept it, you don’t need to do anything.

Don’t worry about trying to remember all of the steps that I’m going to tell you – any letter that the Government sends to you will tell you what you need to do next.

## Slide 24:

If payment is offered a letter of offer will be sent to you.

The letter of offer will includean acceptance form and certificates for financial counselling and legal advice.

Some people will speak to a financial counsellor or legal advisor before they decide whether they will accept the payment offer. The financial counsellor or legal advisor will sign the certificates and they will send them to the Government.

If you do not speak to a financial counsellor or legal advisor, the letter of offer will tell you what to do with the certificates.

Once the acceptance form and certificates have been filled in, they need to be sent to the Government. The letter of offer will tell you what address to send these to.

It's important to remember, that if you accept a payment from the scheme, you can’t take part in any legal proceedings about the BSWAT in the future.

When the Government receives the acceptance forms they will check to make sure they have everything they need. If there is anything missing they will let you know.

Before you accept a payment you might need to show proof about who you are. This means that you might be asked to give them a document that shows that you are the person who has applied for the Scheme. This won’t be necessary for everyone, just some people. The Government will tell you if you need to do this.

Once they have everything they need the Government will pay the money.

It's important to remember that the letter of offer will say how long you have before you need to tell the Government if you want to accept a payment. If you need more time you need to ask the Government for this before the date in the letter of offer. The letter of offer will tell you how to do this.

## Slide 25:

So how long will the process take?

The time the process takes will depend on if the Government has all of the information they need or if they need to ask you for more information.

Each application will be processed by the Government as quickly as possible.

If you receive a payment offer you will usually be given 90 days to accept the offer – you can ask for more time if you need it, up to 28 days.

If the Government says you are not eligible for a payment you will have 21 days if you want to ask them to review this – again, you can ask for more time if you need it, up to 28 days.

Once you accept an offer, the Government will pay the money as quickly as possible. The money will normally be paid into your bank account unless a different way has been agreed to.

## Slide 26:

So how do you apply for the Scheme?

Registering for the Scheme and applying for the Scheme are two different things.

If someone applies for the Scheme before the first of May 2017, then they don’t need to register separately.

But, if someone is not sure if they want to apply, but they want to be able to change their mind, they need to register.

To register, they need to contact the Government to give them their contact details. Registering is a way of letting them know that you want more information about the Scheme. When someone registers, the Government will send them information and forms. We will provide you with contact information for the Government at the end of the video. Registration needs to be done by the first of May 2017.

If someone wants to apply and they're going to apply before the first of May 2017, then separate registration isn’t needed – the application form will also register the person. Remember that if someone is *not* sure if they want a payment, they *can still apply* and decide later if they want to accept any payment they are offered.

To apply, you need to fill in an application form.

You can ask someone to help you fill in the form.

The form tells you all of the information that is needed. Once the form is filled in, it gets sent to the Government to read and work out if someone gets a payment.

Sometimes the Government might ask people for more information before they can make a decision – if they do, they will always say what information they need and why they need it.

Another important point for some people to know, is that if there was someone who would have been eligible for the Scheme who has died, their legal personal representative (which could be a family member, friend or legal representative) can still apply to the Scheme. To do this, they will fill in the application form and tick a box to say they are applying on behalf of someone who is deceased. The Government will then send them a second form that also needs to be filled in.

## Shot of presenter talking:

I hope the information in this video has helped you to understand the BSWAT Payment Scheme and to help you to decide if you want to apply for the Scheme. If you need more information or you have any questions that you want to ask, there are a number of ways that you can do this.

## Slide 27:

You can get more information by:

* Reading the BSWAT Payment Scheme handbooks that are available on the Department of Social Services website. These include one for families, advocates and nominees, and another one for supported employees.
* You can also get other written information about the Scheme from the Department’s website. The website address is shown on the screen. It is [www.dss.gov.au/bswat-payment-scheme](http://www.dss.gov.au/bswat-payment-scheme)

If you want to speak to someone to ask questions you can call the Department’s information line on 1800 799 515 or you can email them with any questions you have at bswatpayments@dss.gov.au