

OPT OUT NOTICE

This is important information for you. It is about a legal case that you might be part of.

The Court has asked us to send you this information because you need to decide whether you want to stay part of the case.

If you do not understand this notice, you should show it to:

- A family member;
- A guardian;
- An advocate; or
- Someone else you trust to help you make important decisions.

This notice is not legal advice.

What is this notice about?

This notice is about a court case started by Mr Tyson Duval-Comrie as a “class action”.

He has started this case in the Federal Court of Australia against the Commonwealth Government (the **Government**).

Mr Duval-Comrie is a supported employee with intellectual disability.

He works in an Australian Disability Enterprise (**ADE**) in Victoria.

Mr Duval-Comrie’s wages at his ADE have been worked out using the Business Services Wage Assessment Tool (**BSWAT**).

His case is about wages worked out using the BSWAT and paid to supported employees with intellectual disability in ADEs.

We are sending you this notice because you may be working in an ADE now, or you may have worked at one in the past.

Mr Duval-Comrie started the case against the Government because it owns the BSWAT.

Mr Duval-Comrie’s lawyers in this case are Maurice Blackburn Lawyers.

More people are now part of this case. You might now be part of this case.

What is a class action?

This type of case is called a “**class action**”. It is also called a “representative proceeding”.

A class action is a case started in court by one person for a group of people.

This group of people have the same problem with something that has happened to them.

This group of people are called “group members”.

You may be a group member if you have had the same problem with the BSWAT that Mr Duval-Comrie says he has.

What is this class action about?

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.

BSWAT payment scheme

You may have heard about the BSWAT payment scheme that has been set up by the Government.

You may be able to get money from the BSWAT payment scheme if:

- you have an intellectual impairment (which includes an intellectual disability); and
- you had your wages worked out using the BSWAT.

The money you may get is about 50% (or half) of the money that Mr Duval-Comrie claims for group members in the class action.

What has happened in the class action?

Two things have happened in the class action.

1. Mr Duval-Comrie and the Government have agreed on what should happen in the class action instead of asking the Court to decide who should win the case. This is called a “**settlement**”.
2. The Court has agreed to change the class action so more people are group members in the class action. You could be one of those new group members.

The settlement

Mr Duval-Comrie and the Government have agreed to the following things in the settlement.

The Government has agreed to try to change the law so that people get more money from the BSWAT payment scheme.

If the law is changed, people will get 70% instead of 50% (or half) of the money claimed in the class action.

If the Government is able to get the law changed, Mr Duval-Comrie and the Government will ask the Court to end the class action.

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

Are you in the class action?

As explained above, the class action has been changed so more people are now group members in the class action. You are a group member in the class action if:

- You worked in an ADE before or on 22 October 2013 – previously, only persons who were employed on 22 October 2013 could be group members;
- You have an intellectual disability; and
- Your wage was worked out using the BSWAT; or (on 22 October 2013) your wage was going to be worked out using the BSWAT.

If you do not know whether your wage has been worked out using the BSWAT, ask your supervisor or manager at work.

What are my choices?

You have two choices:

- You can stay in the class action; or
- You can opt out of the class action.

How do I stay as a group member?

If you want to stay as a group member in the class action, you don't have to do anything.

What does staying in the class action mean for me?

If you stay in the class action, the Court's decision about whether the settlement between Mr Duval-Comrie and the Government is fair will apply to you.

If the Court thinks the settlement is fair:

- you may get more money from the BSWAT payment scheme;
- but you won't be able to take part in any other court case about the BSWAT.

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

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

That means:

- If the Court decides that using the BSWAT to work out Mr Duval-Comrie's wages was not fair, you may get compensation.
- If the Court decides that using the BSWAT to work out Mr Duval-Comrie's wages was fair, you won't get compensation.
- If the Court decides that you didn't lose any money when your ADE used the BSWAT to work out your wage, you won't get compensation.

Will I have to pay money if I stay in the class action?

If you use Maurice Blackburn to work for you in the class action, you will not have to pay any money to Maurice Blackburn.

You will only have to pay money if you decide to use a different lawyer to work for you in the class action.

How do I opt out?

No one had to ask you to be a group member in this class action.

If you are a group member in the class action but want to stop being part of the case, you need to let the court know. This is called "opting out".

If you "opt out", and you want to make your own legal claim about BSWAT, you will have to do that yourself.

If you "opt out" and you do not want to make your own legal claim you will not be part of any court action about BSWAT.

You can "opt out" by filling in the form on page 5.

You will then need to send the form to the Federal Court by 23 April 2016.

The address of the Federal Court is on the form.

What if I cannot understand or need help?

If you cannot understand any part of this notice or need help to fill in the form, you should ask a family member or guardian, an advocate, or someone you trust to help you make important decisions.

What do I do if I have any questions?

If you have any questions about the class action, you or someone you trust can see the court documents of Mr Duval-Comrie and the Government at:

www.fedcourt.gov.au/case-management-services/class-actions

www.mauriceblackburn.com.au/BSWAToptout .

Or you or someone you trust can call Maurice Blackburn Lawyers at 1800 645 990.

Remember:

- If you want to stay in the class action – do nothing.
- If you want to leave the class action, complete and return the form on page 5.

Opt out notice

No. VID 1367 of 2013

Federal Court of Australia
District Registry: Victoria
Division: General Division

TYSON DUVAL-COMRIE (by his litigation representative CLAUDINE DUVAL)

Applicant

COMMONWEALTH OF AUSTRALIA

Respondent

To: The Registrar
Federal Court of Australia
Victoria District Registry
Owen Dixon Commonwealth Law Courts Building
305 William Street
Melbourne VIC 3000

_____ [PRINT NAME], a group member in this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that _____ [PRINT NAME] is opting out of the representative proceeding.

Date:

Signed by [PRINT NAME]