

# Opt out notice

**This notice is important.**

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**Don't worry.**

**You haven't done anything wrong.**

**This notice has information that may be important to you.**

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This notice is about a legal case that you might be a part of.



You need to decide if you want to stay part of the case.



This document is not legal advice.

You can get legal advice if you want to.



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

- a family member or guardian
- an advocate – someone who can speak up for you
- someone else you can trust to help you make important decisions.

## How to use this document



This document has been written by the Federal Court of Australia. When you see the word 'we', it means the Court.



This information is written in an easy to read way.  
We use pictures to explain some ideas.



Some words are written in **bold**. We explain what these words mean. There is a list of these words on page 25.

## **What's in this document?**

Have you heard of the BSWAT?	4
What is the legal case about?	5
What is the BSWAT Payment Scheme?	9
Are you in the class action?	12
Recent changes for the class action	14
What are your choices?	16
What does staying in the class action mean for you?	17
Will you have to pay money to take part in the class action?	20
Choosing not to take part in the class action	21
What if you can't understand or need help?	23
Word list	25
Opt out notice	27

## Have you heard of the BSWAT?



BSWAT stands for **Business Services Wage Assessment Tool**.



It's a tool that was used to work out the wages of some people who worked in Australian Disability Enterprises – or ADEs for short.



ADEs are workplaces that support people with disability.



You might work in an ADE.

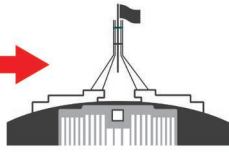


And your wages might have been worked out using the BSWAT.



You can ask your boss or manager about this.

## What is the legal case about?



In 2013, a man named Tyson Duval-Comrie started a legal case against the Australian Government about the BSWAT.



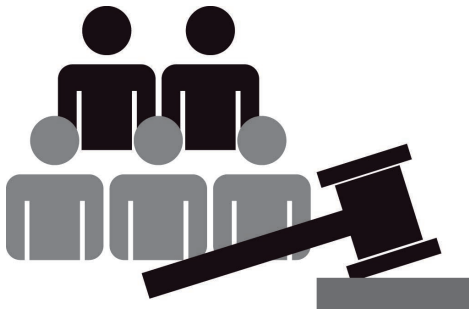
This legal case is a **class action**.



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



These people are called **group members**.



A class action can also be called a **representative proceeding**.



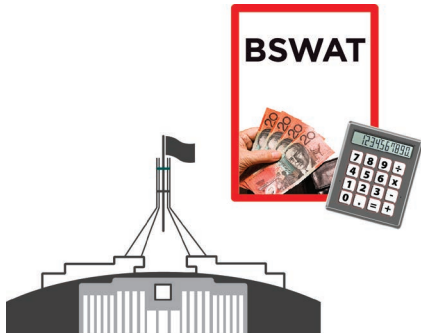
Tyson is a supported employee with an intellectual disability.



He works for an ADE.



And he was paid with the BSWAT.



Tyson started the class action against the Australian Government.

They own the BSWAT.

Tyson has said to the Court that:



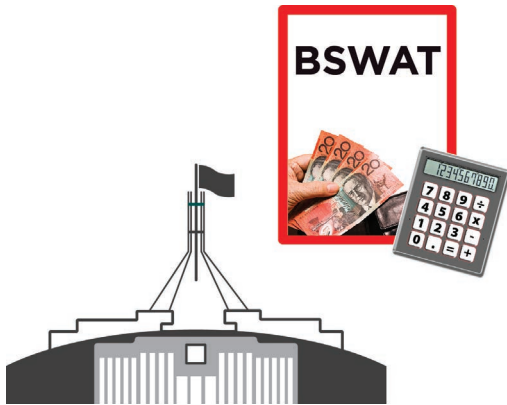
- Under the BSWAT, people with an intellectual disability are paid less for the same work than people without an intellectual disability.



- This is not fair. In the law, this is called **disability 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 Tyson.

The Government has told the Court that they think:

- The BSWAT was a fair way of working out wages for people with intellectual disability working at ADEs.
- It was not disability discrimination.

**Maurice  
Blackburn**  
Lawyers

Since 1919

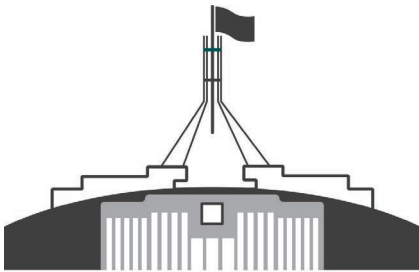
Tyson's lawyers in this class action are Maurice Blackburn Lawyers.



## What is the BSWAT Payment Scheme?



You may have heard of the BSWAT Payment Scheme. We usually call this 'the scheme'.



The Australian Government set up the scheme.



They did this so that they could make payments to some people who were paid with the BSWAT.

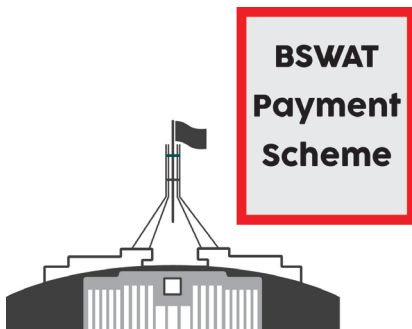


The scheme is different from the class action.





The class action is a legal case.



The scheme is a Government program.



Under the scheme, some people will receive an amount of money.

**50%**

Currently, this amount is 50% of what is being claimed in the class action – but this amount may change in the near future.

We explain more about this change on page 14.



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



- You have an intellectual impairment.

Under the scheme, intellectual impairment means:

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



- You had your wages worked out using the BSWAT.



You may have already registered for the scheme.



If so, that's ok.

## Are you in the class action?

In the past, the class action only applied to some people.

These rules are different now.

Now, more people are in the class action.



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.



We are sending this notice to you because you might now be in the class action.



You are now a group member in this class action if:

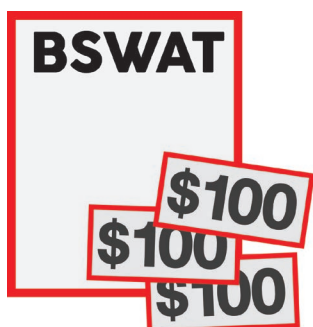
- you were working in an ADE on or before 22 October 2013

and



- you have an intellectual disability

and



- your wage was worked out using the BSWAT.



People with autism, dementia or an acquired brain injury are not part of the class action.

The class action is only for people with intellectual disability.

## Recent changes for the class action



Recently, Tyson and the Australian Government came to an agreement about what should happen in the class action.

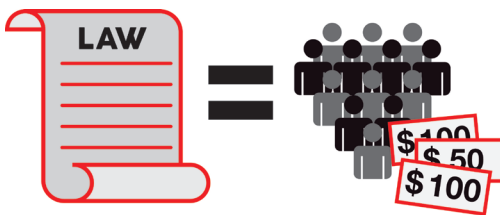


Together, they decided to settle Tyson's case out of court.

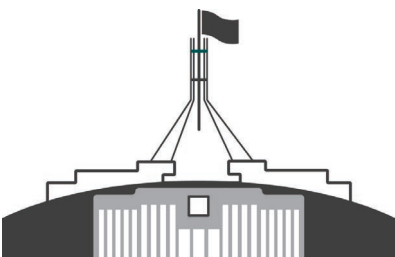


This means that they won't ask the court to decide who should win the case.

This is called a **settlement**.



They agreed that the Government will try to change the law so that people will get more money from the BSWAT Payment Scheme.



The law still needs to pass in Parliament to make these changes happen.

70%



If the law is passed, people will get 70% of the claim.

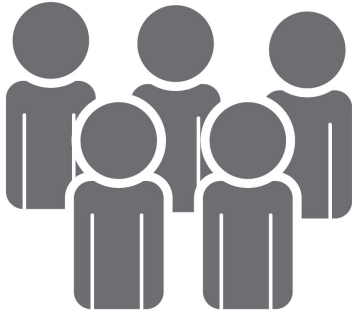


And, if the law is passed, Tyson and the Government will ask the Court to end the class action.



The judge still needs to agree to this settlement. He or she will need to say it's fair for everyone in the group.

## What are your choices?



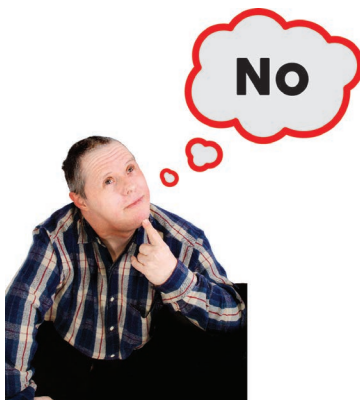
If you are a group member you will automatically be part of the class action.



You can choose if you want to stay part of the class action or not.



If you would like to stay part of the class action you do not have to do anything.

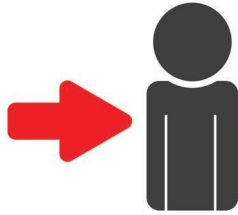


If you want to stop being part of the class action you must let the Court know.

We explain how to do this on page 21.



## What does staying in the class action mean for you?



If you stay in the class action, the judge's decision about whether the settlement is fair will apply to you.

If the judge says the settlement is fair, the following things will happen:

**70%**



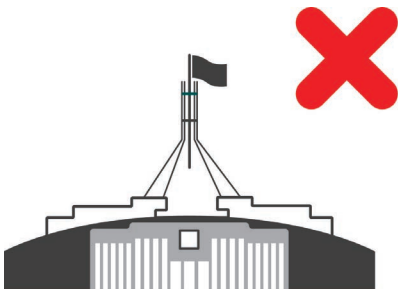
- You may receive more money from the scheme – as we explain on page 15, this will be 70% of what was claimed.



- You won't be able to take part in any other legal case about the BSWAT in future.



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



Also, if the law does not pass in the Parliament, the class action will continue.



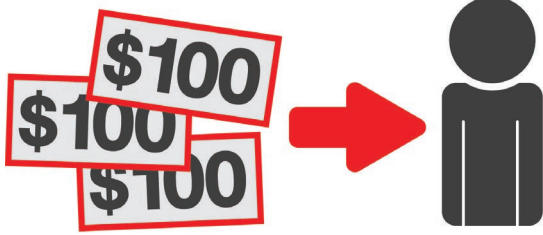
This means that the judge will need to decide who wins.



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, you may get money from the class action.



If the Government wins, you won't get money from the class action.

## Will you have to pay money to take part in the class action?

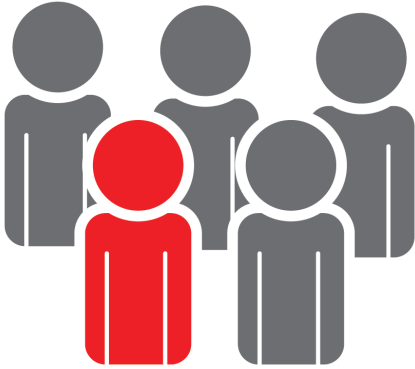


If you use Maurice Blackburn to work for you in the class action, you will not have to pay any money to Maurice Blackburn.



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

## Choosing not to take part in the class action



No one has asked you if you would like to be a part of the class action.



If you want to stop being part of the class action, you must let the Court know.

This process is called **opting out**.

You will need to sign a form saying that you want to opt out.

This form is on page 27.



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

The address of the Court is on the form.



If you opt out, and you want to start your own legal case about the BSWAT, you will have to do that yourself.



If you opt out, and you do not want to start your own legal case, you will not be part of any legal case about the BSWAT.



And remember – you don't have to opt out. You can stay in the class action if you want to.



To stay in the class action, you don't need to do anything.

## What if you can't understand or need help?



If you do not understand this notice, or need help filling out the form on page 27, you should show it to:

- a family member or guardian
- an advocate
- someone else you can trust to help you make important decisions.



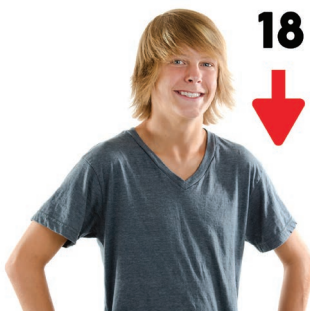
If you needed help, you might need a **next friend** or **committee** to sign the form for you.

A next friend is someone who helps you in a legal case if you have trouble understanding things about the legal case.

A next friend could be someone in your family, a guardian or someone else you trust.



A committee is similar to a next friend but there could be more than 1 person helping you.



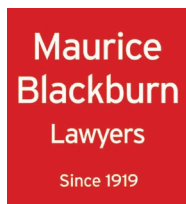
A person under 18 years cannot sign the Opt out notice and will need a next friend or a committee to sign for them.

## Would you like more information?



If you would like more information about the class action you can find documents for this case on the Federal Court website at:

[www.fedcourt.gov.au/case-management-services/class-actions](http://www.fedcourt.gov.au/case-management-services/class-actions)



Or, you can contact Maurice Blackburn.



1800 645 990



[www.mauriceblackburn.com.au/BSWAToptout](http://www.mauriceblackburn.com.au/BSWAToptout)



### 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 27.



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## Word list



**Australian  
Disability  
Enterprises**

More than just good business

### Australian Disability Enterprises

Australian Disability Enterprises provide work and support for people with disability. They are often called ADEs.



### Business Services Wage Assessment Tool

A tool that was used to work out how much someone with an intellectual disability should be paid to do their job.



### Committee

A group of people who help you in a legal case if you have trouble understanding things about the legal case.



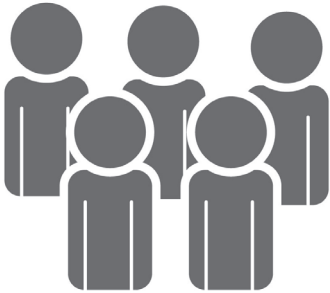
### Class action

A case started in court by one person for a group of people with the same problems. It is also sometimes known as a representative proceeding.



## Disability discrimination

When someone is treated unfairly because of their disability.



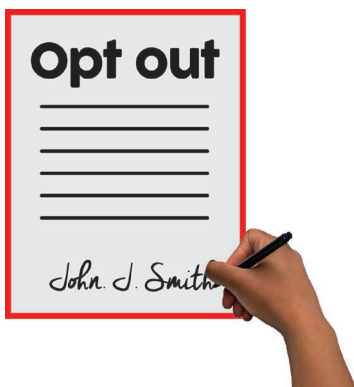
## Group members

A group of people who have the same problems and are part of a class action.



## Next friend

Someone who helps you in a legal case if you have trouble understanding things about the legal case.



## Opting out

Choosing not to take part in the class action.



## Settlement

When two people who have taken a case to court agree on a solution to the problem outside of court.

## Opt out notice

No. VID1367/2013

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]