



Business Services Wage Assessment Tool Payment Scheme Amendment Act 2016

No. 21, 2016

**An Act to amend the law in relation to the BSWAT
payment scheme, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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Business Services Wage Assessment Tool Payment Scheme Amendment Act 2016

No. 21, 2016

An Act to amend the law in relation to the BSWAT payment scheme, and for related purposes

[Assented to 18 March 2016]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Business Services Wage Assessment
Tool Payment Scheme Amendment Act 2016*.

No. 21, 2016 Business Services Wage Assessment Tool Payment Scheme Amendment 1
Act 2016

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	18 March 2016
2. Schedule 1	The 14th day after this Act receives the Royal Assent.	1 April 2016

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Amendments

Business Services Wage Assessment Tool Payment Scheme Act 2015

1 Section 3

Omit “1 December 2016”, substitute “1 December 2017”.

2 Section 3

Omit “1 May 2016”, substitute “1 May 2017”.

3 Section 3

Omit “1 September 2017”, substitute “1 September 2018”.

4 Section 3

Omit “31 December 2017”, substitute “31 December 2018”.

5 Section 4

Insert:

Chief Executive Centrelink has the same meaning as in the *Human Services (Centrelink) Act 1997*.

Human Services Department means the Department administered by the Minister administering the *Human Services (Centrelink) Act 1997*.

6 At the end of section 6

Add:

Effect of person’s death

- (5) A person who was eligible for the BSWAT payment scheme immediately before his or her death, or who would have been so eligible if this Act had been in force on the day he or she died,

continues to be eligible for the BSWAT payment scheme despite his or her death.

Note: See section 97.

7 Paragraph 8(3)(a)

Omit “50%”, substitute “70%”.

8 Section 12

Omit “1 December 2016.”, substitute “1 December 2017.”.

9 Section 12

Omit “1 May 2016”, substitute “1 May 2017”.

10 Section 12

Omit “1 December 2016.”, substitute “1 December 2017.”.

11 Section 12

Omit “end of 2017”, substitute “end of 2018”.

12 Section 12

Omit “1 September 2017”, substitute “1 September 2018”.

13 Section 12

Omit “1 December 2017”, substitute “1 December 2018”.

14 Section 12

Omit “31 December 2017”, substitute “31 December 2018”.

15 Subsections 13(2) and (4) and 14(2)

Omit “1 May 2016”, substitute “1 May 2017”.

16 Paragraph 15(1)(b)

Omit “30 November 2016”, substitute “30 November 2017”.

17 Paragraph 15(2)(c)

Omit “1 December 2016”, substitute “1 December 2017”.

18 Subsection 16(2)

Omit “1 May 2016”, substitute “1 May 2017”.

19 Subsections 16(3) and 18(2)

Omit “1 December 2016”, substitute “1 December 2017”.

20 Paragraph 19(2)(f)

Omit “first obtain”, substitute “produce”.

21 Subsection 21(2)

Omit “1 September 2017”, substitute “1 September 2018”.

22 Subsection 21(3)

Omit “1 December 2017”, substitute “1 December 2018”.

23 Subsection 21(4)

After “refusal”, insert “on or”.

24 Subsection 22(2)

Omit “31 December 2017”, substitute “31 December 2018”.

25 Subsection 22(3)

Omit “30 November 2017”, substitute “30 November 2018”.

26 Paragraph 23(3)(b)

Repeal the paragraph, substitute:

- (b) set aside the determination and substitute a new determination (in accordance with Division 6, if applicable).

27 Subparagraph 24(6)(b)(ii)

Repeal the subparagraph, substitute:

- (ii) set aside the determination and substitute a new determination (in accordance with Division 6, if applicable).

28 Subparagraph 28(1)(b)(ii)

Repeal the subparagraph, substitute:

- (ii) set aside the determination and substitute a new determination (in accordance with Division 6, if applicable).

29 Paragraph 36(c)

Repeal the paragraph, substitute:

- (c) is signed by a legal practitioner, the person or the person's nominee, as applicable in relation to the matters certified.

30 Section 38

Before "An acceptance", insert "(1)".

31 Paragraph 38(b)

Omit "1 January 2018", substitute "1 January 2019".

32 At the end of section 38

Add:

- (2) To avoid doubt, subparagraph (1)(c)(iii) does not apply to a person who was the representative party in a relevant representative proceeding if, at the time the person lodges an acceptance:
 - (a) the proceeding has been determined, settled or discontinued; and
 - (b) the person is not the representative party in any other relevant representative proceeding.

33 Paragraph 69(1)(a)

Repeal the paragraph, substitute:

- (a) the registration of another person, or determination of another person's application, for the BSWAT payment scheme;

34 At the end of subsection 69(1)

Add:

Note: The Secretary or another person may also, for the purposes of this Act, obtain, record, use or disclose information held in the records of the Department or the Human Services Department (see section 202 of the *Social Security (Administration) Act 1999*). A notice under section 72 is not needed to do this.

35 Section 97

Repeal the section, substitute:

97 Effect of person's death

- (1) Any act that may be done under or for the purposes of this Act by a person who is eligible for the BSWAT payment scheme (including the acts of registering or applying for the scheme) may be done, on behalf of a deceased person whose eligibility for the scheme is continued by subsection 6(5), by the deceased person's legal personal representative.
- (2) An act done by a legal personal representative on behalf of a deceased person because of this section has effect for the purposes of this Act as if it had been done by the person.
- (3) The rules may make provision for the application of this Act in relation to deceased persons, including by making modifications of this Act not inconsistent with subsection (1) or (2).
- (4) A reference in subsection (1) or (2) to an act that may be done, or an act done, includes a reference to refraining from doing an act in order to give effect to a decision.

36 After subsection 100(1)

Insert:

- (1A) The Secretary may, in writing, delegate to the Chief Executive Centrelink the Secretary's function under section 40 of this Act (payment of amount).

Part 2—Application and transitional provisions

37 Definitions

- (1) In this Part:

BSWAT Act means the *Business Services Wage Assessment Tool Payment Scheme Act 2015*.

BSWAT rules means the rules made under section 102 of the BSWAT Act.

commencement day means the day this item commences.

pre-commencement offer means an offer made under the BSWAT Act before the commencement day.

top up amount has the meaning given by subitem (2).

using the 70% principle has the meaning given by subitem (3).

- (2) The **top up amount**, for a payment amount (the **original payment amount**) for a person, means the excess (if any) of the payment amount worked out for the person using the 70% principle over the original payment amount. If the excess is less than \$1, the top up amount is nil.
- (3) A payment amount for a person is worked out **using the 70% principle** if the payment amount is worked out:
- (a) under BSWAT rules made in accordance with the principle set out in paragraph 8(3)(a) of the BSWAT Act as amended by this Act; or
 - (b) if being worked out before such rules take effect—under the BSWAT rules in effect as referred to in subitem 38(2) of this Schedule.

38 Application of amendment of paragraph 8(3)(a)

- (1) The amendment made by this Schedule of paragraph 8(3)(a) of the BSWAT Act (the **70% amendment**) applies in relation to BSWAT rules that take effect on or after the commencement day.
- (2) During the period:
- (a) beginning at the start of the commencement day; and

- (b) ending immediately before the day on which rules to which the 70% amendment applies take effect;

the BSWAT rules as in force immediately before the commencement day continue in effect except that subsection 3.19(1) of those rules is taken to be substituted with the following subsection:

- (1) Multiply the total excess amount for the person worked out in Step 3 (section 3.18) by 0.7.

Note: Paragraph 8(3)(a) of the Act provides that the amount a person should receive should broadly reflect the amount that is 70% of the excess of a productivity-scored wage over an actual wage indexed to reflect compounding increases in the Consumer Price Index since the financial years in which eligible days occurred.

- (3) To avoid doubt, an amount worked out in accordance with BSWAT rules in effect as referred to in subitem (2) is a **payment amount** within the meaning of the BSWAT Act.
- (4) To avoid doubt, this item has no effect if rules in relation to which the 70% amendment applies take effect on the commencement day.

39 Entitlement to top up amount if effective acceptance of pre-commencement offer is lodged

- (1) If a person lodged an effective acceptance of a pre-commencement offer before the commencement day, the Secretary must, as soon as practicable after the commencement day, work out the top up amount for the person.
- (2) If a person lodges an effective acceptance of a pre-commencement offer on or after the commencement day, the Secretary must, as soon as practicable after the person lodges the acceptance, work out the top up amount for the person.
- (3) If the Secretary is required by this item to work out a top up amount for a person, the Secretary must notify the person in writing of the top up amount.
- (4) The reference in section 40 of the BSWAT Act to the payment amount offered to a person is, on and after the day a top up amount is worked

out for the person, taken to include a reference to the top up amount for the person.

Note: This means that the Secretary must pay the top up amount to the person in accordance with section 40 of the BSWAT Act.

40 Review of pre-commencement offers still open on commencement day

- (1) This item applies if:
 - (a) immediately before the commencement day, the acceptance period for a pre-commencement offer made to a person had not ended; and
 - (b) the person has not lodged an effective acceptance of the offer; and
 - (c) the person has not applied for review of a determination included in the offer or has withdrawn any such application.
- (2) The Secretary must, as soon as practicable after the commencement day, review, under section 23 of the BSWAT Act, the determination of the payment amount offered to the person, on the basis that the payment amount for the person is to be worked out using the 70% principle.

Note: If the payment amount worked out on review is higher, the Secretary must substitute a new determination of the payment amount (see subsection 23(3) of the BSWAT Act) and make a new offer to the person under section 19 of the BSWAT Act.

- (3) Subitem (2) applies even if paragraph 23(2)(c) of the BSWAT Act would otherwise prevent the Secretary from reviewing the determination (no review of a determination made or affirmed by external reviewer).

41 Review of pre-commencement offers on application

- (1) This item applies in relation to a review of a determination included in a pre-commencement offer made to a person, if:
 - (a) the person applied for the review before the commencement day and the decision on review has not been made; or
 - (b) the person applies for the review on or after the commencement day.
- (2) The review must be done on the basis that the payment amount for the person is to be worked out using the 70% principle.

Note: If the payment amount worked out on review is higher, the reviewer must substitute a new determination of the payment amount (see subsection 24(6) or 28(1) of the BSWAT Act) and the Secretary must make a new offer to the person under section 19 of the BSWAT Act.

42 Review of certain refusals given before commencement day

- (1) This item applies in relation to a person if:
- (a) before the commencement day, the person's application for a payment under the BSWAT payment scheme was refused because of a determination (the *original determination*) that the payment amount for the person was nil; and
 - (b) the person has not applied for review of the determination or has withdrawn any such application.
- (2) The Secretary must, as soon as practicable after the commencement day, review, under section 23 of the BSWAT Act, the original determination, on the basis that the payment amount for the person is to be worked out using the 70% principle.

Note: If the payment amount worked out on review is more than nil, the Secretary must substitute a new determination of the payment amount (see subsection 23(3) of the BSWAT Act) and make an offer to the person under section 19 of the BSWAT Act.

- (3) Subitem (2) applies even if paragraph 23(2)(c) of the BSWAT Act would otherwise prevent the Secretary from reviewing the determination (no review of a determination made or affirmed by external reviewer).

43 Review of certain refusals on application

- (1) This item applies in relation to a review of a determination made before the commencement day that the payment amount for a person is nil, if:
- (a) the person applied for the review before the commencement day and the decision on review has not been made; or
 - (b) the person applies for the review on or after the commencement day.
- (2) The review must be done on the basis that the payment amount for the person is to be worked out using the 70% principle.

Note: If the payment amount worked out on review is more than nil, the reviewer must substitute a new determination of the payment amount (see subsection 24(6) or 28(1) of

Part 2 Application and transitional provisions

44 Application of amendment of paragraph 36(c)

- #### 45 Application of amendments of sections 6 and 97

(a) before, on or after the day the BSWAT Act commenced; or

(b) before, on or after the commencement day as defined in this Schedule.

(16/16)