

## 4. What is 'compensation'

### 4.1 'Compensation' under the NDIS Act

When the term 'compensation' is used in the context of the National Disability Insurance Scheme (the NDIS), it is limited by the definition contained in section 11 of the [National Disability Insurance Scheme Act 2013](#) (NDIS Act).

*Section 11 of the NDIS Act defines compensation as:*

1. *In this Act:*

*Compensation means a payment (with or without admission of liability) in respect of:*

1. *Compensation or [damages](#) in respect of [personal injury](#);*
2. *Personal injury, under a [scheme of insurance](#) or compensation under a Commonwealth, State or Territory law, including a payment under a contract entered into under such a scheme; or*
3. *Personal injury, in [settlement](#) of a claim for damages or a claim under such an insurance scheme;*

*that is wholly or partly in respect of the [cost of supports that may be provided to a participant](#) (whether or not specifically identified as such). It does not matter whether the payment is made directly to the person who sustained the personal injury or to another person in respect of that person.*

2. *A payment referred to in subsection (1) may be:*

1. *In the form of a [lump sum](#) or in the form of a series of periodic payments; and*
2. *Made within or outside Australia.*

The definition provided in the NDIS Act limits "compensation" to a payment that is, wholly or partly, for the cost of supports that may be funded or provided by the National Disability Insurance Scheme (NDIS) for the injury which was the subject of the compensation claim.

If a person has sustained an injury, the person may lodge a claim for damages.

A claim for damages may include, but is not limited to, a claim for [general damages](#) (e.g. pain and suffering), [economic loss](#) (past and future), [medical and like expenses](#) (past and future), and [domestic care and assistance](#) (past and future).

### 4.2. When may a person be entitled to compensation?

A person may be injured in a number of ways that may result in compensation being paid or payable. This includes, but is not limited to events or injuries

- involving a motor vehicle;
- occurring at work;
- resulting from medical treatment, or lack of;
- occurring in a public place;
- occurring at private residence;
- occurring as a result of a criminal act;
- relating to equipment or product failure; or
- occurring during a sporting activity.

### **4.3 Identifying if an amount is ‘compensation’ under the NDIS Act**

In order for an amount received by a participant to meet the definition of compensation it must meet the following criteria:

1. Payment (limited to a lump sum payment or periodic payment);
2. The payment must be for a personal injury; and
3. The payment must include a component for supports that may be provided to the participant by the NDIS.

A description given to an amount may assist the NDIA to identify whether or not the amount is compensation, but the description will not be determinative.

For example, although the NDIS does not fund medical expenses, an amount identified as being for ‘medical expenses’ may still meet the definition of compensation under the NDIS Act. This may occur if the amount included a component for the cost of supports that may be provided to a participant by the NDIS, such as assistive technology, home modifications, prosthesis or other disability support.

Amounts paid for domestic care and assistance are also in respect of the costs of supports that may be funded or provided to a participant. Whether those services are required and provided under a paid agreement, or gratuitously by a family member or friend, the purpose of the payment of compensation for those services will not change, which is to provide for a kind of support that may be funded or provided under the NDIS.

### **4.4 Payments that are wholly or partly for the cost of supports that may be provided to a participant**

A payment will be *wholly* for the costs of supports that may be funded or provided to a participant or a person who later becomes a participant, if, that person receives an amount that is solely for medical and like expenses and/or domestic care and assistance (including [gratuitous care](#)).

A payment will be in part for the costs of supports that may be provided to a participant if a participant, or a person who later becomes a participant, receives an amount that is, in part, for medical and like expenses or domestic care and assistance (or a support type that may fall under one of these sub-categories).

For example: A person makes a compensation claim, and within the claim, the person seeks damages for pain and suffering, economic loss and medical and like expenses (and/or domestic care and assistance). The person's claim settles for a global sum. The global sum will be deemed 'compensation' under the NDIS Act because the person's claim was, in part, for medical and like expenses and domestic care and assistance.

## **4.5 In what form may a compensation payment be made?**

Compensation may be paid in a number of ways, such as, but not limited to:

- a lump sum payment;
- a structured settlement resulting in periodic payments; or
- other periodic payments.

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