

Compensation and the NDIS

What is compensation?

Compensation may be any entitlement a participant receives from an insurance company, statutory scheme or other party due to an accident or injury. It may include any of the following:

- lump sum payment;
- periodical payments (weekly, fortnightly or monthly);
- payments for care, education, household and/or rehabilitation supports and services;
- payments made directly to any service provider (e.g. for rehabilitation or care) by an insurer, statutory scheme or any other body for services provided to the participant.

When might a participant have an entitlement to compensation?

A participant may have received compensation, or they may be entitled to receive compensation, if their disability is the result of an event or injury. Examples of an event or injury include, but are not limited to, the following:

- A work injury;
- A motor vehicle injury;
- A sporting injury;
- An injury arising from medical negligence; or
- An injury caused by an event like a fall in a public place.

When should a participant tell the NDIS about their compensation?

Participants should tell their NDIS contact person immediately about any compensation (past, present or future), they have received, or may be entitled to.

If the participant does not lodge a claim for compensation until after they have become a participant, the participant should advise the NDIS of their claim for compensation as soon as possible.

Who should the participant contact regarding their compensation?

All communication with the NDIS regarding past, present and/or future compensation should be with the participant's NDIS contact person.

What types of compensation does the NDIA need to know about?

All types including past, present and/or future compensation received by:

- lump sum;
- periodical payments (weekly, fortnightly or monthly);
- payments for care, education, household and/or rehabilitation supports and services;
- payments made directly to any service provider (e.g. for rehabilitation or care) by an insurer, statutory scheme or any other body for services provided to the participant.

What guides the NDIS when they account for compensation?

The National Disability Insurance Scheme Act (2013) and the National Disability Insurance Scheme (Supports for Participants – Accounting for Compensation) Rules guides how the NDIA must account for compensation. The NDIS Rules complement the NDIS Act 2013 by explaining how compensation payments for personal injury are taken into account.

In addition to the NDIS Act and the NDIS Rules, there are Operational Guidelines which are available [here](#). The Guidelines outline how we calculate the Compensation Reduction Amount (CRA) and how the Act and Rules assist the NDIA to make decisions.

Will becoming an NDIS participant affect the supports and services a participant receives from other insurers or statutory schemes?

Becoming an NDIS participant does not affect any entitlement to supports and services received from another insurer or statutory scheme, such as a motor vehicle or work cover scheme. The funded supports provided by the NDIS may be reduced to account for the supports provided by an insurer or statutory scheme.

If a person has received a lump sum or periodic payments before becoming an NDIS participant, will becoming a participant of the NDIS affect their lump sum compensation?

A participant's lump sum will not be affected by becoming a participant.

A participant will not be required to repay any amount to the NDIA as a result of a lump sum compensation payment made prior to becoming a participant.

The impact of receiving a lump sum award prior to becoming a participant is that the value of the reasonable and necessary supports funded in the participant's NDIS plan may be reduced by the CRA (*see Compensation Reduction Amount below*).

If a participant's compensation claim is in progress or is yet to be lodged, will this affect a participant's NDIS plan?

A participant's plan will not be affected until the claim is finalised.

Once the claim is finalised, the payer of compensation may be liable to pay an amount from the settlement amount to the NDIA, prior to the participant being paid their settlement monies. This would be similar to reimbursement of Centrelink or Medicare.

This amount is called a Recoverable Amount. It is calculated by adding the cost of supports and services provided under the participant's NDIS plan that relate to the participants compensable impairment. Using the date they became a participant to the day before they were awarded their compensation lump sum.

The participant has a right to request a review of the Recovery Amount decision (*see Reviewable Decisions*).

Once the claim is finalised, the value of the reasonable and necessary supports funded in the participant's NDIS plan may be reduced by the CRA (*see Compensation Reduction Amount*).

What sort of information will the NDIA need about the participant's compensation?

The participant will be asked to complete a Compensation Information Form (CIF). The CIF will ask for information relating to the circumstances of the participant's injury and details regarding the participant's past, present or future entitlement to compensation.

When providing this sort of information it is important to provide documents in support of the information. In most cases the NDIS will require the following documents in order to assess a participant's compensation:

- Judgement or Terms of Settlement;
- Medicare notice of recovery;

- Centrelink notice of recovery; and
- Centrelink preclusion period notice.

If the participant has personally spent money on supports and services, like those the NDIS may provide, the participant will be required to produce evidence of the costs of these items/support services, including, but not limited to:

- Invoices of receipts;
- Names of providers;
- Dates items/supports were provided; and
- Cost of items/supports.

The participant may not be aware of the details of their past compensation claim or the supports and services purchased with their compensation lump sum. The NDIS may, with the participants consent, contact relevant third parties e.g. courts for these details.

What if the participant does not seek compensation or gives up an aspect of their compensation claim?

If the participant does not seek compensation and the NDIS considers the participant may be entitled to compensation, the NDIS may request the participant seek compensation.

In the event the participant fails to comply with this request:

- The participant's plan may be suspended until they comply.
- The NDIS may claim compensation in the name of the participant.
- The NDIS may take over the conduct of a participant's existing claim.

A participant may enter into a settlement agreement to give up their right to compensation and this may reduce the amount of compensation they receive. In this circumstance the settlement agreement may be reviewed by the NDIS.

The NDIS may not be satisfied that it was reasonable for the participant to give up their right to compensation. If so the NDIS may calculate a CRA using a compensation amount they consider the participant would have received had the claim proceeded to judgement.

This may result in a higher CRA being applied to the participant's plan, resulting in less funding for supports and services. For this reason, it is important participants always seek the appropriate level of compensation when negotiating settlements.

Compensation Reduction Amount

What is the Compensation Reduction Amount (CRA)?

The CRA is the amount of funding the Agency will reduce a participant's reasonable and necessary plan by to account for compensation.

How is the CRA calculated?

A CRA can be calculated using compensation received either by way of judgement, consent judgement or settlement.

Where the participant continues to receive compensation by way of periodic payments this will also to be considered.

If a participant has received more than one compensation payment, multiple CRA's will be calculated and implemented against their NDIS plan.

Each CRA will be divided by the remainder of the participant's expected lifetime, according to actuarial data, and applied to the participants plan.

CRAs may also be calculated when a participant receives supports from a statutory scheme or insurer.

Will the CRA affect the participant's current NDIS plan?

Yes. The CEO is required to reduce the amount of reasonable and necessary supports funded in the plan by the CRA. Following calculation of the CRA, the NDIA will implement a plan review within 14 days and finalise the review as soon as possible.

Will the CRA affect the participant's future NDIS plans?

Yes. The NDIA is required to reduce the value of reasonable and necessary supports funded in the plan by the CRA for the remainder of the participant's expected lifetime.

If the participant outlives their expected lifetime as calculated by the actuary, the CRA will no longer be applied to the participant's plan.

Can the participant request a review of a CRA?

Yes. The CRA forms part of the statement of participant's supports under the Act and the statement of participant supports is reviewable.

Reviewable Decisions

What is a reviewable decision?

The participant may ask for an internal review of the following decisions which are relevant to compensation:

- A decision to approve a participant's statement of supports relating to a plan;
- A decision to require a person to take action to claim or obtain compensation;
- A decision not to extend the period by which the participant is to take steps to claim or obtain compensation;
- A decision to take over conduct of a claim;
- A decision to give notice to recover an amount from compensation;
- A decision not to disregard certain payments under a judgment or settlement on the basis of special circumstances.

How does a participant request a review of a decision?

A participant may request an internal review within 3 months of a reviewable decision being made.

A request for an internal review can be made to the NDIS either orally or in writing.

Following a request for internal review, the NDIS will appoint a "reviewer".

The reviewer must vary, confirm or set aside the original decision as soon as they can.

All affected persons must be notified of the outcome of the internal review by the NDIS.

What if the participant is not satisfied with the outcome of the internal review?

A participant can make application to the Administrative Appeals Tribunal (AAT) within 28 days after the affected party receives notice of the reviewer's decision. In certain circumstances application can be made to the AAT to extend this deadline.

Please refer to the AAT website [here](#) for the forms required to lodge a review.