

Compensation Operational Guideline - Calculating the compensation reduction amount (CRA) when compensation is fixed by a non-consent judgment, consent judgement, or settlement and the NDIS component is not objectively identifiable

10.1 Calculating the compensation reduction amount (CRA) when compensation is fixed by a non-consent judgment, consent judgement, or settlement and the National Disability Insurance Scheme (NDIS) component is not objectively identifiable

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Where [compensation](#) is received under a [non-consent judgement](#), [consent judgement](#) or [settlement](#) and the [NDIS component](#) is not objectively identifiable, a CRA will be calculated in accordance with rules 3.13-3.16 of the [National Disability Insurance Scheme \(Supports for Participants - Accounting for Compensation\) Rules 2013](#) (Compensation Rules) (as set out below).

The NDIS component of a compensation payment will not be [objectively identifiable](#) if a non-consent judgement, consent judgement or settlement attributes an amount to the supports of a kind that may be funded or provided under the NDIS without objective evidence that substantiates the amount attributed (see paragraph 3.1, Explanatory Statement of Compensation Rules).

10.1 Steps for calculating the CRA where the NDIS component is not objectively identifiable

To calculate the CRA in accordance with rules 3.13-3.16 of the Compensation Rules, the National Disability Insurance Agency (NDIA) will:

Step 1 - Rule 3.13(a) of the Compensation Rules

Identify the amount of compensation [fixed](#) under the non-consent judgement, consent judgement or settlement.

The NDIA will do this by reviewing the non-consent judgement, consent judgement or settlement or other documents demonstrating the amount of compensation fixed.

If the amount of compensation agreed upon by the parties is inclusive of legal costs, the NDIA will subtract the value of the legal costs from the amount fixed under the consent judgement or settlement.

Step 2 - Rule 3.13(b) of the Compensation Rules

The NDIA will subtract the sum of the amounts (if any) payable in respect of the amount of compensation under:

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1. The Health and Other Services (Compensation) Act 1995

2. The Health and Other Services (Compensation) Care Charges Act 1995 ;

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3. Part 3.14 of the Social Security Act 1991 : or

4. A law of the Commonwealth, a State or a Territory, prescribed by the National Disability Insurance Scheme Rules.

The NDIA will take into account amounts the person is required to pay, if any, from their compensation because of other legislation. For example, amounts payable from the compensation to Centrelink and Medicare are subtracted from the amount of compensation fixed (see step 1) at this step.

Currently there are no laws prescribed by the National Disability Insurance Scheme Rules for the purposes of rule 3.13(b)(iv).

Step 3 - Rule 3.13(c) of the Compensation Rules

The NDIA will subtract an amount that reflects the value of any period of preclusion:

- that arises from a Commonwealth, State or Territory statutory scheme of entitlements (for example, the *Social Security Act 1991*); and
- is in respect of the injury.

Step 3 reduces the amount calculated after undertaking steps 1 and 2 above (where applicable), by taking into account the economic loss component of the compensation.

Step 4 - Rule 3.13(d) of the Compensation Rules

Where the NDIA is satisfied that the participant is not subject to a preclusion period for the purposes of step 3 above, and the NDIA is satisfied that:

- the participant claimed damages in relation to lost earnings or lost capacity to earn; and
- the amount of compensation fixed under the non-consent judgement, consent judgement or settlement included an amount in respect of that compensation.

Step 4 reduces the amount calculated after undertaking steps 1 to 3 above (where applicable), by subtracting 50% of the total amount of the compensation identified at step 1.

Step 4 ensures the participant's CRA will be reduced to take account of the economic loss component of the compensation. A deduction will only be applied at step 4 when there was no deduction at step 3.

Step 5 - Rule 3.13(e) of the Compensation Rules

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The NDIA will identify the compensable event and the NDIS type supports that would otherwise have been provided to the participant and funded under the National Disability Insurance Scheme Act 2013 (NDIS Act) over the participant's expected lifetime, had the participant been a participant from the time of the compensable event. 21/03/2023, 02:55

The amount is to be calculated in accordance with any applicable actuarial model published by the NDIA on its website at the time the calculation is undertaken (see rule 3.14).

If the amount calculated in accordance with the actuarial model is less than the amount calculated under steps 1 – 4, then this amount replaces the amount calculated under steps 1 – 4. The calculation then continues using the amount identified at this step.

If the amount calculated in accordance with the actuarial model is greater than the amount calculated under steps 1 – 4, then the calculation continues using the amount identified after undertaking steps 1 – 4.

Step 6 - Rule 3.13(f) of the Compensation Rules

The NDIA will subtract an amount equivalent to the total of the amounts that were paid by the participant for supports of a kind that may be funded under the NDIS, in the period between the compensable event and the day before the person became a participant.

The NDIA subtracts these amounts to reduce the CRA by the amount of NDIS type supports the participant self-funded after they sustained their injury and before they became a participant. For more information on the kinds of supports funded under the NDIS, see NDIS Pricing Arrangements and Price Limits.

To identify this amount, the NDIA will require information and evidence of past amounts paid by the participant for supports of a kind funded under the NDIS. For more information see Information and documents required for the NDIA to undertake its function, the Information Handling Operational Guideline , and/or the NDIA Privacy Policy.

Step 7 - Rule 3.13(g) of the Compensation Rules

The NDIA will subtract any recoverable amount payable by the participant pursuant to section 106 and section 107 of the NDIS Act in respect of the compensation amount that is the subject of the current calculation (see steps 1-6 above).

For more information on the recoverable amount, see Recovering past NDIS amounts from compensation and/or Recovery from compensation payers and insurers.

Step 8 - Rule 3.13(h) of the Compensation Rules

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The NDIA will subtract any amounts deducted by the NDIA under section 105B of the NDIS Act.

For more information see [Recovery of past NDIS amounts and costs incidental to the claim paid for by the NDIA from claims brought, or taken over by the NDIA on behalf of the participant or prospective participant.](#)

Step 9 - Rule 3.13(i) of the Compensation Rules

Subtract the amount of any reduction in the participant's funding that has occurred previously in respect of the non-consent judgement, consent judgement or settlement.

A participant may have had previous reductions in funding applied to their statement of participant supports in respect of compensation paid under the non-consent judgement, consent judgement or settlement.

Each time the participant's plan is reviewed, the new plan will take into account earlier CRAs calculated to prevent double reductions.

The amount remaining after steps 1 - 9, is the compensation reduction amount.

10.2 Where the person has received more than one compensation payment for the same injury

When an amount of compensation is received from a non-consent judgement, and another amount of compensation is received under a settlement or consent judgement for the same injury, the amounts will be treated separately. This means a CRA will be calculated for each amount and more than one CRA will be applied to the statement of participant supports.

If a CRA has been identified in respect of the injury under rules 3.11-3.12 (non-consent judgement, consent judgement or settlement where [NDIS component](#) of compensation is objectively identifiable), the calculation under rule 3.13 is modified as follows:

- reduce from the amount to be subtracted at step 6 above, any amount subtracted under rule 3.11(b); and
- reduce from the amount to be subtracted under step 9 above, any amount subtracted under rule 3.11(c).

This step ensures that if a person:

- Receives an amount of compensation where the NDIS component is objectively identifiable;

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- Both amounts are received in respect of the same injury;

The NDIA does not duplicate reductions made to the CRA calculated second in time, in respect of amounts paid by the participant for supports of a kind funded under the NDIS Act.

10.3 CRA reduced to nil

If the compensation reduction amount would be reduced to nil, there will be no reduction to the statement of participant supports (see rule 3.16).

For more information see [What happens if compensation reduction amount is reduced to nil?](#)

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