



Disability Services Commission

Western Australian National Disability Insurance Scheme (WA NDIS) Operational Policy

Compensation

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1. Key words

Catastrophic injury, claim, compensation, compulsory third party, court action, medical negligence, motor vehicle accidents, motor injury, National Injury Insurance Scheme (NIIS), personal injury, reasonable and necessary, settlement, work injury.

2. Policy statement

This operational policy statement outlines the approach to compensation awards received for personal injury by a person with disability in the WA NDIS.

3. Principles

People with disability have the same rights and responsibilities as all people to participate in, and contribute to, the community.

Services provided by WA NDIS are complementary to, not a replacement for nor duplicate of, existing supports available to the person. People with disability should be assisted by their Local Coordinator to coordinate all available supports.

Ensuring the financial sustainability of WA NDIS is a key objective of the State.

WA NDIS will support people with disability to maximise their level of choice and control, including the right to request a review of key decisions made by WA NDIS.

4. Definitions

Compensation

Compensation means a payment that is entirely or partly related to the cost of supports provided to a person through the WA NDIS, to compensate for damages caused by personal injury. This includes payments from Governments or insurance schemes.



Compensation reduction amount (CRA)

The amount of the total compensation award that is taken into account to reduce the funding for reasonable and necessary supports that would otherwise be approved.

Representative

A person who supports a person with disability, and/or acts on their behalf, including both a formal or informal decision makers.

5. Scope

This operational policy applies to residents of the WA NDIS who:

- are in receipt of compensation for personal injury
- are pursuing a claim of compensation for personal injury
- have not taken action to claim or obtain compensation for personal injury, despite having a viable claim
- have entered into an agreement to give up a right to compensation in respect of personal injury and the Commission is not satisfied that it was reasonable, in the circumstances, for the person to have entered in the agreement
- have agreed a compensation settlement amount less than that which the Director General (or delegated authority) considers reasonable given the circumstances relating to the injury.

It does not matter whether a compensation payment is:

- made directly to the person who sustained the personal injury
- made with admission of liability
- specifically identified as related to the cost of supports.

Applicability of this operational policy to people with disability moving into and from WA NDIS will be determined on a case by case basis (see below).

6. Implementation

Supports provided through WA NDIS are intended to complement existing compensation arrangements for personal injury, and where this is the case, for the person and the Commission jointly contribute funds for supports.

When individuals commence accessing WA NDIS support, they agree to notify the Commission regarding potential and actual compensation claims.

Compensation may affect the level of funding provided by WA NDIS for reasonable and necessary supports.

A person may receive compensation for disability resulting from injury in various ways. This may be received in a lump sum payment, or a structured settlement resulting in



regular periodic payments and be made within or outside Australia. Some examples are work-related injuries (where workers' compensation is usually available), motor vehicle accidents (where an insurer may be liable to compensate an injured person), and medical negligence.

Compensation can comprise funding totalling from different components (such as compensation for income replacement, pain and suffering etc.). WA NDIS is concerned with the parts of compensation that relate to reasonable and necessary supports which may be funded under WA NDIS. Generally, if the purpose of the compensation is to provide supports for daily living, then the compensation will be considered by the WA NDIS.

Some other parts of compensation payments are not relevant to the WA NDIS for the purpose of calculating CRA. Compensation for past and future economic loss, medical expenses, pain and suffering, or income replacement, will not affect any supports provided by the WA NDIS.

The compensation that a person receives may be awarded or agreed in a number of different ways. In determining the value of the compensation to be taken into account and how these are applied against the cost of reasonable and necessary supports, WA NDIS will apply the Disability Services Regulations 2004 Division 4 – Supports for participants – Accounting for compensation.

7. Implementation

Application of CRA

Compensation payments and settlements are often made to cover the person's future care needs across their anticipated lifetime. A proportion of the total compensation payment is applied against funding for reasonable and necessary supports in each year of the person's expected lifetime. The determination of the person's expected lifetime is made in accordance with accepted actuarial standards and in consultation with the WA NDIS actuary.

Small amounts of compensation

Throughout the planning process, people can make arrangements with WA NDIS about how the compensation will be applied against funding for supports. If the CRA is small, it can be applied in a single year's plan. For example, if a person's total CRA is \$10,000 and the cost of reasonable and necessary supports in Plan 1 is \$15,000, the \$10,000 may be applied in full against Plan 1 support costs of \$15,000 (i.e. utilised against Plan 1) rather than spread across the person's expected lifetime.



Special circumstances

The whole or part of a CRA that would otherwise be applied may be ignored if the Director General thinks it appropriate to do so, due to the special circumstances of a case (which may include financial hardship suffered by the person).

National Injury Insurance Scheme (NIIS)

As part of NIIS, WA has expanded its motor injury insurance cover for all motorists to include all people who were catastrophically injured in motor vehicles accidents in WA. This insurance cover will deliver reasonable and necessary treatment, care and support to people that were unable to claim under the existing compulsory third party scheme.

Catastrophic injuries include spinal cord injuries, traumatic brain injuries, multiple amputations, severe burns and permanent traumatic blindness.

People receiving this insurance will need to notify the Commission to ensure there is no duplication of funding for the same supports.

Participants moving into or out of the WA NDIS

As the application methodology of compensation differs in the WA NDIS sites from the remainder of the Commission, attention must be given to individuals moving to and from the WA NDIS. How compensation is applied for these individuals will be determined on a case by case basis. In making a decision, consideration will be given to factors such as:

- the proposed length of residency in/out of the WA NDIS area, if known;
- the person's residency transience patterns
- the amount of compensation funds remaining at the time of the move to/from the WA NDIS site
- the total amount of compensation funds awarded.

Where the application of compensation funds deviates from the model described in this operational policy, the rationale must be fully documented, approved and saved on the person's record.

No recovery of Local Coordinator service costs for planning and referral activities

The plan development, review and referral functions of the Local Coordinator are separate from the strategies to be funded in the plan (reasonable and necessary supports).

Therefore, Local Coordinator service costs are not recovered from compensation funds.

Impact of compensation

A person who has suffered an injury and is considering a compensation settlement (or other agreement that might relate to WA NDIS funded services and supports) may seek an indication from the Commission on the likely CRA that would apply to the settlement or



agreement. No action lies against the Commission or any officer in respect of the provision of this indicative information.

Person gives up the right to compensation

If a person entered into an agreement to give up the right to compensation, and consequently did not receive a compensation payment, the Commission will consider this agreement.

Before the Commission accepts this agreement as reasonable, the following matters will be considered:

- the disability of the person, including whether the disability affected their ability to reasonably assess the terms of the agreement
- the circumstances which gave rise to the entitlement or possible entitlement to compensation
- any reasons given by the person as to why they gave up the right to the compensation
- the impact, including any financial impact on the person and their family, that would have occurred if the compensation claim had been pursued or continued.

If the Commission does not consider the agreement reasonable, it may act as if a hypothetical compensation payment had occurred, and determine the CRA.

Review of decision

Decisions in relation to compensation are reviewable decisions based on compensation arrangement and CRA. The person, their family and carers will be advised in writing of the decision, that the decision can be reviewed, and of the review process.

The person, their family and carers must be informed about the internal and external processes available to them to seek review of a reviewable decision (see WA NDIS Operational Policy – Reviewing and Appealing WA NDIS Decisions).

8. Compliance

Compliance with this policy is mandatory.

9. Communication

This document will be published on the Commission's website and intranet, and relevant employees and other stakeholders advised of its existence.

10. Evaluation and review

This policy will be reviewed in 24 months or whenever required by a significant change to relevant policy, people, process, technology and/or information. Evaluation of the policy will take into account operational learning, feedback from stakeholders and relevant data.



11. Related documents

Disability Services Act 1993

Disability Services Regulations 2004

National Disability Insurance Scheme Act 2013

NDIS (Supports for Participants - Accounting for Compensation) Rules

Motor Vehicle (Catastrophic Injuries) Act 2016

Explanatory Statement to the National Disability Insurance Scheme (Supports for Participants – Accounting for Compensation) Rules

National Disability Insurance Agency Operational Guidelines on Compensation (various)

Compensable Individuals for Commission Provided Services

Compensable Clients Policy and Policy Information Sheet

Individualised Funding Policy

WA NDIS Operational Policy - Reviewing and Appealing WA NDIS Decisions

