



Disability Services Commission

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

## Compensation

### 1. Keywords

Compensation, settlement, claim, court action, personal injury, medical negligence, motor vehicle accidents, work injury.

### 2. Policy statement

This operational policy statement outlines the approach to compensation awards received by individuals in the WA NDIS trial.

### 3. Principles

As citizens, people with disability have the same rights and responsibilities as all other people to contribute to their life goals and the life of the community.

Services provided by WA NDIS are complementary to, i.e. add to, not a replacement for nor duplicate of, existing supports available to the individual and that individuals should be assisted to coordinate all available supports.

The financial sustainability of WA NDIS is ensured.

### 4. Scope

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

- are in receipt of compensation, or
- are pursuing a claim of compensation, or
- have not taken action to claim or obtain compensation despite having a viable claim; or
- 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.

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

## 5. Introduction

Supports provided through WA NDIS are intended to complement existing compensation arrangements for personal injury, and for the individual and the Commission to 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. 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 (which may be the subject of court action).

Compensation can comprise of many different components. WA NDIS is concerned with the parts of the judgment or settlement that relate to reasonable and necessary supports which may be funded under WA NDIS. Compensation amounts received for such things as past and future economic loss and medical expenses are not taken into consideration.

The compensation that an individual 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.

## 6. Definitions

### Compensation

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

- a. compensation or damages in respect of personal injury; or
- b. 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
- c. 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.

A compensation payment may be:

- a. in the form of a lump sum or in the form of a series of periodic payments, and
- b. made within or outside Australia.

### **Compensation reduction amount**

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

## **7. Implementation**

This Operational Policy will be implemented in WA NDIS trial sites.

### **Application of Compensation Reduction Amounts (CRA)**

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

### **Small amounts of compensation**

Through the planning process, individuals 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 an individual'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 individual).

### **Participants moving into or out of the WA NDIS trial**

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

The proposed length of residency in/out of the trial site area, if known;

- The individual's residency transience patterns;
- The amount of compensation funds remaining at the time of the move into/from the trial 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 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 compensation reduction amount 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.

### **Review of decision**

Decisions in WA NDIS trial sites in relation to compensation are reviewable decisions. The individual will be advised of the decision, that the decision can be reviewed, and of the review process.



## **8. Related documentation**

Disability Services Act 1993 (amended 2014)

Disability Services Regulations 2004 (amended 2016) – Part 2 Division 4 – Accounting for Compensation

National Disability Insurance Scheme Act 2013

NDIS (Supports for Participants - Accounting for Compensation) Rules 2013

Explanatory Statement to the National Disability Insurance Scheme (Supports for Participants – Accounting for Compensation) Rules 2013

National Disability Insurance Agency Operational Guidelines on Compensation (various) Compensable Individuals for Commission Provided Services, June 2013

Disability Services Commission, Funding Directorate, Compensable Clients Policy, Policy No: B56 Part B, December 2013

Policy Information Sheet, Compensable Clients Policy, Policy No: B56 Part B, December 2013

Individualised Funding Policy, June 2015, Disability Services Commission

WA NDIS Operational Policy - Reviewing and Appealing WA NDIS Decisions

## **9. Evaluation and review date**

30 June 2017 or earlier if required.

## **For further information contact**

Scheme Policy & Program Transition Manager

Policy and Planning

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