

1. What is the purpose of this operational guideline?

This Operational Guideline is intended to provide guidance in relation to the compensation provisions of the [National Disability Insurance Scheme Act 2013](#) (NDIS Act) and the [National Disability Insurance Scheme \(Supports for Participants – Accounting for Compensation\) Rules 2013](#) (Compensation Rules).

1.1. Overview

The National Disability Insurance Scheme (NDIS) is designed to complement, not replace, existing [compensation](#) arrangements for [personal injury](#).

This means the NDIS is not meant to alter the way in which people seek compensation, or affect existing rights to compensation, in circumstances where they have sustained an injury which has caused, [to any extent](#), an [impairment](#).

If a participant (see section 9 of the NDIS Act) or [prospective participant](#) does not seek compensation in circumstances where they have a right to do so, the National Disability Insurance Agency (NDIA) may direct them to seek compensation. If the participant, or prospective participant, does not comply with the direction of the NDIA to take steps to claim or obtain compensation the NDIA may:

- suspend their plan;
- not approve their plan;
- bring a claim for compensation in the name of the participant or prospective participant; or
- take over conduct of an existing claim for compensation.

The compensation provisions of the NDIS Act and the Compensation Rules are based on the need to ensure the financial sustainability of the NDIS. This is done by ensuring that:

- The NDIA may require a participant or prospective participant to take action to claim or obtain compensation if they have sustained an injury, which has caused, to any extent, an impairment [in compensable circumstances](#). Failure on the part of the participant, or prospective participant, to take the required action, may result in the NDIA claiming or obtaining compensation in the name of the participant, or prospective participant, or the NDIA taking over the conduct of an existing compensation claim. For more information, see [Requiring a participant or prospective participant to take action to claim or obtain compensation](#).
- The NDIA may recover from a participant past [NDIS amounts](#) paid to a participant, where compensation has been paid, or becomes payable, for an injury that has caused, to any extent, a participant's impairment. For more information see [Recovering past NDIS amounts from compensation](#).

- The NDIA may recover from the compensation payer or insurer past NDIS amounts paid to a participant, where compensation has been paid, or become payable, for an injury that has caused, to any extent, a participant's impairment. For more information see [Recovery from compensation payers and insurers](#); and
- The NDIA may reduce the funding for [reasonable and necessary](#) supports that would otherwise be approved in a statement of participant's supports (see section 33(2) of the NDIS Act) in a participant's plan to take into account compensation received, being received, or given up, by a participant. For more information see [Compensation Reduction Amount \(CRA\)](#).

1.2. Information and Documents required for the NDIA to undertake its functions

In order for the NDIA to undertake the functions as outlined throughout this Operational Guideline, it will be necessary for the NDIA to collect, use and disclose personal information and documents from participants and/or third parties.

The NDIA seeks to adopt best practice when handling personal information. Therefore, the NDIA may obtain consent from a participant or their [authorised representative](#) for the purposes of:

- Requiring a participant to claim or obtain compensation; or
- Calculating a compensation reduction amount; or
- [Providing information to a third party](#).

Third parties, that may be requested to lawfully provide information and/or documentation, include, but are not limited to:

- Authorised representatives (for example, lawyers).
- Trustees.
- Financial Managers (or similar).
- Insurers.
- Medicare.
- Centrelink,
- Commonwealth, State or Territory [schemes of insurance](#).
- Plan Managers.
- Service providers.

Circumstances in which the NDIA is likely to request information and/or documentation include, but are not limited to, when:

- A participant or prospective participant has sustained an injury, which has caused, to any extent, an impairment, but has not claimed compensation;
- A participant, or prospective participant, is currently claiming compensation;

- A participant or prospective participant received compensation either before or after they have been granted access to the NDIS;
- A participant is receiving compensation from a scheme of insurance or under a Commonwealth, State or Territory law; or
- A participant, or prospective participant, has given up a right to claim compensation.

Types of information and/or documents the NDIA is likely to request include but are not limited to:

- Court Judgement or Tribunal Decision.
- Statement of Claim.
- Particulars of Special Damage/Statement of Particulars.
- Terms of Settlement.
- Medical or other reports.
- Centrelink Charge Notice.
- Centrelink Preclusion Notice.
- Medicare Notice of Past Benefits or Notice of Charge.
- Letters from lawyers identifying the final settlement amount, including any breakdown (for example pain and suffering, medical and like expenses, economic loss).
- Letter from the scheme of insurance or insurer identifying the final settlement amount and any breakdown (for example [general damages](#), [medical and like expenses](#) and [economic loss](#)).
- Details of any supports provided, or funded, by a scheme of insurance or insurer.
- Invoices or receipts for supports paid for by the participant from the date of the compensable event to the date of becoming a participant in the NDIS.
- Accounting or bank records showing support expenses paid by the participant from the date of the compensable event to the date of becoming a participant in the NDIS.
- Outgoing expense reports from trustees, financial managers or similar.

The information and documentation collected will assist the NDIA to efficiently and effectively enquire where compensation is a factor. For this reason, it is often beneficial for participants, prospective participants, authorised representatives, and third parties to assist the NDIA by providing the requested information and documentation in a timely manner.

The NDIA will not disclose collected information or documentation unless authorised by law. This includes situations where consent has been obtained by the participant, prospective participant, or an authorised representative, and the release of that information or documentation is necessary for the purposes of the NDIS Act and/or the Compensation Rules.

For information on the NDIA's power to collect information, and how information is handled, see the [Information Handling Operational Guideline](#), [NDIA's privacy policy](#) and/or the [Privacy Act 1988 \(Cth\)](#) .

2. What is the relevant legislation?

- Sections 3 – 5, 11, 17A, 31 – 36, 51 – 57, 99 – 116 of the [National Disability Insurance Scheme Act 2013](#) (NDIS Act).
- [National Disability Insurance Scheme \(Supports for Participants – Accounting for Compensation\) Rules 2013](#) (Compensation Rules).

3. Principles relating to compensation and the NDIS

The [National Disability Insurance Scheme Act 2013](#) (NDIS Act) sets out a number of principles (see section 4 of the NDIS Act) for the National Disability Insurance Scheme (NDIS).

The NDIS is designed to complement, not replace, existing [compensation](#) arrangements for [personal injury](#).

Chapter 5 of the NDIS Act and the [National Disability Insurance Scheme \(Supports for Participants – Accounting for Compensation\) Rules 2013](#) (Compensation Rules) also ensure that where individuals receive compensation payments, the NDIS does not duplicate funding for supports that may be provided to a participant.

The National Disability Insurance Agency (NDIA) does this in the following key ways:

1. Ensuring participants (see section 9 of the NDIS Act) or [prospective participants](#), take reasonable action to claim or obtain compensation if they are, or may be, entitled to do so;
2. Taking action to claim or obtain compensation in the name of the participant, or prospective participant, or by taking over the conduct of any existing claim;
3. Recovering amounts from participants who have received reasonable and necessary supports from the NDIS and obtain compensation;
4. Reducing funding for [reasonable and necessary supports](#) through the application of [Compensation Reduction Amounts \(CRA\)](#).

A key principle, to which consideration must be given, when undertaking these functions under Chapter 5 of the NDIS Act and the Compensation Rules, is the financial sustainability of the scheme.

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