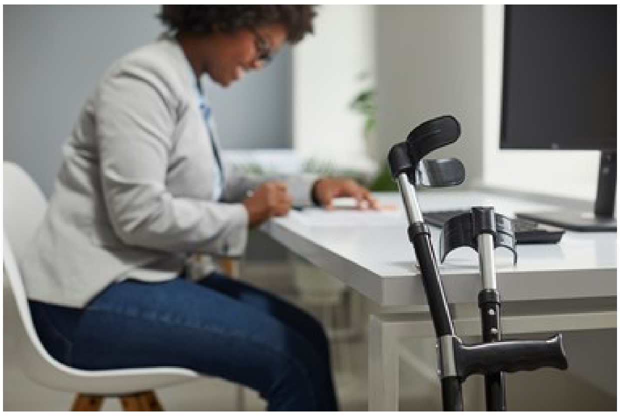

NDIS and compensation explained: what Australians need to know

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If you are receiving support through the National Disability Insurance Scheme (NDIS) and are also pursuing or have received a compensation payment, understanding how the two systems interact can be confusing.

Common questions we receive from our clients include:

- Will my compensation payment cancel my NDIS funding?
- Will I have to repay the NDIS for money paid by them?
- Can I get support in the future from the NDIS if I accept a compensation payment?

In Australia, it is legal and common for people to receive both NDIS supports and compensation payments. However, there are rules about how they work together. Understanding these rules can help you protect your entitlements and avoid unexpected outcomes.

This article explains how NDIS support packages and compensation payments interact, what your obligations are, and how to make sure you stay compliant with Australian law.

What is the NDIS and what does it fund?

The NDIS is a national scheme that provides funding for reasonable and necessary supports for people with permanent and significant disabilities. It is governed by the National Disability Insurance Scheme Act 2013 (Cth).

To become an NDIS participant, you must:

1. Be under 65 when you request access; and
2. Reside in Australia and be an Australian citizen, permanent resident or holder of a special visa category; and
3. Establish that you have either a ‘permanent disability requirement’ or an ‘early intervention requirement’.

A disability can be attributable to one or more of the following:

- intellectual conditions;
- cognitive conditions;
- neurological conditions;
- sensory conditions;
- physical conditions;
- psychiatric conditions.

The NDIS is not designed to remove your right to claim compensation if someone else caused your injury. It also does not replace other insurance or compensation schemes. Instead, it provides funding for the support you need to live your life and participate in the community.

NDIS funding may include:

- personal care and daily living supports;
- therapy services such as physiotherapy, psychology and occupational therapy;
- assistive technology and equipment;
- home modifications;
- support coordination;
- transport and community participation supports.

What is a compensation payout?

A compensation payment is money paid to you because you have suffered harm, injury or loss due to another person or organisation’s actions or negligence. Your compensation could be paid out as a lump sum, weekly income replacement benefits and medical and like expenses.

Section 11 of the NDIS Act defines “compensation” as a payment (with or without admission of liability) in respect of:

1. compensation or damages in respect of personal injury; or

2. 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
3. personal injury, in settlement of a claim for damages or a claim under such an insurance scheme;

Compensation can arise from:

- motor vehicle accidents through schemes such as the TAC;
- workplace injuries through workers' compensation;
- public liability claims;
- medical negligence claims;
- product liability claims;
- common law personal injury claims.

Compensation is designed to address losses such as pain and suffering, loss of earning capacity, past and future medical and treatment expenses, future care and support needs, domestic assistance and loss of enjoyment of life.

Can you receive both NDIS funding and compensation?

The short answer is yes, you can. However, the law requires coordination between the two systems.

The key principle is that the NDIS should not pay for supports that are more appropriately funded by compensation. If another party is legally responsible for your injury, they should bear the cost of your injury-related supports wherever possible. This prevents double funding and ensures the NDIS remains sustainable.

How can compensation affect your NDIS funding?

1. A participant can be prevented from accessing NDIS support until they have sought compensation or benefits elsewhere

If the NDIA (National Disability Insurance Agency) believes you may be entitled to compensation or benefits elsewhere, such as through WorkCover or the TAC, it can require you to take “reasonable action” to pursue those entitlements. This is usually within a specified period of at least 28 days. A participant who already has an NDIS plan in place may have their plan suspended until the requested action is taken.

This ensures the NDIS is not paying for supports that another system is legally responsible for funding.

2. Compensation could result in a payback of past NDIS benefits

Pursuant to sections 106 or 107 of the National Disability Insurance Scheme Act 2013 (Cth), the NDIA has the power to recover the cost of supports it funded before your compensation claim is finalised. This means that if you received NDIS supports related to your injury and later received compensation for that same injury, the NDIA could seek repayment of those past supports from your settlement.

Often these recoverable amounts are related to past medical and like expenses, and past domestic care and assistance. Before settlement, the NDIA will usually issue a Preliminary Notice to the insurer or compensation payer, advising that it may seek recovery.

Once your claim settles, the NDIA calculates:

- the period from when you first accessed the NDIS;
- to the day before settlement or judgment;
- and identifies which supports relate to your compensable injury.

3. Compensation could result in a future reduction in NDIS benefits

The NDIA applies a Compensation Reduction Amount, or CRA. The CRA is the amount that the NDIS can reduce funding to account for compensation being received. It represents the portion of your compensation that is considered to cover future supports and thus, the amount by which NDIS funding can be reduced over time.

A Compensation Reduction Amount (CRA) can be worked out if you have suffered a personal injury that has contributed to your disability, even if the injury happened before you joined the NDIS, and one of the following applies:

- you received compensation through a court decision or a settlement;
- you accepted a lump sum instead of ongoing payments for medical or care expenses under an insurance or compensation scheme; or
- you agreed not to pursue compensation, and the NDIA believes that decision was not reasonable in your situation.

In simple terms, if your disability is linked to an injury and you have received, settled, or given up compensation connected to that injury, the NDIA may reduce your future NDIS funding to take that compensation into account.

What refunds can the NDIS request following resolution of my personal injury claim?

Under sections 106 and 107 of the NDIS Act, the NDIA can recover past NDIS supports that overlap with compensation damages for past medical and like expenses and past domestic care and assistance.

If you were receiving NDIS supports for impairments related to your injury, the NDIA will calculate the recoverable amount from:

- the date you accessed the NDIS;
- to the day before your settlement or judgment.

In Victoria, common law damages that include components for past medical and like expenses or past domestic care and assistance are usually only available in public liability or medical negligence matters.

How does the NDIA know what compensation benefits you have received?

The NDIA has broad powers to request documents that relate to compensation or other benefits you may have received. These documents could include settlement documents, court judgements, correspondence from insurers, medical reports and documents detailing other benefits paid.

If the NDIA requests these documents, they must be provided. Failure to provide can result in penalisation.

Can I appeal a decision to refund the NDIS?

Yes. Decisions made by the NDIA about recovery of funds or reduction of future supports are reviewable decisions. This means you have the right to challenge the decision if you believe it is incorrect, unfair, or based on incomplete information.

First, you must ask for an internal review through the NDIA. A different officer will reassess the decision, and you can provide more information or evidence. If you are still not satisfied, you can appeal to the Administrative Appeals Tribunal (AAT), which is independent of the NDIA and can change the decision.

There are strict time limits that apply at each stage. Missing a deadline can mean losing your right to appeal. Because these decisions can affect your funding long term, getting legal advice early is critical.

Get advice on NDIS and compensation claims in Victoria

The NDIS and compensation systems are designed to work together, not against each other. While the interaction can feel complex, the underlying principle is simple - the right system should pay for the right support.

If you are a current or potential NDIS participant seeking compensation, you should seek assistance with navigating such a highly specialised and complex area. At Guardian Injury Law, we can help you understand your rights to ensure you can receive fair compensation while still protecting your access to essential NDIS funding.

Contacting Guardian Injury Law

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