



## Refunding NDIS after a personal injury claim settlement

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Similar to [refund obligations to Medicare following a personal injury claim](#), compensation received in a personal injury claim can be considered payable (or refundable) to the National Disability Insurance Scheme ('NDIS'), with some exceptions. It is important for claimants to understand the circumstances surrounding refunds to entities like the NDIS because it will impact the amount of money potentially owed to them and, subsequently, the amount of compensation a claimant receives themselves.

In this blog, we discuss the situations surrounding refunds to the NDIS following personal injury claim settlements.

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

Rules surrounding settlement refunds to the NDIS are found in the National Disability Insurance Scheme Act 2013 (Cth) ('the Act') (see s 105B).

The Act provides that any settlement amounts from a personal injury claim must be reported to the NDIA (the agency that administers the NDIS), and a certain amount (calculated by the NDIA) will be payable from those settlement amounts. This includes amounts equal to the total support funds issued under the NDIS to the participant and any other amounts related to the personal injury claim if the NDIA also provided support related to the participant's claim.

However, amounts can only be requested for refund by the NDIA once the personal injury claim has settled or compensation has been provided in a relevant judgment to the participant for access.

It is also notable that these rules only apply to individuals who were already participants for the purposes of the Act. In other words, only people who had been receiving NDIS support at the time of the claim settling or being finalised can be subject to repayment.

Another important thing to consider is that amounts requested by the NDIS are considered debts under the Act, payable to the NDIA. This means that if the amount is not paid, the NDIS may be entitled to take further legal action.

## How are NDIS refunds calculated?

Generally, the amount repayable will equal the NDIS amounts provided to the participant in relation to their injury.

In the recent case of [HRZI and National Disability Insurance Agency \[2023\] AATA 481](#), the Administrative Appeals Tribunal (AAT) confirmed that the NDIS can only request amounts that relate to the participant's impairment that have also resulted in a personal injury claim. That is, the important consideration is the connection between the amount of the compensation for the injury and the payments by the NDIS to the participant in relation to that injury.

Here's an example:

"AB" is an NDIS participant due to chronic depression and an inability to work or undertake day-to-day activities.

"AB" has a fall on unsafe stairs at a local shopping centre and sustains physical leg injuries. They lodge a [public liability claim](#) against the shopping centre and are awarded compensation.

NDIS provides some support to "AB" for the leg injuries by way of physiotherapy.

When "AB's" personal injury claim is settled, they will refund NDIS for the physiotherapy treatment for the leg injury. NDIS cannot seek payment for any services related to "AB's" ongoing depression.

There are important exceptions to the NDIA's ability to recover amounts following a participant's personal injury settlement. For example, the NDIA is not permitted to request a refund amount greater than the amount the NDIS has provided to the participant.

Also, there may be applicable reduction amounts to the repayable sum depending on the order of the personal injury judgment. It is critical that if you are an NDIS participant who has recently settled their personal injury claim, you have experienced lawyers assess the orders to determine whether reductions may apply to the refundable amount.

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## How does the NDIS refund process work?

NDIS participants will likely know that the NDIA is entitled to any documents or information related to the participant's personal injury claim. In particular, if the participant receives any compensation in relation to their injury, the NDIA must be notified. As a result, the NDIS would be notified of the ongoing personal injury claim by the participant.

Once the NDIS is put on notice of compensation or awarded settlement funds, under the Act, NDIS will issue a notice to the participant to request payment be made. If you are involved in a personal injury claim, and that claim has recently been settled, it is very important that you take note of the deadline for any repayments to NDIS. These are typically quite strict and quick turnarounds.

## Why can the NDIS receive some of my personal injury compensation?

The reason that NDIS can claim settlement amounts is to ensure fairness. The NDIS is structured to provide reasonable and necessary supports insofar as those supports are not attainable through any other source.

If an NDIS participant were able to claim supports from the NDIS and keep their personal injury compensation for the same injury, this would result in a benefit outside the scope of the NDIS' objectives.

Specifically, the "NDIS refunds process" avoids having the claimant receive compensation from the defendant to a personal injury claim as well as the NDIS, which is publicly funded by taxpayers.

## Can I appeal a decision to refund the NDIS?

NDIS decisions are a form of reviewable decision, which means you can apply to have the decision reviewed if you believe it is incorrect. Any appeal of an NDIS decision is through internal processes first (so through the NDIS channels). If, following the initial internal review, the decision is still unsatisfactory, the decision may be appealed at the Administrative Appeals Tribunal for an additional review.

Again, there are strict deadlines surrounding NDIS review processes, and it is critical that if you have any concerns or questions surrounding the process, you bring this to the attention of a lawyer.

## Get help from a personal injury lawyer

If you are looking for advice about a personal injury claim or NDIS settlement refunds, reach out to IM Lawyers. It costs you nothing to find out where you stand, and we run personal injury claims on a 'no win, no fee' basis.

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