



## Compensable Clients with Disability Policy

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Applies to:	Disability SA and Disability and Domiciliary Care Services staff
Issued by:	Disability SA
Delegated authority:	David Caudrey Executive Director Disability SA Lynn Young Executive Director Disability and Domiciliary Care Services
Resource custodian:	Vince Raschella Manager, Contracting & Sector Liaison
Due for review:	May 2019
Confidentiality:	Public
DCSI strategic objective:	Support independence and participation

### 1 Intent

This policy outlines the rationale and process for people with disability who are likely to be in receipt of compensation funds to pay for support services provided through, and or funded by, Disability SA and/or the Disability and Domiciliary Care Services Divisions of the Department for Communities and Social Inclusion (DCSI).

### 2 Context

People with disability who have been compensated, or are seeking compensation as a result of injury, illness or disease may have services coordinated and provided by Disability SA and/or Disability and Domiciliary Care Services, its funded organisations, or through private arrangements.

Disability SA and Disability and Domiciliary Care Services do not fund services for people who receive compensation payouts or settlements made for the purpose of meeting current and future costs of care. In instances where Disability SA and/or Disability and Domiciliary Care Services have provided services to people in receipt of compensation funds, Disability SA and/or Disability and Domiciliary Care Services is entitled to recover these costs.

The National Disability Insurance Scheme (NDIS) commenced in South Australia with a children's launch on 1 July 2013. Since this time, funding and responsibility for determining the eligibility and allocating and planning services for children and young people from birth to 13 years has progressively transitioned from the Department to the National Disability Insurance Agency. The NDIS will continue to be rolled out in South Australia as follows:

- From 1 February 2016, children aged between 0 to 14 years of age across South Australia will continue to enter the NDIS.
- From 1 January 2017, young people aged between 15 and 17 years of age across South Australia will begin to enter the NDIS.
- From 1 July 2017, adults aged 18 to 64 years of age will begin to enter the NDIS based on where they live.

South Australia has signed up to the full implementation of the NDIS for all South Australians with disability, which commenced in 2016, with full implementation by 2018.

The NDIS provides support and, where relevant, individualised funding to support people with disability. Once fully implemented, the NDIS will change the way disability services are assessed and provided to individuals.

Given the evolving nature of the way disability services are managed and delivered in South Australia, this policy is required to establish the rationale and process for people with disability who have been compensated, or are seeking compensation as a result of injury, illness or disease to pay for support services provided through, and or funded by Disability SA and/or the Disability and Domiciliary Care Services Division of the DCSI.

### 3 Risk

The absence of a policy for compensable clients with disability may result in Disability SA and/or Disability and Domiciliary Care Services not obtaining reimbursement for the cost of services when people have been financially compensated for the provision of these services. This would result in reduced resources for non-compensable clients and significant inequity in favour of clients who have received compensation.

### 4 Reference Documents and Links

#### 4.1 Directive Documents

- [Disability Discrimination Act 1992](#)
- [Disability Services Act 1993](#) South Australian
- [Eligibility for Disability Services and Programs Sector-Wide Policy](#)

#### 4.2 Supporting Documents

- South Australian Government Gazette – Fees Payable (Current Arrangement)
- Compensable Clients Guideline, Disability SA

### 5 Scope

This policy applies to people with disability who have been, or will be compensated, and who have received, or are expected to receive services, funded or provided by Disability SA and/or Disability and Domiciliary Care Services. It encompasses all services provided through National Disability Agreement (NDA) funding and South Australia Home and Community Care (SA HACC) funding.

People with disability who have received compensation payments may choose to purchase services directly from non-government organisations (NGOs) or commercial service providers and negotiate fees directly with these provider(s). These situations fall outside of this policy.

### 6 Definitions

#### 6.1 Compensable Client

For the purposes of this policy, a compensable client refers to a person who is (or may be) entitled to payment, or has received payment(s), by way of compensation in respect of the injury, illness or disease that has caused disability for which the person is either seeking to receive or is receiving services provided or funded by Disability SA and/or Disability and Domiciliary Care Services.

A client who is entitled to or has received compensation under the [Victims of Crime Act 2001](#) is not considered a 'compensable client' for the purpose of this policy.

#### 6.2 National Disability Agreement (NDA)

The National Disability Agreement (NDA) is an agreement between the Australian, State and Territory Governments. It defines the national framework for the delivery, funding and development of specialist disability services.

#### 6.3 South Australia Home and Community Care (SA HACC)

The South Australia Home and Community Care (SA HACC) program provides community care services to eligible people with disability aged under 65, or under 50 for Aboriginal and Torres Strait Islander people who live at home.

## 7 Policy Detail

### 7.1 Compensable status and eligibility for services through Disability SA and/or Disability and Domiciliary Care Services

- People who are compensable are eligible to receive services through Disability SA and/or Disability and Domiciliary Care Services providing they meet the requirements of the current eligibility policy in relation to disability services.
- In addition to meeting the requirements of the current eligibility policy, persons who have received a lump sum compensation payment that was **not** divided into categories, who are seeking access to funded services through Disability SA and/or Disability and Domiciliary Care Services must meet either the Australian Government Department of Human Services (DHS):
  - Assets test threshold for full pension; or the
  - Assets test for Disability Support Pension under 21 with no children.

To determine their eligibility status for services through Disability SA and/or Disability and Domiciliary Care Services, DCSI will apply the relevant asset test to compensable persons receiving either a full or part pension.

DHS updates the asset test limits in January, March, July and September of each year. Further information regarding the Disability Support Pension asset thresholds and the associated rules (e.g. what assets are assessed, exempt and excluded) can be found at the following link: <http://www.humanservices.gov.au/customer/enablers/assets>

Persons who have received a lump sum compensation payment that was not divided into categories, can reapply to access funded services through Disability SA and/or Disability Services once their assets fall below the applicable threshold.

- The DHS asset tests do not apply to persons who have received a compensation payment that was divided into categories of support (eg for personal care, equipment, occupational therapy etc.). In these circumstances, DCSI would only provide funded services when the person has exhausted the relevant compensable categories.

### 7.2 Establishing compensable status

Compensable status must be declared by the person with disability and/or their guardian, trustee, appropriate advocate or family member. At the point of the intake assessment, this disclosure will specify whether compensation insurance has been paid or whether a claim for compensation has been made or is pending in respect of the person's disability.

Adherence to this policy is a condition of receiving services through Disability SA and/or Disability and Domiciliary Care Services. Disclosure documents will be signed by both parties and will permit Disability SA and/or Disability and Domiciliary Care Services to obtain the required detail about the client's compensation status from the relevant parties.

### 7.3 Compensable status and payment for services

- Clients who have received compensation as a result of injury, illness or disease are required to pay for services received through Disability SA and/or Disability and Domiciliary Care Services, or from organisations funded by Disability SA and/or Disability and Domiciliary Care Services.
- Clients who have current compensation claims not yet settled are also required to pay reimbursement for services provided or funded by Disability SA and/or Disability and Domiciliary Care Services. If interim payments for care and/or services are not available from the insurance company prior to settlement, Disability SA or Disability and Domiciliary Care Services will provide or fund services to the client until these costs are redeemed from the compensation payment at settlement.
- For clients with current and pending compensation claims Disability SA and/or Disability and Domiciliary Care Services will notify the client's solicitor and/or insurance agency prior to settlement about all charges that have been accrued for the services provided.

- If a client's anticipated compensation does not eventuate, Disability SA and/or Disability and Domiciliary Care Services will not seek reimbursement of the cost of services provided and the usual fee arrangement will apply.

For clients that receive a lump sum compensation payment, which does not detail specific amounts for claimable services (such as may occur in out of court settlements), Disability SA and Disability and Domiciliary Care Services will charge in accordance with gazetted fees by a contract agreement up until the time they fall below the asset threshold for the full payment of the Disability Support Pension. Information regarding the Disability Support Pension asset threshold can be found at the following link:  
<http://www.humanservices.gov.au/customer/enablers/assets>

#### 7.4 Claimable services

**Disability SA and Disability and Domiciliary Care Services is able to claim payment from compensation funds for care including:**

- Case management
- Accommodation and support
- Personal care/support
- Support for day activity
- Domestic assistance
- Allied health and therapy
- Counselling
- Home nursing
- Equipment, aids and appliances
- Home modifications
- Travel
- Respite

**Funds received for the following items will not be accessed by Disability SA and/or Disability and Domiciliary Care Services to pay for services:**

- Solicitor's cost
- Pain and Suffering (also known as Non-Economic Loss)
- Past Economic Loss (PEL)
- Future Economic Loss (FEL)
- Loss of Chance (when PEL and FEL are not awarded)
- Superannuation
- Voluntary Services
- Solatium (compensation, especially for hurt feelings)
- Interest from monies awarded for these categories

#### 7.5 Service fees

- Disability SA and Disability and Domiciliary Care Services will charge clients in accordance with gazetted fees by contractual agreement between the Minister and the client or client's representative as specified in the Compensable Client Agreement (Client Agreement) or the Compensable Client Agreement (Client's Representative Agreement).
- Reimbursement for equipment maintenance and repair, equipment provision and home modifications provided by Disability and Domiciliary Care Services will be recovered at their actual cost. Decisions about the type of equipment or level of home modifications required will be based on assessed need and what is fair and reasonable for the person.

- Accommodation charges apply for supported accommodation places provided or funded by Disability SA and/or Disability and Domiciliary Care Services. Charges to compensable clients with disability in accommodation services will be the amount prescribed in the South Australian Government Gazette.
- When a non-government organisation funded by Disability SA and/or Disability and Domiciliary Care Services is providing services to a compensable client, that agency is required to immediately advise the Disability SA, Contracting and Sector Liaison Unit (CSLU). The CSLU will negotiate with the agency and undertake the appropriate funding adjustment to address this situation so double charging for one service does not occur.

#### 7.6 Variations to charging for services

- Compensation outcomes vary widely according to a person's circumstances and the legal process undertaken. Each person's situation needs to be considered carefully to identify the terms of the settlement and what the financial amount is expected to cover. For example some people may receive compensation for pain and suffering, which is not redeemable by Disability SA and/or Disability and Domiciliary Care Services.
- When a client's compensation funds have been exhausted, they are no longer required to reimburse Disability SA and/or Disability and Domiciliary Care Services. If a person meets current eligibility criteria and guidelines service(s) will continue to be provided.
- Any normal fee arrangements will be payable when these apply.

#### 7.7 Future planning

- Disability SA and Disability and Domiciliary Care Services are required to maintain essential services to a compensable client if the client's compensation money is exhausted.
- Once a person's compensable funds have been exhausted and if they continue to meet eligibility criteria, services will be provided to the person based on identified need and priority of access in comparison to other service users.
- Clients who previously had compensable status and whose funds have been exhausted may not be able to access the same level of service they were once able to afford. Disability SA and/or Disability and Domiciliary Care Services will provide clients in this situation with information to prepare them for possible reductions or changes in service.

#### 7.8 Guidelines and procedures

In accordance with the principles and directions of this policy, Disability SA and Disability and Domiciliary Care Services will maintain transparent guidelines and procedures relating to services provided or funded.

### 8 Aboriginal Impact Statement Declaration

The needs and interests of Aboriginal people have been considered in the development of this policy. It has been assessed that there is no impact specific to Aboriginal people or an impact that could disproportionately affect Aboriginal people.

### 9 Approval

<b>Content Author:</b>	<b>Resource Custodian:</b>	<b>Delegated Authority:</b>
Date: May 2016	Date: May 2016	Date: May 2016
Position: Team Leader Policy and Consumer Engagement Contracting and Sector Liaison	Position: Manager Contracting and Sector Liaison Disability SA	Position: Executive Director Disability SA  Position: Executive Director Disability and Domiciliary Care Services