

Chapter 2

Eligibility criteria

Introduction

2.1 This chapter primarily deals with term of reference (a) the eligibility criteria for the NDIS for people with a psychosocial disability.

2.2 The first part of the chapter focuses on the key issues relating to eligibility criteria, including: the lack of clarity of criteria and guidelines; the criterion of 'permanent impairment' in the context of psychosocial disability; and the reliance on a diagnosis approach.

2.3 The second part of the chapter discusses participation and eligibility rates and touches on the repercussions for people deemed not eligible for NDIS services, which will be discussed in detail in Chapter 4.

Eligibility criteria

Current legislation, rules and guidelines regarding the disability requirements

2.4 Section 24 of the *NDIS Act 2013* stipulates the disability requirements:

(1) A person meets the disability requirements if:

(a) the person has a disability that is attributable to one or more intellectual, cognitive, neurological, sensory or physical impairments or to one or more impairments attributable to a psychiatric condition; and

(b) the impairment or impairments are, or are likely to be, permanent; and

(c) the impairment or impairments result in substantially reduced functional capacity to undertake, or psychosocial functioning in undertaking, one or more of the following activities:

(i) communication;

(ii) social interaction;

(iii) learning;

(iv) mobility;

(v) self-care;

(vi) self-management; and

(d) the impairment or impairments affect the person's capacity for social or economic participation; and

(e) the person is likely to require support under the National Disability Insurance Scheme for the person's lifetime.

(2) For the purposes of subsection (1), an impairment or impairments that vary in intensity may be permanent, and the person is likely to require support under the National Disability Insurance Scheme for the person's lifetime, despite the variation.

2.5 The *National Disability Insurance Scheme (Becoming a Participant) Rules 2016* about the disability requirements state:

5.4 An impairment is, or is likely to be, permanent (see paragraph 5.1(b)) only if there are no known, available and appropriate evidence-based clinical, medical or other treatments that would be likely to remedy the impairment.

5.5 An impairment may be permanent notwithstanding that the severity of its impact on the functional capacity of the person may fluctuate or there are prospects that the severity of the impact of the impairment on the person's functional capacity, including their psychosocial functioning, may improve.

5.6 An impairment may require medical treatment and review before a determination can be made about whether the impairment is permanent or likely to be permanent. The impairment is, or is likely to be, permanent only if the impairment does not require further medical treatment or review in order for its permanency or likely permanency to be demonstrated (even though the impairment may continue to be treated and reviewed after this has been demonstrated).

2.6 The NDIS website provides the following details:

You may meet the disability requirements if:

you have an impairment or condition that is likely to be permanent (i.e. it is likely to be lifelong) and

your impairment substantially reduces your ability to participate effectively in activities, or perform tasks or actions unless you have:

◦ assistance from other people or

◦ you have assistive technology or equipment (other than common items such as glasses) or

◦ you can't participate effectively even with assistance or aides and equipment and

• your impairment affects your capacity for social and economic participation and

• you are likely to require support under the NDIS for your lifetime.

An impairment that varies in intensity e.g. because the impairment is of a chronic episodic nature may still be permanent, and you may require support under the NDIS for your lifetime, despite the variation.¹

2.7 In its submission to this enquiry, the NDIA described the evidence required to meet the disability requirements:

Most potential participants with a psychosocial disability will be asked to provide evidence that they have or are likely to have a permanent disability relating to their mental health condition. This needs to be documented by a

1 NDIS, *Access requirements*, <https://ndis.gov.au/people-disability/access-requirements.html> (accessed 25 May 2017).

health professional and in the case of psychosocial disability; this is usually a treating general practitioner or treating psychiatrist. The NDIA will also need evidence/assessments to describe the extent of the functional impact of the mental health condition on the person's everyday living skills.²

Issues arising

Clarity of criteria

2.8 The vast majority of inquiry participants expressed concerns about the lack of clear eligibility criteria for access to NDIS services for people with a psychosocial disability.

2.9 Participants found the disability requirements provided in the NDIS Act difficult to interpret when they are applied to a psychosocial disability related to a mental health condition. The Office of the Public Advocate (Victoria) said in its submission:

Notions that are particularly abstract in this context are those of 'permanency' and 'functional impact', which the National Disability Insurance Agency (NDIA) does not further qualify.³

2.10 Mental Health Australia, the peak, national non-government organisation representing the interests of the Australian mental health sector states:

Clarification of the eligibility criteria for the NDIS re psychosocial disability (currently accepted prevalence figure is 64,000 people at Full Scheme) is the essential starting point. This was made clear in the National Mental Health Commission's (NMHC) Review, which recommended that government 'urgently clarify the eligibility criteria for access to the NDIS' (recommendation 3).⁴

2.11 The Australian Government response to NMHC recommendation 3 reads:

The National Disability Insurance Scheme (NDIS) represents a major advance in terms of funding available for disability support and in terms of giving people with disability the power to choose what works best for them. This includes people who gain entry to the Scheme due to disability arising from mental illness.

The National Disability Insurance Agency (NDIA), Commonwealth and state governments are working together with consumers, carers and peak organisations on a significant work programme to underpin transition arrangements, and to ensure implementation of the NDIS reflects the needs of people with mental illness, their families and carers. The primary

2 NDIA, *Submission 102*, p. 4.

3 Office of the Public Advocate (Victoria), *Submission 7*, p. 5.

4 Mental Health Australia, *Submission 1 – Attachment 1*, p. 2.

mechanism for this work is the NDIA Mental Health Sector Reference Group.⁵

2.12 In 2014, the Independent Advisory Council to the NDIA (IAC) identified the need for 'a more informed evidence base to assist in addressing the complex issues involved in implementing the intent of the NDIS Act in regard to the assessment of eligibility'.⁶ At the time, the IAC noted that there were no accepted criteria for the determination of serious and persistent functional impairments in regards to psychosocial disabilities. In the submission to this inquiry, the IAC reiterated a number of recommendations it had made in 2014, including:

The Agency develops its own working definition and guidelines of permanency of disabilities related to mental health issues.⁷

Permanent impairment requirement

Terminology

2.13 Best-practice mental health care emphasises the language of *empowerment*, *recovery* and *ability* over that of *disability*, *impairment* and *illness*. Inquiry participants were concerned that the language used in the NDIS Act does not fit with the recovery oriented approach of the mental health sector.⁸

2.14 In particular, inquiry participants found the requirement for a person to have an impairment that is permanent or likely to be permanent difficult to reconcile with contemporary, recovery-focussed mental health management and service delivery.⁹

2.15 The committee heard on numerous occasions¹⁰ that some people declined to engage with the NDIS because of the permanent disability requirement and definition of mental illness disability. Tandem, the Victorian peak body representing families and carers of people living with mental health challenges or a psychosocial disability explains:

A reliance on the language of permanence as a requirement to access the Scheme creates barriers for people. Tandem has heard numerous anecdotes

5 Australian Government, *Summary of Actions within the Australian Government Response to Recommendations to the Review of Mental Health Programmes and Services*, November 2015, p. 6, [http://www.health.gov.au/internet/main/publishing.nsf/Content/EDB3AA47E0609E3ACA257F06007F794D/\\$File/actions.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/EDB3AA47E0609E3ACA257F06007F794D/$File/actions.pdf) (accessed 29 May 2017)

6 NDIS Independent Advisory Council, *Submission 125*, p. 3.

7 NDIS Independent Advisory Council, *Submission 125*, p. 4.

8 Royal Australian and New Zealand College of Psychiatrists, *Submission 18*, p. 2.

9 See for example: UnitingCare Wesley Country SA, *Submission 14*, p. 2; Mental Health Australia, *Submission 1*, p. 3; Mental Health and NDIS Facebook Support Group, *Submission 8*, p. 2.

10 See for example: Arafmi Qld Inc., *Submission 10*, p.3; Mr Quinlan; CEO, Mental Health Australia, *Committee Hansard*, 28 April 2017, p.5; Katoomba Neighbourhood Centre, *Submission 84*, p. 3.

from family and carers of the person that they care for declining to engage with the NDIS because they do not view their situation as a 'psychosocial disability' that is 'permanent'.¹¹

Young people

2.16 Orygen, the National Centre of Excellence in Youth Mental Health, raised the issue of the difficulty for young people with a psychiatric disability to enter the NDIS because they are likely not to receive a diagnosis of permanent impairment:

Even for young people experiencing severe and functionally disabling mental ill-health, current NDIS eligibility criteria would exclude access on the basis that it would not be possible (or clinically advisable) to diagnose the illness as a 'permanent' condition. It is therefore problematic that this term is used to define eligibility for the NDIS.¹²

2.17 The Commonwealth Ombudsman also reported receiving 'feedback that suggests a barrier to accessing the Scheme, especially for young people with psychosocial disability, is that medical professionals may be reluctant to assess the person's condition as permanent or likely to be permanent'.¹³

2.18 Similarly, Anglicare Tasmania Inc. raised concerns about the permanent impairment requirement for young people:

Professionals are often reluctant to both diagnose and label symptoms as a specific illness and to confidently state that this is a permanent condition. Many young people living with mental health conditions are likely to be reluctant to consider that their condition is permanent, given the recovery model's emphasis on positive improvements.¹⁴

2.19 At a public hearing, Professor McGorry, Executive Director, Orygen, further explained:

A very important thing in psychiatry is early intervention and recovery—they have been the two big things in the last 20 or 30 years—and changing the pessimism that used to be associated with these illnesses. To have a model that assumes and requires permanent and fixed disability does not really work for us; certainly not in youth mental health. This is what young people have told us.¹⁵

11 Tandem Inc., *Submission 69*, p. 3.

12 Orygen, *Submission 67*, p. 2.

13 Commonwealth Ombudsman, *Submission 4*, p. 4.

14 Anglicare Tasmania Inc., *Submission 98*, p. 7.

15 Professor McGorry, Executive Director, Orygen, *Committee Hansard*, 28 April 2017, p. 3.

Amendments to legislation and rules

2.20 The committee heard on a number of occasions¹⁶ that amendments to the *NDIS Act 2013* in relation to the 'permanent' requirement criterion would enable NDIS to have a recovery-oriented approach aligned with its objectives of maximising independence, social and economic participation at the individual level.

2.21 Dr Sarah Pollock, Executive Director, Research and Advocacy, Mind Australia, explained:

Our view is that there does need to be some change made to the act. One way of dealing with that would be to reference permanency if appropriate support is not received, so that permanency or recovery becomes contingent on the person being able to get support—so that it says that impairment will be permanent if support is not accessible.¹⁷

2.22 Proposed amendments to the NDIS Act in relation to the 'permanent' requirement include:

- Replacing the word permanent with *ongoing, enduring* or *chronic*.
- Considering incorporating into Section 24.1(b): *the impairment or impairments are ongoing, or likely to be ongoing without the person receiving supports intended to build their capacity*.¹⁸

2.23 The committee also received recommendations to amend the *National Disability Insurance Scheme (Becoming a Participant) Rules 2016* to, a) include the principle of recovery-oriented practice for psychosocial disability; and b) clarify that Rule 5.4 does not apply to psychosocial disability to reflect that people with mental illness will receive ongoing clinical, medical and other treatments and psychosocial services to aid their recovery.¹⁹

2.24 In contrast, the committee also heard that the NDIS Act has sufficient flexibility. Mary Burgess, Public Advocate (QLD) cited Section 24 (2) that allows for variability within the concept of permanency. In her view, 'the critical issue for people with psychosocial disability in relation to determining eligibility for the NDIS in accordance with the Act, is that of assessing functionality and capacity to participate in Australian society over the long term (Section 24 (1) (c) and (d))'.²⁰

16 See for example: Occupational Therapy Australia, *Submission 57*, p.5; CMHA, *Submission 75*, p.3; Additional information co-authored by Mental Health Australia; Mental illness Fellowship and CMHA, additional information received 19 May 2017, p. 1.

17 Dr Sarah Pollock, Executive Director, Research and Advocacy, Mind Australia, *Committee Hansard*, 12 May 2017, p. 16.

18 Additional information co-authored by Mental Health Australia; Mental illness Fellowship and CMHA, additional information received 19 May 2017, p. 1.

19 Additional information co-authored by Mental Health Australia; Mental illness Fellowship and CMHA, additional information received 19 May 2017, p. 2.

20 Ms Mary Burgess, Public Advocate (Queensland), answers to questions on notice, 25 May 2017 (received 25 May 2017).

Reliance on formal diagnosis

2.25 In the context of psychosocial disability, assessing and predicting functionality over the long term is complex and difficult. Some submitters suggested that this has led to a practice of heavy reliance and focus on a formal diagnosis rather than functionality and the need for support to determine eligibility.²¹

2.26 Mary Burgess, Public Advocate of Queensland, stated:

We are also aware that eligibility decisions made by the NDIA staff are often heavily reliant on diagnosis rather than functionality and the need for support.²²

2.27 The committee heard that another contributing factor leading to the diagnosis type approach to determine eligibility is the reference to 'psychiatric condition' in Section 24 of the NDIS Act. Psychiatric condition is the causal component of later psychosocial disability.²³ According to Mind Australia, no other forms of disability are related to a cause in Section 24 of the NDIS Act.²⁴ Peak organisations such as Mental Health Australia, Mental Illness Fellowship of Australia Inc. and CMHA recommend removing references to psychiatric condition in the NDIS Act.²⁵

2.28 Aftercare, which currently services more than 6 000 clients across NSW, QLD and VIC, argues that the focus on diagnosis disqualifies some people with demonstrable needs under the NDIS:

Our consistent experience over the full period of the operation of the Scheme to date is that the eligibility criteria do not adequately consider the episodic nature of psychiatric disability/mental illness, and the focus on diagnosis rather than physical and psychosocial impact disqualifies many with a demonstrable need for assistance under the Scheme.²⁶

2.29 Many participants²⁷ talked about the episodic nature of conditions and symptoms associated with psychosocial disabilities and how this may exclude people from the Scheme despite their ongoing need for support.

2.30 Anglicare Australia highlighted issues expressed by many participants:

21 See for example: Flourish Australia, *Submission 117*, p.5; Mr Jarrad Smith, NDIS Transition Manager, New England Partners in Recovery, *Committee Hansard*, 12 May 2017, p. 20; Mental Health and NDIS Facebook Support Group, *Submission 8*, p. 4.

22 Mary Burgess, Public Advocate QLD, *Committee Hansard*, 12 May 2017, p. 4

23 Dr Sarah Pollock, Executive Director, Research & Advocacy, Mind Australia, *Committee Hansard*, 12 May 2017, p. 15.

24 Dr Sarah Pollock, Executive Director, Research & Advocacy, Mind Australia, *Committee Hansard*, 12 May 2017, p. 15.

25 Additional information co-authored by Mental Health Australia; Mental illness Fellowship and CMHA, additional information received 19 May 2017, p. 1.

26 Aftercare, *Submission 101*, p. 4.

27 See for example: Australian Red Cross, *Submission 15*, p. 6; Homelessness NSW, *Submission 21*, p.2; JFA Purple Orange, *Submission 25*, p. 7.

In particular the requirement for a psychosocial disability to be both severe and permanent significantly narrows eligibility, contradicts the known episodic nature of many severe forms of mental illness, and directly challenges a recovery framework for treatment.²⁸

2.31 Mind Australia Limited explained the limitations of reliance on diagnosis:

Current practice in assessment of eligibility for people with mental illness relies heavily on diagnosis and evidence from GPs and psychiatrists. As a means of determining disability, this is a blunt instrument because it fails to take into account the complex interplay between symptom severity and individual context over time – including the cumulative impact of episodes of illness on a person's broader life and ability to participate socially and economically.²⁹

2.32 As described by Ms Burgess, the Public Advocate of Queensland, the reliance on diagnosis can also lead to inconsistencies and disadvantage individuals with less acknowledged conditions:

So, in Queensland, we are seeing people with a diagnosis for schizophrenia or depression being more likely to receive NDIS funding than those with less acknowledged conditions such as post-traumatic stress disorder or personality disorders, without consideration of the impacts of these conditions on their functionality.³⁰

2.33 This is confirmed by consumers' groups such as Mental Health and NDIS Facebook Support Group, which has reported instances where applicants have been deemed not eligible to the NDIS solely because their conditions are not on the list of acceptable disabilities and are a medical condition.³¹

Functional impairment

2.34 Overall, participants³² found that the emphasis should be on the assessment of functional impairments and needs to determine eligibility. Whilst many areas of disability do have accepted criteria for the determination of serious and persistent functional impairments, such criteria have not yet been developed in regard to psychosocial disabilities related to a mental health condition.³³

28 Anglicare Australia, *Submission 62*, p. 5.

29 Mind Australia Limited, *Submission 118*, p. 7.

30 Ms Mary Burgess, the Public Advocate of Queensland, *Committee Hansard*, 12 May 2017, p. 4.

31 Mental Health and NDIS Facebook Support Group, *Submission 8*, p. 4.

32 See for example: MHCA, *Submission 116*, p. 3; Royal Australian and New Zealand College of Psychiatrists, *Submission 18*, p. 3; Sunshine Coast and Gympie – Partners in Recovery, *Submission 36*, p. 7.

33 IAC, *Submission 125*, p. 4.

2.35 The IAC and others recommended that the NDIA develop a validated instrument to determine functional impairments and support needs for people with psychosocial disability related to a mental health condition.³⁴

Participation rates

2.36 The estimated number of Australians with severe mental illness requiring community support varies but is, in any case well over 200 000. The Australian Government has estimated that 230 000 Australians with severe mental illness have a need for some form of social support, ranging from low intensity or group-based activities delivered through mainstream social services to extensive and individualised disability support.³⁵

2.37 Using NMHSPF modelling, it is estimated that approximately 290 000 Australians with severe mental illness require community support.³⁶

2.38 As discussed in Chapter 1, in 2019–2020, it is estimated that around 64 000 people with a primary psychosocial disability will be participants in the NDIS.³⁷

2.39 At the end of March 2017, 4849 people with a psychosocial disability had approved plans, accounting for six per cent of Scheme participants.³⁸

Eligibility rates

2.40 To date, eligibility rates for NDIS applicants with a psychosocial disability have been one of the lowest compared to other broad disability categories. Over the life of the Scheme, 81.4 per cent of people with psychosocial disability who lodged an access request have been found eligible for the Scheme. This compares to 97.5 per cent for people with intellectual disability; 98.8 per cent for people with autism and 98.9 per cent for people with cerebral palsy.³⁹

2.41 In 2016–2017, the approval rate for people with psychosocial disability has fallen during the first and second quarter (data not available for third quarter) with only 69.4 per cent approved during Quarter 1,⁴⁰ and 71.3 per cent during Quarter 2.⁴¹

34 See for example: IAC, *Submission 125*, p. 2; Additional information co-authored by Mental Health Australia; Mental illness Fellowship and CMHA, additional information received 19 May 2017, p. 2.

35 Australian Government, Department of Health, *Australian Government Response to Contributing Lives, Thriving Communities – review of Mental Health Programmes and Services*, 2015 p. 17.

36 Mental Health Australia, *Submission 1*, Attachment 1, p. 18.

37 National Disability Insurance Agency (NDIA), *Submission 102*, p. 2.

38 NDIS, *Quarterly Report to COAG Disability Reform Council*, 31 March 2017, p. 18.

39 NDIA, *NDIS COAG Disability Reform Council Quarterly Report*, Version 1, January 2017, p. 56.

40 NDIA, *NDIS COAG Disability Reform Council Quarterly Report*, Version 1, October 2016, p. 45.

2.42 A number of submitters suggested the need for a review into the eligibility rates for NDIS applicants with a psychosocial disability to investigate the high rejection rate of applications for this client group in comparison with applications from people with other primary disabilities.⁴²

2.43 The IAC recommended:

That the Agency monitor patterns of eligibility and ineligibility in relation to functional impairment and a psychiatric condition to build a picture of who is being included and excluded, track compliance with the requirements of the legislation and the consistency of the assessments being undertaken.⁴³

Impact on people deemed not eligible for NDIS services

2.44 One of the key issues for people deemed not eligible for NDIS services is what services will be available once some of the existing Commonwealth, state and territory funded services have fully transitioned into the NDIS.

2.45 Currently, to access continuity of support, clients of Commonwealth programs transitioning to the NDIS need to apply for the NDIS, regardless whether or not they are obviously ineligible for the NDIS.⁴⁴ This is especially important given that service providers have reported that, to date; only some of their existing clients are applying for the NDIS.⁴⁵ This may result in some existing clients losing supports and left without appropriate services.

2.46 The ILC, formerly known as Tier 2, is the component of the NDIS that provides information, linkages and referral to efficiently connect people with disability, their families and carers, with appropriate disability, community and mainstream supports.⁴⁶

2.47 As described by the Sunshine Coast and Gympie – Partners in Recovery, 'the ILC component has been branded as the answer to ensuring continuity of support for those who be ineligible for an IFP'.⁴⁷

2.48 However, there are concerns that the ILC does not have the capacity to provide for what existing services deliver or respond to the needs of people who won't be eligible for the NDIS.⁴⁸

41 NDIA, *NDIS COAG Disability Reform Council Quarterly Report*, Version 1, January 2017, p. 56.

42 See Public Advocate of Queensland. *Submission 93*, p. 11; Australian Red Cross, *Submission 15*, p. 3.

43 IAC, *Submission 125*, p. 4.

44 Committee Hansard, 16 June 2017, pp. 13–14.

45 *Committee Hansard*, 16 June 2017, pp.13 –14.

46 NDIS, *ILC Policy Framework-revised*, August 2015, p. 1.

47 Sunshine Coast and Gympie – Partners in Recovery, *Submission 36*, p. 5.

48 Mental Health Carers Australia, *Submission 116*, p. 4.

2.49 For example, the National Mental Health Commission is 'concerned that the ILC as currently envisaged will not be adequately funded to address the level of need, especially among those with psychosocial disability who do not qualify for a package under the NDIS'.⁴⁹

2.50 Mental Health Coordinating Council noted that there is no quarantined ILC mental health specific allocation and added 'if there were, it would not come close to replacing the Commonwealth mental health programs that are scheduled to be lost to the NDIS'.⁵⁰

2.51 The scope and level of funding for mental health services under the ILC framework are discussed in Chapter 4.

2.52 The RACP expressed concerns that any reduction in services available to people deemed ineligible for the NDIS will likely result in increased pressure and demand upon the mental healthcare system.⁵¹

2.53 The issues relating to the transition of services to the NDIS, the interface between the NDIS and services outside the Scheme as well as emerging service gaps for people not eligible for NDIS services are explored and discussed in Chapter 4.

Committee view

2.54 The committee acknowledges the widespread concerns expressed by stakeholders in relation to the lack of clarity of the eligibility criteria when applied to psychosocial disabilities related to a mental health condition.

Terminology

2.55 The committee agrees that the language of disability used in the NDIS Act and NDIS (Becoming a Participant) Rules does not readily translate into the mental health sphere. An example is the language of permanence which, while a core eligibility criteria for access to the NDIS, can on the surface at least, appear to conflict with a recovery approach, which is the guiding vision and value base for contemporary practice in mental health. Additionally, the committee notes that the language of permanence and disability may detract some people in needs of ongoing support, including young people, to actually engage with the NDIS.

2.56 The committee agrees that Rule 5.4 in the *National Disability Insurance Scheme (Becoming a Participant) Rules 2016* should not apply to psychosocial disability to reflect that people with a mental health condition receive ongoing clinical, medical and other treatments and psychosocial services to aid their recovery.

Young People

2.57 The focus on recovery is particularly important for young people experiencing mental ill-health. Organisations supporting young people have long advocated the

49 National Mental Health Commission, *Submission 114*, p. 2.

50 Mental Health Coordinating Council, *Submission 27*, p. 7.

51 The Royal Australasian College of Physicians (RACP), *Submission 17*, p. 2.

need for early-intervention for young people with conditions that will be diagnosed as being permanent. While changes to the permanency criteria in the NDIS Rules may assist participants of NDIS, there is still a significant need for adequate tailored support as early as possible for those young people who will not access the Scheme.

Reliance on formal diagnosis

2.58 The reference to psychiatric condition in Section 24(1) (a) may blur the assessment process for eligibility and lead to a heavy reliance on diagnosis instead of functional needs. Overall, the committee is concerned that, in the context of psychosocial disability, the ambiguity of the language combined with a lack of appropriate tools to assess eligibility could lead to inconsistent interpretations of the NDIS Act and result in inconsistent eligibility outcomes for applicants.

2.59 At operational levels, the adoption of a fit-for-purpose assessment tool to assess the eligibility of people with psychosocial disability would ensure fair and consistent eligibility outcomes.

Review of the Act

2.60 In July 2015, the Australian Government commissioned Ernst & Young to conduct an independent review of the NDIS Act.⁵² COAG considered the review's recommendations and developed a response, which was agreed in December 2016. COAG agreed with recommendation 31 to conduct a further review of the NDIS Act in two-to-three years.⁵³ The committee recommends a review of the NDIS Act as early as possible to provide greater clarity to eligibility criteria and better alignment with the core principles of the NDIS.

Eligibility rates

2.61 The committee is concerned with the relatively high rejection rate of applications for people with a psychosocial disability in comparison with applications from people with other primary disabilities. The committee believes there is value in investigating why ineligibility rates are significantly higher for people with psychosocial disability as the reasons remain unclear.

Requirement to apply for the NDIS to access continuity of support for existing program clients

2.62 Evidence received by the committee strongly suggests that not all existing clients of Commonwealth programs such as Partners in Recovery (PIR), Personal Helpers and Mentors (PHaMs) and Day to Day Living (D2DL), which are transitioning into the NDIS, will apply for the NDIS. Those currently receiving support under the Mental Health Respite: Carer Support (MHR:CS) could also be impacted. The committee is concerned that the current requirement for existing clients

52 Ernst & Young, *Independent review of the NDIS Act*, December 2015, https://www.dss.gov.au/sites/default/files/documents/04_2016/independent_review_of_the_ndis_act.pdf (accessed 6 June 2017)

53 Australian Government, *COAG response to the independent review of the National Disability Insurance Scheme Act*, December 2016, p. 7.

of these programs to apply for the NDIS to be able to access continuity of support may have some detrimental consequences. It is likely to result in some existing clients losing psychosocial supports, which would further marginalise a cohort of people who are hard-to-reach and had very little or no interaction with existing services prior becoming clients to these specific programs.

Recommendation 1

2.63 The committee recommends that the NDIS Act is reviewed to assess the permanency provisions in Section 24 (1) (b) and the appropriateness of the reference to 'psychiatric condition' in 24 (1) (a).

Recommendation 2

2.64 The committee recommends that a review of the NDIS (Becoming a Participant) Rules 2016 should be considered to assess the appropriateness and effectiveness of:

- Including the principle of recovery-oriented practice for psychosocial disability, and
- Clarifying that Rule 5.4 which dictates that a condition is, or is likely to be permanent,⁵⁴ does not apply to psychosocial disability, to reflect that people with mental conditions will receive ongoing treatments to aid recovery.

Recommendation 3

2.65 The committee recommends that the Australian Government ensures young people with mental ill-health who are not participants of the Scheme, have access to adequate early intervention services.

Recommendation 4

2.66 The committee recommends the NDIA, in conjunction with the mental health sector, develops and adopts a validated fit-for-purpose assessment tool to assess the eligibility of people with psychosocial disability that focuses on their functional capacity for social and economic participation.

Recommendation 5

2.67 The committee recommends the NDIA monitors eligibility rates for people with psychosocial disability to, a) understand the reasons for a higher rejection rate compared to other disabilities; and b) to build a clearer picture of the size and needs of the people who have been found ineligible for NDIS services.

54 Rule 5.4 of the NDIS Rules states that:

An impairment is, or is likely to be, permanent (see paragraph 5.1(b)) only if there are no known, available and appropriate evidence-based clinical, medical or other treatments that would be likely to remedy the impairment.

Recommendation 6

2.68 The committee recommends clients currently receiving mental health services, including services under Commonwealth programs transitioning to the NDIS, namely Partners in Recovery (PIR), Personal Helpers and Mentors (PHaMs), Day to Day Living (D2DL, and Mental Health Respite: Carer Support (MHR:CS), should not have to apply for the NDIS to have guarantee of continuity of supports and access services.