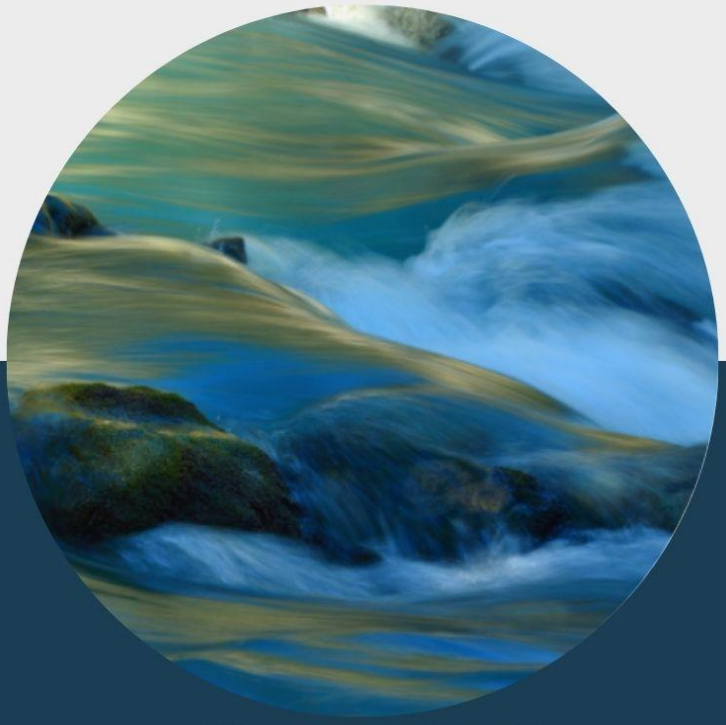
RESPONSE TO THE NDIS "DEFINING THERAPY SUPPORTS" DISCUSSION PAPER



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Response to the NDIS "Defining Therapy Supports" Discussion Paper

Submitted by Occupational Therapy Society for Hidden and Invisible Disabilities (OTSi)

Introduction

OTSi welcomes the opportunity to respond to the Department's Discussion Paper on Defining Therapy Supports. As a professional body representing occupational therapists working across the lifespan and across disability cohorts, OTSi is committed to ensuring that NDIS policy settings align with:

- The objects and principles of the *National Disability Insurance Scheme Act 2013* (NDIS Act);
- The biopsychosocial framework of the *International Classification of Functioning, Disability and Health* (ICF); and
- Contemporary evidence-based allied health practice.

This submission raises significant concerns regarding the proposed categorisation of therapy supports into "general", "social", and "physical and health related" categories, particularly as these categories are proposed to be linked directly to domains identified through the ICAN Support Needs Assessment.

Our central concern is that the proposed framework is not compatible with the NDIS Act, is conceptually inconsistent with the ICF, and relies on an assessment tool (ICAN) that has not been validated for the purpose of determining therapy categories or therapy access.

1. Compatibility with the NDIS Act

1.1 Statutory Purpose and Participant Goals

The NDIS Act establishes that the Scheme is intended to:

- Support people with disability to pursue their goals and aspirations;
- Facilitate choice and control;
- Provide reasonable and necessary budgets based on individual needs.

The current NDIS approach positions therapy as a means of enabling participants to work toward their self-defined goals. By contrast, the proposed categorisation model appears to anchor therapy eligibility to pre-defined "core assessment tool domains" derived from the ICAN.

This risks subordinating participant goals to administrative domain structures.

Therapy in practice is goal-directed, dynamic, and often cross-domain. A participant's goal to parent safely, to return to work, or to participate in community life cannot be meaningfully reduced to discrete subdomains such as "mobility", "interpersonal relationships", or "learning and applying knowledge". The Act does not confine participant aspirations to domain boxes.

1.2 Artificial Segmentation of Supports

The proposal to divide therapy into "social" and "physical and health related" categories reflects a reductionist separation that does not reflect contemporary disability practice. Therapeutic interventions routinely target transferable skills across multiple domains. It is unclear if this form of categorisation will extend to other supports also.

Rigid categorisation may:

- Constrain clinical reasoning;
- Restrict interdisciplinary practice;
- Limit flexibility in thin markets;
- Reduce participant choice.

Importantly, if therapy is categorised in this way, the precedent may extend to other support types. If therapy can be confined to domain-linked categories based on assessment outputs, the same logic could be applied to assistive technology, behaviour supports, employment supports, or capacity building more broadly. It is unclear how these categories may interact with participant Impairment categories to limit access to therapy supports, or other supports also. This would represent a structural shift in how "NDIS supports" are conceptualised under section 10 of the Act.

The proposed approach therefore has implications well beyond therapy. The rationale for the proposed three therapy support categories has not been clearly articulated. We also note apparent duplication across these categories, which suggests that specific criteria are being applied but have not been made transparent to readers.

2. Compatibility with the ICF

The ICF provides the conceptual foundation for understanding disability as an interaction between:

- Body functions and structures;
- Activities;
- Participation;
- Environmental factors; and
- Personal factors.

The proposed separation of therapy into “social” versus “physical” categories reintroduces a dualistic model that the ICF explicitly rejects. Therapeutic interventions frequently address body functions in order to enable participation outcomes. Similarly, participation-based therapy often influences physical function.

Under the ICF, functioning is dynamic and interdependent. The proposal’s domain-linked therapy categories risk fragmenting that integrated model and incentivising siloed intervention rather than whole-of-person practice.

3. The ICAN Assessment: A Novel and Unvalidated Use

OTSi is deeply concerned about the proposed reliance on the ICAN Support Needs Assessment (SNA) to determine therapy categories.

This is an entirely novel way to use the ICAN assessment. It has never been used, piloted, or trialled in any context to determine therapy categories or therapy eligibility.

The ICAN:

- Contains no set or standardised questions;
- Has no structured focus on capacity measurement (the binary of “can” versus “can’t” is conceptually vastly removed form the concept of ‘capacity’);
- Does not embed a theory of change regarding “improving, maintaining or reducing decline”;
- Relies heavily on the ability of the assessor (who may not be clinically qualified) to ask the “right” questions;
- Relies equally on the participant’s ability to articulate needs.

There is no published evidence demonstrating that the ICAN can reliably identify therapy support needs or determine which therapy category applies.

Therapy categorisation is inherently a clinical decision. It requires professional reasoning, an understanding of intervention mechanisms, and an analysis of how functional capacity can change over time. An assessment tool that does not embed clinical reasoning or outcome theory cannot substitute for this.

Our community needs to know that this assessment has reliability and validity before it is rolled out in this way.

Without published psychometric validation demonstrating reliability, inter-rater consistency, construct validity, and predictive validity for therapy allocation, the proposed use of ICAN risks arbitrary or inconsistent outcomes.

4. Legal Precedent: Relevance of Recent Case Law

4.1 NDIS v Sutherland

In *Sutherland*[1], the Federal Court emphasised that support needs cannot be artificially constrained by administrative interpretations inconsistent with the statutory framework. The Court reinforced that eligibility and support determinations must align with the text and purpose of the NDIS Act.

The reasoning in *Sutherland* is relevant here: therapy supports cannot be artificially confined to rigid domain boxes if that structure is inconsistent with the Act's purpose or with how functional needs manifest in practice.

4.2 Eastham and CEO of the NDIA

In *Eastham*[2], the Tribunal considered whether a mobility scooter met the criteria for funding under the Act and Transitional Rules. The decision reinforced that supports must be assessed holistically, in light of real-world functional need and environmental context, rather than by narrow administrative categorisation.

This reasoning is directly applicable to therapy. If therapy access is determined primarily by alignment with assessment domains rather than by holistic functional analysis and goal-directed need, similar legal challenges may arise.

5. Systemic Risk and Precedent

The proposed therapy categorisation model establishes a precedent that could extend to:

- Assistive technology;
- Home modifications;
- Behaviour supports;
- Employment supports;
- Capacity building more broadly
- Daily living support
- Support for community participation

If Support Item Group (SIG) alignment and ICAN domain outputs become the gatekeeping mechanism for therapy, the same structural logic may be applied across the Scheme.

[1] Access to NDIS safeguarded by Federal Court win | Victoria Legal Aid

[2] Eastham and Chief Executive Officer of the National Disability Insurance Agency (NDIS) - [2025] ARTA 198 - Case | CaseNote AU

This represents a fundamental shift from a goal-directed, reasonable-and-necessary model to a domain-classified allocation model.

Such a shift would require full transparency, an Exposure Draft of all relevant Rules and Schedules, and robust consultation.

Recommendations

OTSi recommends that:

1. The Department publish a full Exposure Draft of all Rules and Schedules relevant to therapy and SIG alignment before implementation.
2. The ICAN Support Needs Assessment not be used to determine therapy categories unless and until:
    - It has undergone independent validation for this purpose;
    - Evidence of reliability, inter-rater consistency, and construct validity is published;
    - It is piloted transparently in real-world contexts;
    - Clinical governance frameworks are established.
3. Therapy categorisation preserve clinical discretion and recognise cross-domain, transferable skill development consistent with the ICF.
4. Any interpretation of functional domains remain consistent with the NDIS Act and not be retrofitted to align with administrative tools.
5. The Department explicitly consider the broader precedent this approach may set for other NDIS supports.
6. Participant goals remain central and not subordinated to domain-based assessment outputs.

Conclusion

The proposed therapy categorisation model represents a significant structural change in how therapy supports are defined and accessed under the NDIS.

As currently described, it:

- Risks incompatibility with the NDIS Act's goal-directed and participant-centred intent;
- Is inconsistent with the integrated biopsychosocial model of the ICF;
- Relies on an entirely novel and unvalidated use of the ICAN assessment tool;
- Establishes a precedent that may extend far beyond therapy supports.

Before proceeding, the disability community must be assured that any assessment tool used to determine therapy or other support categories is reliable, valid, clinically robust, and consistent with the NDIS Act.

The integrity of the Scheme depends on it.

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