



Options for the protection of the public posed by the inappropriate use of psychological testing

Consultation Paper

Issued by the Psychology Board of Australia under the authority of Associate Professor Brin Grenyer, Chair, 17 May 2010.

If you wish to provide comments on this paper, please lodge a written submission in electronic form, marked 'Attention: Chair, Psychology Board of Australia' to chair@psychologyboard.gov.au by close of business on Monday 16 August 2010. Please note that your submission will be placed on the Board's website unless you request otherwise.

Invitation to comment

This Consultation Paper invites comment on the issue of options for the protection of the public posed by inappropriate use of psychological testing. The Board seeks feedback on the specific issues raised in this paper, and would also welcome comments on any other issues relevant to this area of concern. The Board will decide what action to take in relation to inappropriate use of psychological testing after considering the outcomes of the consultation process.

Additional information

From 1 July 2010, the Psychology Board of Australia will commence registering psychologists under the *Health Practitioner*

Regulation National Law Act 2009 (the National Law). Psychologists already registered by State and Territory psychologist registration boards will transition to registration under the National Law. A link to the National Law is available at www.ahpra.gov.au.

The Board is progressively releasing consultation papers on issues relating to the new scheme. Previous consultation papers have addressed the registration standards and codes and guidelines required for commencement of the new scheme on 1 July 2010 and are available on the Board's website at www.psychologyboard.gov.au.

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1. Introduction

The Psychology Board of Australia is concerned that significant harms to the public may currently be occurring as a result of the use of sophisticated psychological tests by unqualified, or inadequately qualified individuals. Moreover, it has identified certain trends which suggest that there is a significant risk that the extent of these harms may increase substantially in the near future.

In response to these concerns, the Board has commenced a research project which aims to gather information on several, connected issues, as follows:

- What evidence is available of specific harms to the public due to the inappropriate use of psychological testing?
- In what contexts are harms likely to occur?
- To what extent do harms arise from:
 - The administration of tests and/or interpretation of test results by unqualified or underqualified persons?
 - The inappropriate use of tests, or use of inappropriate tests?
 - Inappropriate policy/service delivery responses to test results;
 - Other factors?
- What policy responses are available to address the identified harms?
- What evidence is available as to the likely effectiveness of these different potential responses?

This consultation paper has been prepared as the basis for a process of consultation with major stakeholders to be undertaken in mid 2010. The purposes of the consultation process are to gather additional information on the issues highlighted above and to obtain a clearer understanding of the views of stakeholders on the need for action to address the issues and the most effective and appropriate forms of action.

The material contained in the consultation paper is derived from the Board's initial research and provides relevant information on the issues highlighted above. Stakeholders are encouraged to provide written responses to the Board, including references to relevant research and legislative and other policy actions taken to address issues related to the use of psychological testing both in Australia and internationally. In addition, the Board particularly invites stakeholders to provide information on specific cases of the inappropriate use of psychological tests and the harms that have resulted.

Written submissions should be received by Monday 16 August 2010.

The Board will be conducting direct consultation with a range of stakeholders. This will include some workshops with dates to be advised subsequently.

2. Background

The development and application of tests of intelligence, personality, psychopathology, attitudes, and behaviour is an area of professional practice unique to psychology. Psychological assessment using these tests is applied in a wide range of contexts, including health, education, forensics, the military, and industry.

Tests are used by psychologists for a wide range of purposes, the most common of which are:

- Measurement of thinking and reasoning capacity using intelligence and /or specific cognitive tests;
- Measurement of disturbed personality, behaviour and thinking and diagnosis of mental disorders /illnesses;
- Diagnosis of neuropathology;
- Identification and classification of intellectual disability and learning disorders using World Health Organisation standards ;
- Identification of occupational/vocational potential ; and
- Assessment of personal qualities and capacities .

The complexities of psychological test construction and content need to be fully understood before users can be confident of using them competently and safely. Competent use of psychological tests embraces selection of the appropriate test or tests to administer in particular circumstances, correct administration of the

test(s) and competent interpretation of the test results. The knowledge and training required in order to reach this standard must include:

- Understanding test construction for particular applications;
- Specific training in the concepts and meaning of specificity, sensitivity, reliability and validity;
- Understanding of the concepts and theory of intelligence, cognition, personality, behaviour, psychopathology and attitudes;
- Measurement in psychology and familiarity with descriptive statistics and standardisation;
- Ability to understand the underlying constructs of a test so as to interpret results accurately and validly;
- Familiarity with the administration of a comprehensive range of tests; and
- Understanding of the discipline and context in which test results are generally useful (psychiatry, neurology, education, paediatrics, industry, management, etc).

Competent conduct of psychological assessments includes, but is not limited to, the following steps:

- determining the need to undertake a psychological assessment;
- clarifying whether previous assessment data exist, and if so, whether the existing assessment data can be considered current, or a new assessment is required;

- choosing appropriate and psychometrically sound assessment procedures and, where necessary, making adaptations to allow for cultural differences (refer to Section 4);
- accurately scoring and interpreting the results;
- considering the assessment data in the context of all available information about the *client*, rather than interpreting assessment data in isolation;
- drawing conclusions from the assessment of the *client* that are based on data obtained from a range of sources;
- effectively communicating the results by oral or written feedback to the individual *client*, and/or by a written report to the commissioning party (e.g. to the medical practitioner, insurance company, or human resources agency); and
- making sound recommendations and decisions on the basis of the results, ensuring each component of the assessment is appropriately weighted.

Risks to the public

Should tests be administered and/or interpreted by persons who lack the above knowledge and training, numerous serious risks to the public may arise. Problems may arise either as a result of the administration of inappropriate tests or through incorrect administration or interpretation of test results. The resulting harms to the public may be of long duration. Chief among identifiable harms to the public are:

- Inadequate or inappropriate treatment of serious psychological disorders (e.g. neuropathology, psychopathology, intellectual disability, developmental

disorders) due to misdiagnosis or failure to diagnose the disorder;

- Personal distress and life-long personal misperceptions from provision of inaccurate information to the patient about psychological disorders or personal characteristics (e.g. intelligence);
- Poorly informed career and life decisions, threats to life opportunities and self esteem from misclassification;
- There may be risks in the medico-legal context of tests being administered by persons who lack appropriate knowledge and training,
- Invalidation of diagnostic tools by public familiarity with the content of the tests¹.

Regulating the use of psychological tests

Historically, recognition of the above factors has led to substantial restrictions being placed on both the availability and use of a wide range of psychological tests. Restrictions on the use of tests (as distinct from their availability) have generally been imposed via government legislation. Historically, one of the drivers of the registration of psychologists was the protection of the public from the misuse of these tests. The legislation providing for registration provided, in most States and Territories, that restricted tests could only be used by registered psychologists.

However, the States and Territories progressively removed these legislative restrictions over time. With the adoption in 2010 of national legislation governing a range of health professions, including psychology,

¹ Because of practice effects, many tests cannot be re-administered until an extended period (usually at least one year) has elapsed since the test has been taken or viewed.

this process will be complete. Thus, the restrictions on access to tests imposed by publishers will become the only formal source of control over the use of psychological tests.

Restrictions on the availability of tests have long been implemented by the publishers of these tests, with publishers making certain tests available for purchase only by registered psychologists. These restrictions have usually been based on a three part test classification first approved by the American Psychological Association's (APA) Council of Representatives in 1950. The policy was referred to as the "Ethical Standards for the Distribution of Psychological Tests and Diagnostic Aids" (APA, 1950) and included a three-level system for classifying test user qualifications², as follows:

- Level A tests were designated as appropriate for administration and interpretation by non psychologists, as these tasks required no specific training or expertise. This category of test includes vocational proficiency tests.
- Level B tests were those that required "some technical knowledge of test construction and use, and of supporting psychological and educational subjects such as statistics, individual differences, the psychology of adjustment, personnel psychology, and guidance".³ Level B tests include

² Report of the Task Force on Test User Qualifications, Practice and Science Directorates American Psychological Association, Approved by the APA Council of Representatives August, 2000, p.12.

³ Ibid, p.13

general intelligence tests and interest inventories.

- Level C tests were restricted to "persons with at least a Master's degree in psychology, who have had at least one year of supervised experience under a psychologist". These tests included individually administered tests of intelligence, personality tests, and projective methods.⁴

Some change to this taxonomy occurred in practice when all those sanctioned "by an established school, government agency, or business enterprise" were reclassified as eligible test users of Level B tests. This change apparently reflected a view that the organisations in question would make appropriate judgements as to whether individuals were adequately qualified to administer these tests in the specific circumstances in question. However, subsequent experience seems to have demonstrated that this assumption was not always borne out in practice⁵.

⁴ Ibid.p.12-13

⁵ Ibid. In the United States, restricted psychological tests administered and scored by technicians have included the (a) Wechsler intelligence scales, (b) memory scales, (c) Minnesota Multiphasic Personality Inventory, (d) Halstead-Reitan test, and (e) Luria Nebraska neuropsychological batteries (Guilmette et al., 1990; Hartlage & Telzrow, 1980). The Wechsler intelligence scales appear to be the tests that are most frequently administered by testing technicians. See: The Use of Testing Technicians: Critical Issues for Professional Psychology, John D. Hall and D. Lynn Howerton, Arkansas State University, Aaron U. Bolin U.S. Navy Human Performance Centre Newport INTERNATIONAL JOURNAL OF TESTING, 5(4), 2005. p. 359

The APA ceased the use of the three-tiered system in 1974, but this earlier approach has nevertheless been maintained by the publishers of psychological tests as the basis for their self-regulatory approach, as is evidenced by review of their publications catalogues.

Breakdown of self-regulation?

While these publisher-based restrictions have a long history (see below) and continue to be implemented, concerns have been raised as to the possibility of these restrictions becoming less effective over time. Indeed, concern over the misuse of tests has been growing in the international psychology community over most of the past twenty years. Several national and international groups, including the International Test Commission (ITC), the British Psychological Society (BPS), and the Canadian Psychological Association (CPA), have launched initiatives to address concerns about test user qualifications.⁶

In 1994, the Canadian Psychology Association (CPA) released a report on the adequacy of typical safeguards used by test publishers to limit test access to qualified individuals. The report suggested that test publishers did not uniformly apply the system of classifying tests according to three levels. Some publishers did not use the three-tier system to screen test users, and those who did often did not agree on the qualifications required for a particular test. In fact, there was disagreement on the classification of about two thirds of the tests. The CPA report contained recommendations for improving safeguards to protect the public from test misuse. These recommendations ranged from replacing or supplementing the

test-rating system used by the publishers to requiring all first-time test users to complete a qualifications statement.⁷

An alternative approach proposed by the Council of Psychologists Registration Boards in Australia recommends that the legislation provide that the Psychology Board of Australia should publish on its website a list of restricted tests (i.e. those only to be used by qualified psychologists), in order to protect both the public and also practitioners who will be informed about practice restrictions. Such a list could hope to become "definitive", or at least pre-eminent, within the Australian context and so reduce the degree of difference between publishers as to which tests were made available and to whom.

A second issue giving rise to concerns as to the possible breakdown of self regulation is that the internet has enabled greater access to psychological tests, particularly for patients in remote locations. The parallel rise of book sellers such as Amazon.com is believed to be a significant factor in leading to more tests being available to unqualified persons, while another significant development has been the recent publication of the Rorschach tests on Wikipedia.

The problem of the breakdown of the sale restrictions on psychological tests was highlighted at a 2004 meeting of the American Psychological Association:

In past years, instances of exposure of test materials have been reported. The advent of the Internet has increased this risk through its ease of publishing and disseminating information to a broad audience. At times the exposed test

⁶ Ibid. P.14

⁷ Op cit, Report of the Task Force on Test User Qualifications, p.14-15.

*content has been accompanied by coaching and hints so that clients could prepare their responses before being tested and thus have a better chance at winning a child custody case or qualifying for workman's compensation or another program. After such exposure of the test, the practitioner is left not knowing whether or not his client is a naïve test taker, and thus, whether the comparisons to normative and research data are valid.*⁸

The use of unsupervised testing is believed to be particularly prevalent in occupational testing where it enables candidates anywhere in the world to complete an assessment without the requirement for supervised administration.

The potential consequences of further dissemination of restricted tests are substantial. The potential exists for multiple Government programs that rely on psychological measures to allocate resources, allowances and pensions to be undermined, with procedures set down by State and National Departments of Education, Employment, Disability, and Aged Care and Health being compromised. Moreover, the widespread dissemination of these tests would mean that their integrity would be fatally undermined for all future uses, effectively rendering worthless tests that have been developed at very substantial cost over long periods of time⁹.

⁸ Symposium: Recent Developments in Psychological Testing – Update for Assessment Professionals. Paper: Caught in the Middle: Ethical/Legal Mandates and Test Security Presented by: Marcia M Andberg, Marcia Andberg Associates LLC American Psychological Association Convention Honolulu, Hawaii July 28, 2004.

⁹ Ibid.

Public sector issues

Self-regulation of the availability of psychological tests by publishers has also proven to be ineffective in preventing the use of restricted tests by non-psychologists within some public sector contexts. This has occurred despite the fact that much of the testing conducted by government agencies is carried out in order to determine the appropriate disposition of public resources under various programs. While this factor suggests that governments have strong incentives to ensure that testing is carried out appropriately, observations of actual practice in some Australian jurisdictions suggest that these incentives have proven insufficient in some cases.

A long-standing example is that of the Queensland Education Department, where administration and/or interpretation of a number of psychological tests by unqualified "Guidance Officers" has been widespread over a number of years. While the relevant psychology Board has frequently raised this issue and highlighted the potential for inaccurate test results to lead to inappropriate denial of access to support services (as well as unnecessary resource expenditure where people are inappropriately classified as requiring the services), the practice has continued.

Extent of the problem

As discussed above, psychological testing may be used in a wide variety of contexts. This makes estimation of the actual size of the problem of the use of these tests by nonpsychologists extremely difficult. The Board is currently unaware of any systematic data in relation to this question. However, the

2007 ABS *National Survey of Mental Health and Wellbeing* provides some indication of the potential size of the issue. Table 1, below, is based on data from the ABS survey. It reports the percentage of the adult

population (i.e. those aged between 16 and 85) who consulted health professionals for help with mental health problems in the 12 months prior to the survey interview.

Table 1: % of population consulting health professionals for help with mental health problems

| Services used for mental health problems | Lifetime mental disorder with 12-mth symptoms | Lifetime mental disorder with no 12-mth symptoms | No lifetime mental disorder | Total |
|---|---|--|-----------------------------|--------------|
| General Practitioner | 24.7 | 6.2 | 2.8 | 8.1 |
| Psychiatrist | 7.9 | 1.4 | 0.6 | 2.3 |
| Psychologist | 13.2 | 1.8 | 0.8 | 3.5 |
| Other mental health professional | 7.7 | 1.5 | 0.5 | 2.2 |
| Other health professional | 6.6 | 2.1 | 1.0 | 2.4 |
| Services used for mental health problems | 34.9 | 9.2 | 4.7 | 11.9 |
| No services used for mental health problems | 65.1 | 90.8 | 95.3 | 88.1 |
| <i>Total persons aged 16–85 years</i> | <i>100.0</i> | <i>100.0</i> | <i>100.0</i> | <i>100.0</i> |

Note: percentages consulting the various types of health professionals do not sum to see total percentage using the services of health professionals, since many users consult more than one kind of health professional.

Table 1 shows that some 2.2% of the adult population, or 356,100 individuals across Australia in 2007 use the services of mental health professionals other than psychiatrists and psychologists. These other mental health professionals, in respect of which the ABS questioned survey respondents, included mental health nurses and "other professionals

providing specialist mental health services, including social workers, councillors and occupational therapists."

It can be speculated that psychological testing may have been undertaken by these professionals in respect of a significant proportion of this group. To the extent that this is so, it suggests that the use of psychological testing by nonpsychologists may be widespread.

Moreover, the above discussion indicated that psychological testing is widely used in

contexts other than the treatment of mental health problems. These contexts include assessments conducted for educational purposes or to determine eligibility for welfare services (e.g. intellectual disability).

Questions for stakeholders

In this context, the Board is seeking the views of stakeholders in order to better inform its view of what actions may be required to ensure the continued protection of the public from the misuse psychological tests. Through the consultation process, the Board is seeking:

1. Further information on the nature and extent of harms to the public currently occurring

The Board is seeking stakeholder views on the current size of the problem identified and expected future developments. It is also seeking specific information on the areas of practice in which harms to the public are most significant and the specific nature and causes of these harms. It is interested in receiving both general information on the nature and incidence of harms and information on specific cases in which harms have occurred.

2. Stakeholder views on the range of potential policy actions in this area

This Consultation Paper identifies three broad policy options for improving the protection of the public in respect of the use of psychological tests. The board seeks stakeholder views as to any additional policy options that merit consideration in this context. This could, for example, include information on actions undertaken by regulatory authorities or other parties

internationally in order to address the identified issues.

3. Views on the relative merits of the different policy options

The Board seeks stakeholder views on the merits of the different policy options identified, including views on the issues of the likely effectiveness of each option, cost of implementation and any negative impacts likely to be associated with its adoption. Reference to the experience of other countries in adopting particular approaches would be especially valuable.

3. Main areas of concern & harms likely to arise

The nature and extent of the harms likely to arise from incompetent administration and interpretation of psychological tests will be highly dependent on the context in which the testing is administered and the purpose of that testing. According to the American Psychological Association, psychological tests are most commonly used in five major

contexts: employment, educational, vocational/career counselling, health care, and forensic¹⁰.

Within these contexts, the major specific purposes for which testing are used are:

1. *Classification*. To analyze or describe test results or conclusions in relation to a specific taxonomic system and other relevant variables to arrive at a classification or diagnosis.
2. *Description*. To analyze or interpret test results to understand the strengths and weaknesses of an individual or group. This information is integrated with theoretical models and empirical data to improve inferences.
3. *Prediction*. To relate or interpret test results with regard to outcome data to predict future behaviour of the individual or group of individuals.
4. *Intervention planning*. To use test results to determine the appropriateness of different interventions and their relative efficacy within the target population.

5. *Tracking*. To use test results to monitor psychological characteristics over time.

The following discusses the likely nature and extent of harms to the public arising from poor practice in each of these major contexts. A number of illustrative case studies have been included in the discussion to provide indicators of harms that may arise in this context. The case studies are drawn from a recently published US source. Notably, most relate to problems with the use of psychological testing by registered psychologists. That there is a significant incidence of problems with test use by fully qualified psychologists necessarily underlines the inappropriateness of the use of these tests by less qualified individuals.

The Board particularly seeks from stakeholders information on cases of inappropriate uses of psychological testing occurring in the Australian context. Establishing the nature and extent of the harms arising from test misuse as well as the contexts in which they occur is an essential element in determining the most appropriate policy response.

3.1. Harms arising from poor practice in a forensic context

Psychological testing is widely used within the judicial system, with the results of this testing forming a significant input to judicial decision-making on a range of very serious matters. Three specific areas can be highlighted as

¹⁰ Report of the Task Force on Test User Qualifications, Practice and Science Directorates American Psychological Association, Approved by the APA Council of Representatives August, 2000, p 33.

being particularly important, as discussed below.

Criminal Law

Psychological testing is frequently used as an integral part of the evaluation of criminal defendants in order to determine their competency to stand trial, as well as in determining aggravating or mitigating factors with respect to the nature and extent of their criminal responsibility for the act in respect of which they being tried. Wrong decisions following from poorly-applied tests, or the use of inappropriate tests, in these circumstances can clearly have catastrophic consequences for a range of parties.

Case study 1¹¹

A psychologist was ordered by the court to conduct a criminal responsibility evaluation to test whether a defendant charged with first degree murder met the criteria for being found not guilty by reason of insanity. Such a test is designed to identify and assess mental disorders in the defendant as well as assessing potential malingering.

The psychologist administered the Criminal Responsibility Assessment Scales (R-CRAS) to the defendant using a structured interview format. On the base of this test the psychologist assessed the defendant as a malingerer and he was tried and convicted of first degree murder.

However, the R-CRAS test was inappropriately administered, in that only data from the interview as used. The R-CRAS has a space labelled "Sources of Information Used in Making Forensic Evaluations" and with suggested data sources including psychological and psychiatric evaluations', police records, family interviews, and collateral interviews. In this case, the psychologist failed to incorporate other sources of data including evidence of the defendant's 10 year history of mental illness, which was available from his military and work records and an inaccurate diagnosis resulted.

¹¹This and the following case studies are drawn from by Eyde, ID, Robertson, GJ and Krug, SE. (2010) *Responsible Test Use: Case Studies for Assessing Human Behaviour (2nd Ed)*. American Psychology Association.

Case Study 2

A 14 year old male was charged with a violent homicide, but had no prior criminal record. If it was determined that the child posed no *threat* of future violence and was amenable to treatment he would be eligible to be tried in a juvenile court. The assessment tool used by the psychologist was the Psychopathy Checklist Revised (PCL-R) test which is frequently used to assess the risk of future violence. The psychologist recommended that the defendant was “well on the way to becoming a psychopath” and he was therefore tried as an adult and convicted.

However, the PCL-R test was validated for use only with adults at the time of this trial and to compensate the psychologist had eliminated those questions that related clearly to adults (e.g. questions relating to short term marital relationships), thus invalidating the test. The psychologist also failed to consider the defendant’s developmental history and conduct a formal evaluation of the defendant’s level of social maturity.

Case Study 3

B, a 15 year old youth was charged with the murder of a police officer during a robbery and initially protested his innocence. Police questioned him without his mother or a lawyer present. During questioning, they read him his Miranda rights and he acknowledged he understood them, signing a statement to this effect. The police then obtained a confession from him.

B’s attorney retained a psychologist who tested B and found that he had a Wechsler Adult Intelligence Scale IV (WAIS IV) Full Scale IQ of 54 and testified that someone with such a low IQ would be incapable of understanding his Miranda rights. On cross examination the psychologist conceded that the defendant’s low measured IQ score could reflect his frequent absences from school and stated that she did not ask the defendant about his understanding of the Miranda rights, instead simply concluding that, with his low IQ, he could not have understood them. B was convicted of first degree murder and was sent to prison.

After ten years of incarceration the case was appealed and a second psychologist examined B. This psychologist retested B, interviewed him carefully about his Miranda rights, and obtained an audiotape of the police questioning. This psychologist obtained a similar low IQ but was able to demonstrate how the low IQ affected to defendant’s (B’s) understanding of each of the rights. From the audiotape, she was able to demonstrate that the Miranda rights were read all together as a unit and that because of B’s intellectual level, he could not understand this level of complexity. In addition, the appeal dealt with the police misconduct, in that a juvenile is presumed to be incompetent and should not be interviewed without the presence of a parent, an attorney or both. B’s case was reversed on appeal and he was released from prison.

Personal Injury

Personal injury claims arising from a wide variety of circumstances (such as defective products, negligence and road accidents) are litigated in the courts. Psychological harm constitutes a significant aspect of the claimed injury in many of these cases. Therefore, psychological testing will often be carried out in order to verify the presence of such psychological harm's end determine the nature, extent and/or causative factors.

Case Study 4

A neuro-psychiatrist who examined a patient was initially of the opinion that he was suffering from a conversion disorder whose primary symptom of seizures was functional in origin. Nevertheless the neuro-psychiatrist was unsure of the diagnosis and referred the patient for a neurological examination and an electroencephalogram. The neuro-psychiatrist could not rule out an organically based seizure disorder and referred the patient to a mental health specialist who claimed expertise in testing for brain dysfunctions.

The mental health specialist administered the Luria –Nebraska Neuropsychological Battery (LNBB). On the basis of this test the mental health specialist concluded that the patient was not suffering from an organic based seizure disorder but rather from a conversion disorder.

Conservative psychological treatment did not lead to any improvement in the patient and eventually the neuro-psychiatrist decided a trial of anti-seizure medication was warranted. The patient's seizures came quickly under control.

Re-examination of the case by an internal quality assurance team found that the mental health specialist who had used the LNBB test had miscalculated one of the most important scores. The mental health specialist believed that attending a two day workshop and reading the test manual qualified him to administer the LNBB test and he failed to undertake any personality testing (e.g. MMPI-2, Rorschach Inkblot Test) or to

conduct a clinical interview and he failed to assess intelligence.

Seizures can be life threatening and the mental health specialist's over confidence may have placed the patient in danger (e.g. if the patient had a seizure while diving). Clinicians should also check scores as the failure to check protocols is one of the most common and easily corrected errors.

Parenting arrangements

Psychological issues are frequently significant in cases in which parenting arrangements are contested in the context of divorce proceedings. Psychological testing will therefore frequently be conducted in these contexts.

It is apparent from the above overview of the contexts in which psychological testing is used in court proceedings that potential harms arising from incompetent practice are extremely substantial. On the other hand, issues of credibility are paramount in court proceedings and will routinely be subject to substantial testing and examination. Given this, it is highly unlikely that psychological testing undertaken by persons other than registered psychologists would be acceptable as evidence in judicial proceedings. Judicial officers themselves would be expected to challenge any such evidence and, even in the absence of such challenge, equivalent challenges from opposing parties would almost certainly occur and be successful.

Case study 5

Mr and Mrs M had been involved in a custody dispute following their marriage breakup. During the marriage Mr. M had severely abused Mrs. M both physically and verbally, had set fires in the house, poured paint inside the house and demonstrated bizarre behaviour, such as dancing around naked in front of the children.

The Court appointed a psychologist to undertake a custody evaluation as the father was attempting to obtain custody of the children, claiming the mother was alienating the children from him. As part of this assessment, the psychologist administered the Minnesota Multiphasic Personality Inventory -2 (MMPI-2) to both parents. The psychologist found that the mother's MMPI-2 had elevations on Scale 2 (Depression), Scale 6 (Paranoia) and Scale 7 (Psychasthenia¹²). The psychologist raised concerns about the mother's parenting ability, noting that her paranoia, anxiety, and depression could impede effective parenting and that elevations on Scale 6 could indicate that she was delusional in relation to her husband.

However, the psychologist failed to interview the mother to determine which of her responses as revealed by the test scores reflect situational variables and which reflect psychopathology. In addition, the assessment undertaken was totally test based, with the psychologist failing to interview the children with and without each parent to determine the extent of bonding to each parent.

¹²A psychological disorder characterized by phobias, obsessions, compulsions, or excessive anxiety.

3.2. Harms arising from poor practice in health, welfare and educational contexts

Psychological testing is widely used in the context of the provision of a range of health and welfare services, both by government agencies and private practitioners. While specific data on the administration of psychological tests in this context are not available, data on the use of mental health services indicate that around 1% of the population makes use of public mental health services¹³. Psychological testing would obviously be deployed in a significant proportion of these cases.

Other health-related contexts in which testing would frequently be undertaken include:

- **Workers' Compensation:** Psychological assessment can be used to make determinations about the presence and extent of emotional, mental, and psychiatric injury to workers in order to guide decisions as to the nature and extent of benefits to which the injured person is eligible, as well as the treatment to be undertaken.
- **Disability:** Insurance companies and the social security system provide payments to people who are too disabled to work. Psychological testing can provide an objective index of the presence and degree of psychological disability, and can be used to prove the legitimacy of a claim, or to demonstrate that the claimant is malingering.

¹³59,000 people in Victoria (or 1.1% of the population) used a public mental health service during 2007/08. See: Department of Human Services (2009) Victorian Mental Health Reform Strategy 2009 - 2019, p 30.

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- **Education:** psychological testing is often undertaken in the context of the public education system. Testing may aim to determine whether students are in need of particular support services, or eligible for special education programs.

The above is not intended to be comprehensive. However it indicates that there is a wide range of health-related contexts in which psychological testing will frequently be undertaken. It is evident from the above that inappropriate decisions taken as a result of inaccurate results derived from psychological testing undertaken by people who are not adequately competent and qualified holds the potential for substantial harms in most of these contexts.

Limited information is available about the extent of any concerns related to testing undertaken by unqualified persons in these areas. In relation to workers compensation, it is unlikely that substantial concerns exist, given that this is an area in which dispute is generally adjudicated through the judicial system. Conversely, long-standing concerns have been known in the educational context in Queensland in particular. Here, the widespread administration and interpretation of psychological tests by "Guidance Officers" who are not registered psychologists is believed to be leading to situations in which students are not in all cases obtaining access to appropriate support programs. A number of complaints received by the Queensland Psychologists Board (QPB) from registered developmental psychologists have alleged poor and misleading standards of reporting by Guidance Officers, while parents have also claimed that their children have been tested inappropriately, inadequately and unprofessionally within the State Education

Department by unregistered Guidance Officers. The Board has had to inform the parents that it may act only if registered psychologists have provided an inadequate service. Since the Guidance Officers are not psychologists and have not called themselves psychologists, QPB cannot act.

Little can be said *a priori* regarding the incentives operating on government agencies in these areas. On the one hand, and governments have an incentive to ensure that program allocations are not overspent. Conversely, political benefits presumably accrue from having well functioning health and welfare programs in these areas which reliably address areas of need. The need to address areas of need within resource constraints would indicate a clear incentive for reliable decision-making and, hence, for ensuring that psychological tests were administered and interpreted by competent people. Conversely, the potentially substantial additional costs of ensuring that all testing is undertaken by qualified psychologists could create an incentive to avoid these costs within the public administration.

Case study 6

Mr and Mrs P had a solicitor file a lawsuit on their behalf, claiming that they had been injured psychologically and neurologically due to exposure to formaldehyde present in their home ceiling. To support his case the solicitor hired a psychologist to undertake an evaluation of their condition. The psychologist administered the Wechsler Adult Intelligence Scale IV (WAIS IV), the Rorschach Inkblot Test, and some figure drawings and obtained hand writing from both individuals.

From these tests the psychologist concluded that both individuals were suffering from anxiety on the projective tests and a notable intelligence decrement on the basis of the WAIS IV test. He therefore concluded that both individuals were suffering from transcortical aphasia, that their anxiety and depression was the result of damage to the subcortical areas of the brain and that the proximate cause of these injuries was exposure to formaldehyde.

This is a clear case of a psychologist going beyond the limits of his data as the tests used do not constitute a complete neuropsychological test battery. A decrement in intellectual functioning cannot be determined without access to prior records with which to compare the present findings. Trouble finding words on a vocabulary subtest is not the same as transcortical aphasia and to render such an analysis would require tests validated for diagnosing aphasia. The psychologist had not done any analysis of the couple's psychological state before exposure to the chemical.

Case study 7

A school diagnostician tested a five year old child with a moderate hearing loss for educational placement and on the basis of test results from a standard test battery the child was recommended for placement in a Total Communication Classroom where a combination of auditory training, speech reading and sign language is used.

The child's parents objected to the placement arguing that the child should be placed in a standard classroom. After conferring with consultants the parents argued that two errors had been made in the assessment - (1) complete tests of the child's auditory and perceptual abilities had not been made, and (2) the language and intelligence tests used did not have norms based on children with hearing impairments.

The consultants recommended regular classroom placement on the basis of two findings- (a) complete audiological tests showed the child was capable of functioning with assistive listening devices (ALDs, i.e. hearing aids) in a regular classroom and (b) language testing using a test normed on children with hearing impairments indicated that the child had a good prognosis for development of auditory and speech skills.

The school diagnostician did not have the necessary skills to assess the child. The assessment of hearing impairment is a complex task requiring the input of a number of experienced professionals knowledgeable about the modification of tests needed for their use with hearing impaired individuals.

The recommendations of the consultants are also in error. An ALD will only assist the child in achieving greater auditory acuity, other factors are important to functioning effectively in a classroom including the child's language and intellectual ability, speech reading ability, and teacher rapport and sensitivity to children with hearing impairments. The second recommendation is also unlikely as it is virtually impossible to find a test fully normed for children with hearing impairments and the consultants failed to name

the particular test. Considerable care must be taken in any assessment of hearing impairment especially in children.

Case study 8: Education selection tests

New York City and four states used a norm-referenced achievement battery published by a major US test publisher to assess student achievement in connection with special citywide or state-wide testing programs. In New York City, the reading and maths tests were used to assess basic achievement and the results were scored and reported by the test publisher.

The results indicated that some 9000 students had to attend summer school at a cost of \$4.0million and five district superintendents had been dismissed and four more had been placed on probation. Similar outcomes occurred in the state-wide testing affecting thousands of students.

After New York City officials contacted the test publisher it was determined that programming errors in the test publisher's scoring service were responsible for the mistake, as the wrong percentile rank from the norms table was used in reporting the scores. Delays in discovering the error led to the massive societal costs

3.3. Harms arising from poor practice in employment-related contexts

Psychological testing is used in a number of ways in the labour market related environment. Persons about to enter the labour market, or contemplating a change of career, may undertake testing in order to obtain a better understanding of their job-related strengths, weaknesses and characteristics, as well as expert advice on the kinds of employment in which they are most likely to be successful.

Secondly, employers make substantial and increasing use of psychological testing. Such testing may be required as part of the selection process for prospective new employees and may also be used within organisations as part of the process of selecting staff for promotion, further training or other opportunities. Psychological testing is increasingly regarded as an important means of determining the suitability or desirability of a job applicant. The premise is that if scores on a test correlate with job performance, then it is economically useful for the employer to select employees based on scores from that test.

3.4. Questions for stakeholders

1. *Does the above discussion capture all of the main contexts in which psychological testing is used? If not, what other contexts can be identified in which psychological testing is used and gives rise to concerns regarding the potential for harm to the public?*
2. *Does the discussion adequately identify the types of harms that may occur in each context? If not, what other significant harms should be taken into account?*
3. *What, in your view, are the major areas of concern in terms of current practices (i.e, involving the use of psychological testing by non-psychologists) leading to harms to the public? Are you aware of any specific data as to the extent of these harms?*

4. Do you believe that there is a compelling case for additional policy action to be undertaken to better restrict the use of psychological testing to psychologists?

5. Do you believe that any significant risks would be attached to such moves? If so, what are these risks?

4. Possible policy responses

A range of possible responses to the identified problems of harms to the public due to the misuse of psychological tests have been identified. Broadly speaking these are:

- Legislating to restrict the use of certain tests to registered practitioners ("restriction of practice" legislation);
- Non-legislative approaches emphasising education as to the potential harms caused by misuse of psychological tests and based on targeting major "non-psychologist" user groups (e.g. government departments) and working to convince these groups to ensure that only registered psychologists administer and interpret these tests within their own domains; and
- Working to reinforce existing publisher based restrictions.

The following discusses how each of these possible approaches might work in practice and includes a discussion of the benefits and costs of each approach, as currently understood. This should be regarded as an indicative analysis only. In a summary discussion, the benefits and costs of each option will be presented. These will be qualitative in nature and seek to focus on the generic characteristics of each policy instrument.

4.1. Legislation to restrict the use of tests to registered psychologists

As noted above, most Australian states and territories have previously had legislation in

effect which restricted the use of psychological tests to registered psychologists. This is known as "restriction of practice" legislation. Such legislation can be framed in different ways. For example, South Australia's *Psychological Practices Act 1973* established a mechanism by which specific psychological tests whose use would be restricted to registered psychologists were to be identified in regulations made under the authority of the Act. A variation on this approach would be to allow the Board to publish lists of restricted tests from time to time. A further variation might be to rely upon the classification of restricted tests as adopted by test publishers, with legislation specifying that tests identified as being restricted by publishers must not be used by persons who are not registered psychologists.

The approach of requiring those tests that are to be restricted to be identified individually recognises that some widely used tests that may be considered to be "psychological tests" do not require their use to be restricted. However, a potential alternative approach might be simply to legislate that any psychological test whose application and interpretation require specialised training must only be used by registered psychologists, without specifically identifying the tests covered by this restriction. Such an approach would potentially give the Board discretion to determine whether the use of a particular test by a non-psychologist ought to be investigated with a view to sanctions being applied.

4.1.1. Expected benefits of legislation

A major benefit of adopting a legislative approach lies in the potential for effective enforcement action to be taken where there is non-compliance. The use of legislation can be expected to yield higher compliance levels than sole reliance on publisher based restrictions for a number of reasons:

- The fact that the use of tests is restricted to registered psychologists would be more widely known and understood;
- the ability to impose legal sanctions would provide substantial disincentive for non-compliance; and
- legislative restrictions could be expected to support and reinforce the effectiveness of the existing publisher based restrictions.

Moreover, it is arguably more appropriate for government, which acknowledges a general responsibility to legislate in pursuit of the protection of the public interest in relation to the practice of psychology, to undertake this role rather than relying on private sector (and sometimes commercial, profit-making) entities to take the lead in ensuring the appropriate use of psychological tests. Thus, the current position in which the major practical restrictions on the use of psychological tests by non-psychologists is the control of their availability exercised by publishers can be seen as unsatisfactory in that it leaves a major public protection issue within the private domain, in a context of there being a significant legislative structure already in place to ensure public protection.

Size of the benefits

As suggested above, one benefit of adopting a legislative approach to restricting the use of psychological tests can be regarded as being

an intangible one: that is, it constitutes an explicit recognition of the fact that the issue of ensuring the tests are appropriately used is an important one in the public protection context and ensures that the legislation dealing with this issue embraces it as an integral part of its broader public protection objectives.

The tangible benefits of adopting a legislative approach are those of ensuring that the objective of preserving the use of psychological tests to registered psychologists are more effectively achieved. The size of these benefits is necessarily directly related to the degree of effectiveness of the current arrangements in achieving this goal. This question of effectiveness should be considered both in terms of the current position and expectations of future developments in the absence of any policy action.

4.1.2. Expected costs of legislation

Overview

Broadly speaking, two types of costs of legislating to restrict the use of psychological tests to registered psychologists can be identified. These are increases in the cost of using psychological tests and the harms that may result from failure to use these tests when indicated. These two costs are discussed in turn below.

Cost increases

Registered psychologists are highly qualified and relatively highly paid professionals. Consequently, the administration of tests by

psychologists, rather than other less highly qualified technicians will necessarily increase the cost of test administration. These cost increases are likely to be substantial, in proportionate terms.

A related issue is that many public sector organisations, in particular, may have substantial difficulty in securing the services of registered psychologists. This may be the result of limits in their capacity to pay competitive rates and/or a limited supply of appropriately trained psychologists.

Both factors have the potential to contribute to a situation in which one result of the reservation of psychological testing to registered psychologists would be a reduction in the quantum of such testing that is carried out, at least in some contexts.

Reduced testing

To the extent that this dynamic exists, there will be offsetting impact as a result of the restriction. That is, some persons will be tested by psychologists rather than by less well qualified persons, with improved results being expected to result. On the other hand, some persons who might otherwise have been tested may not be tested. This raises the issue of whether the harms that arise from a failure to test some people could substantially offset the improvement in the average quality of test administration and interpretation.

Considered alternatively, while nonpsychologists may demonstrate significantly lower accuracy and reliability in their administration and interpretation of psychological tests, they may nonetheless still do "more harm than good".

A key issue, therefore, is that of the likely response of organisations that make use of

the results of psychological tests to a significant increase in testing costs. In economic terms this is termed the "elasticity of demand" for testing services. To the extent that users are price sensitive, reductions in the use of psychological testing can be expected to result.

4.1.3. National Competition Policy assessments

As noted above, the merits of legislation restricting the use of psychological tests to registered psychologists were assessed in at least three reports published as part of the Legislative Review Programme conducted under the auspices of the National Competition Policy agreements¹⁴. As required under the NCP agreements (specifically, the Competition Principles Agreement), this issue was assessed from the perspective of whether the benefits to society as a whole of such provisions were greater than their costs and whether any alternative policy action would yield greater net benefits. This is the same test that must be applied in the Regulatory Impact Statement (RIS) context, as part of the process of implementing a legislative restriction under the current laws governing psychologists. Consequently, consideration must be given to these NCP assessments.

As discussed below, it is notable that the NCP assessments of this issue contained little detail or consideration of specific evidence on the issues in question. Consequently, stakeholders are requested to provide any additional evidence available to inform a more sophisticated analysis.

¹⁴ All these reports are available for perusal at www.npc.ncc.gov.au.

Of the three NCP reviews identified that address this issue, one related to legislation (that of South Australia) already in effect that contained such restrictions while, in the remaining two cases (those of New South Wales and Queensland), legislative restrictions did not exist at the time of the review, but the case for such restrictions was considered as part of the review process. The following summarises the discussion and conclusions of the relevant sections of these three reports.

South Australia

South Australia's *Psychological Practices Act 1973* was reviewed by the Department of Human Services¹⁵. As part of the review, the restrictions contained in Part 4 of the Act, setting out what constituted "prescribed psychological practice", and was therefore restricted to registered psychologists, were assessed. This part of the Act included provision for the administration and interpretation of certain intelligence and personality tests to be included within the scope of "prescribed psychological practice".

A key point put forward in the review was that, while the Act created a mechanism for restricting the use and interpretation of a range of psychological tests to registered psychologists, this mechanism had never been put into effect. The Act required that each individual test whose use and interpretation was to be restricted should be identified in the Psychological Practices Regulations, but this had not occurred. The review report noted that:

¹⁵ Department of Human Services (South Australia) (1999). *Legislation Review: Psychological Practices Act 1973. Report of the Review Panel*, January 1999.

The difficulties in putting into regulations a complete and up-to-date list of all such instruments at any given time has been a major reason. ... Similarly, ... the Board has not promulgated a definition of hypnosis.

The review concluded that, even though the restrictions envisaged by the Act had not formally been brought into force, other mechanisms had served to achieve, to a considerable extent, the envisaged effect of restricting the use of these tests to registered psychologists. It identified two important mechanisms. The first of these was the restriction imposed by publishers on the availability of the tests. The second was the approach adopted by public sector agencies. According to the report:

"...most public sector employers in Australia have behaved as if these restrictions were absolute--ie, not allowing any employees except registered psychologists to practice in these areas--but this should be seen as a decision in the industrial and/or risk management contexts, and not as a necessary result of the operation of this and similar Acts." (p 13).

The review also highlighted the fact that some other acts did provide a measure of practice protection in certain circumstances. It cited the Firearms, Children's Protection and Workcover Acts in this context:

Other legislation does actually create some practice protection for registered persons, however, by designating them as the only persons authorised to carry out certain tasks. These include the Firearms, Children's Protection and Workcover Acts.

This approach also appears to have been taken in other countries. For example U.S. Federal law regulates special education services under the Individuals with Disabilities Education Act Amendments of 1997 (IDEA '97). The IDEA '97 states that any standardized test used with a child must be administered *by trained and knowledgeable personnel and in accordance with any instructions provided by the developer or publisher*. State and provincial special education laws may also specify that some individual testing can only be conducted by licensed professionals.¹⁶

Within the above context, the review relied on two main arguments to support its conclusion that the continuation of the legislative restriction on the use of these tests was not justified in the public interest. These were:

- First, that the existing legislative restrictions had not been put into practice at any time, even though they had existed for 25 years at the time of the review; and
- second, that no evidence was put to the panel of demonstrable public harm that could have been avoided through the adoption of practice restriction.

The review concluded that:

Undoubtedly, among the large number of "therapists", "counsellors" "psychotherapists" and practitioners

using many other titles, there are persons who may cause harm, but there is neither the evidence of a major issue of public protection, nor the practical means to define areas of practice without producing indefensible anomalies. Provided that the title "psychologist" continues to be protected as recommended, so that employers, clients and other persons seeking a service know which is the "Government guaranteed" provider, the Panel does not believe there is a sustainable case for practice protection.

As a result, the review report recommended the deletion of these practice restrictions from the 1973 Act.

New South Wales

New South Wales Health published a review of the *Psychologists' Registration Act 1989* in December 1999. The review considered the issue of the use of psychological testing in a context of considerable public controversy surrounding the use of "Deep Sleep Therapy" at Chelmsford Hospital. It noted that decisions had been made to administer this "therapy" on the basis of psychological tests administered to patients and quoted conclusions of the Royal Commission to the effect that there was:

". serious concern whether the conclusions [in the test reports] reflected the true condition of the patient."¹⁷

The review noted that it had received submissions arguing for the restriction of the

¹⁶ The Use of Testing Technicians: Critical Issues for Professional Psychology, John D. Hall and D. Lynn Howerton, Arkansas State University, Aaron U. Bolin U.S. Navy Human Performance Centre Newport INTERNATIONAL JOURNAL OF TESTING, 5(4), 2005, p.366.

¹⁷ NSW Health (1999). *Review of the Psychologists Registration Act 1989.*, p 39.

use of tests, to prevent their use by "nonregistered persons such as counsellors and junior psychologists", but that this view had also been strongly opposed in submission from "other professionals".

The review concluded that:

The Department is of the view that it is inappropriate to seek to promulgate regulations that restrict the use of tests by all professionals (or to restrict the use of tests by other professionals) within the Psychologists Act. (p 40).

However, it appeared to leave open the possibility of other quasi-legislative action, stating that:

"However, it is recognised that the potential exists for similar problems to arise in regards to the use of tests by non-psychologists as outlined above. Therefore, registration authorities and professional associations that monitor the conduct of professionals using tests should review the appropriateness of current guidelines to determine whether further action is necessary." (ibid).

That is, the review's conclusions suggest it took the view that psychological tests are liable to misuse by both other professionals and by psychologists themselves and that the regulatory authorities responsible for each profession should deal with this issue separately.

It should be noted, however, that the review report's discussion of this issue is brief and lacks detail. Thus, it is not possible to determine the reasoning adopted in reaching their conclusions.

Queensland

The Queensland NCP review¹⁸ differed from the South Australian and New South Wales reviews in seeking to identify the harms that could be caused by the inappropriate use of psychological testing. It highlighted the following:

The range of harms was difficult to define and was unlikely to directly involve loss of life. Those identified for psychological testing related more to the use of the results of tests, either being misused by the end user of the results (which may not be the psychologist) or the wrong results being delivered through a test being wrongly used. The harms identified were those where results are used in the following type of decisions:

- *hiring or promotion decisions;*
- *child custody;*
- *legal standing;*
- *liability and responsibility; and*
- *education.*

The report's methodology included the use of focus groups, participants in which included psychologists. The focus group participants identified a range of skills required for the conduct of psychological tests and therapies, the most important of which were the ability to diagnose situations and select the appropriate tests and/or therapies. This requires a deep understanding of human psychology, as well as the ability to administer a test. However, the report noted that little information was provided to it subsequent to the focus groups

¹⁸ KPMG (2000). *Review of Restrictions on the Practice of Chiropractic and Osteopathy, Medicine, Occupational Therapy, Optometry, Pharmacy, Physiotherapy, Podiatry, Psychology and Speech Pathology - Final Report*. Prepared for Queensland Health

and concluded that this reflected the "limited ability to identify harm". Notably, it reported that:

"The most significant information related to the suggestion that psychological tests were becoming widely available, either through the breakdown of traditional restrictions placed on tests by the suppliers or via Internet availability." (p42)

This indicates that concerns regarding the potential for the current, publisher-based restrictions on test availability to break down over time are of long-standing and raises the issue of whether there is evidence that the "breakdown of traditional restrictions" identified a decade ago has occurred since that time.

The review distinguished "serious" psychological tests from "fun" tests, but also highlighted the fact that there appeared to be a continuum within the category of serious tests. For example, it noted that a major test provider, the Australian Council for Educational Research, restricted the availability of some tests to registered psychologists, while making others available more widely "*such as those designed to assist human resources or personnel managers with promotion and employment decisions*". This raises the issue of whether some psychological tests might legitimately be used by non-psychologists, at least in some circumstances.

The review also noted that a wide range of professions were involved in activities that were closely related to psychological testing, including speech pathologists, human resources managers, counsellors, coaches, teachers, psychiatrists, social workers, nurses, members of the clergy and parents.

The review applied to the question of psychological testing a standard set of eight "filtering questions" that it had developed for

the purposes of the broader review. These questions and the responses in respect of psychological testing were as follows:

- *Does the practice pose a realistic threat to vital organs (or structures) of the body? No.*
- *Is the practice invasive (e.g. surgery that penetrates the dermis)? No.*
- *Is death or total disablement a realistic (measured rather than theoretical) outcome? No.*
- *Do potential harms include harm to third parties? No.*
- *Does the practice appear to be an area of poor consumer knowledge? Yes.*
- *Is a legislated definition of the practice feasible? No.*
- *Is the practice subject to specific controls already (other than a restriction on practice)? Yes, through the limitation of access to the tests.*
- *Is the practice already undertaken by a large number of different professions (e.g.>4)? Yes.*

The fact that there were few "yes" responses to the filtering questions suggested *prima facie* that restrictions were not justified. However, the review report concluded that the filtering questions did not adequately address the issue of potential harms due to psychological testing. Therefore, it gave further consideration to these risks.

The review report provides no details as to this further consideration. However, it reports that the Review Team:

"...did not identify significant instances of harm which could be

directly ascribed to psychological testing or therapy – the examples considered were harm which could be ascribed to a number of causes other than testing or therapy. This, along with the difficulty in defining testing and therapy in a way that would not also capture non-health practices (e.g. personality tests in magazines and pastoral counselling in a church setting), contributed to the conclusion that neither psychological testing or psychotherapy should be further considered as potential restricted core practices." (p 44).

The above discussion indicates that previous analyses of legislative restrictions on the use of psychological tests have failed to demonstrate that such restrictions would yield net public benefits. It is therefore essential that additional data, information and argument be brought forward if this issue were to be successfully revisited and a positive outcome demonstrated in the RIS context. Given this requirement, stakeholders are requested to respond, in particular, to the following questions:

Questions for stakeholders

1. What is the likely practicability of identifying the range of tests to be restricted, having regard to the need to revise and update the relevant list of tests as required? What do you believe are the major reasons for the failure to use the legislative provisions enabling the restriction of the use of these tests in South Australia from the 1970s to the 1990s?

2. What is your view of the alternative approach of relying on other professional regulatory bodies to restrict or prohibit the use of psychological tests by members of the

profession which they regulate, as highlighted in the above NCP review?

3. To what degree do you believe that the option of "self-regulation" by public sector employers could be successfully used as a mechanism for restricting the use of psychological tests?

4. What evidence exists that long-standing publisher-based restrictions have become less effective over time?

5. Are there contexts (e.g. employment decisions) in which the use of psychological tests by non-psychologists would not be expected to yield significant harms, or in which restrictions on the use of tests would be inappropriate and/or impractical? What are these contexts?

4.2. Adopting context specific legislative restrictions

As suggested in the previous discussion, there is a legislative alternative to acting to restrict the use of relevant psychological tests to registered psychologists in all contexts. This would involve inserting restriction of practice provisions in the legislation governing the regulation of health professionals. Under this approach, restrictions on the use of psychological tests would be imposed only on those specific contexts in which a high likelihood of substantial harms occurring had been identified. The previous discussion indicated that there is some precedent for this approach being taken both in Australia and in the United States.

4.2.1. Expected benefits

This approach is potentially capable of achieving most of the benefits of the more wide-ranging legislative restrictions envisaged under the above alternative. That is, given that there seems to be a limited and fairly clearly identifiable number of circumstances in which psychological tests are used and in which they are likely to cause significant harms, it would seem feasible to adopt a "case-by-case" approach to legislative restrictions.

However, the ability of this alternative to achieve the benefits in practice is rendered somewhat uncertain by the necessary uncertainty as to whether appropriate legislative action will be taken in each relevant circumstance. In particular, it is likely that the prospect of legislative restrictions being implemented would be crucially dependent on the prior existence of a suitable piece of legislation which could be amended to this purpose. The examples cited above of the Firearms Act and the Workcover Act indicate that these restrictions have been applied, where they currently exist, in the context of legislation which has a much broader remit. To the extent that such existing legislation could not be identified, "context specific" restrictions would be unlikely to be adopted in practice and the benefits of this alternative would consequently diminished.

Secondly, this alternative would not give rise to widespread understanding in the community that the use of psychological testing was reserved to registered psychologists. This lack of a clear statement about practice restrictions has the potential to reduce the effectiveness of this approach by

undermining the likely degree of compliance with restrictions where they do occur.

4.2.2. Expected costs

Broadly speaking, the costs of this alternative would be similar to those identified above in respect of a more generalised legislative approach. Significant differences between the two approaches would appear to lie in the following areas:

Because this approach limits the imposition of restrictions to those specific contexts in which the case had been made that significant harms were likely to result from non-psychologists administering psychological testing, the scope of restrictions is likely to be more limited than under the above option and the costs imposed thereby reduced. Thus, for example, restrictions might be imposed in relation to testing undertaken for forensic purposes or to determine the provision of government services, but might not be applied in respect of the use of psychological testing in employment related contexts. In such a scenario, employers wishing to use psychological testing as part of employment selection processes would not be subject to the additional costs involved in requiring registered psychologists to administer these tests.

By adopting a more targeted approach, it is plausible that a better outcome may be achieved in benefits/cost terms: this approach allows the benefits and costs of imposing restrictions to be assessed individually in each individual circumstance. Thus, restrictions would only be imposed where a net benefit could be identified. By contrast, a generally

applied restriction might extend into areas in which no such net benefit exists.

Questions for stakeholders

1. *Do you believe that specific legislative restrictions on the use of psychological testing have been effective, where they currently exist?*
2. *More generally, what do you see as being the merits of this potential approach to the issue?*
3. *If further action were to be taken in this area, what would you see as being the areas of highest priority?*

4.3. Accreditation based approaches

It is also possible to establish and promote appropriate standards in relation to psychological testing without the use of legislation. This approach involves the profession of psychology, through its professional association, potentially with the involvement of the Psychology Board of Australia, establishing competence standards in respect of the administration of different categories of psychological tests and accrediting qualified persons as meeting the standards.

This approach has long been adopted by the British Psychological Society, which began to implement a competency based approach to test user qualification over 20 years ago and established a dedicated Psychological Testing

Centre¹⁹ in 2002. The centre's purpose, as set out in its Mission Statement is:

To establish the Psychological Testing Centre as the leading national organisation for all matters relating to psychological testing and to set, promote and maintain standards in psychological testing.

The centre issue certificates of competence in psychological testing at different levels, as well as ensuring that standards are maintained in the assessment of individuals who deliver training courses in psychological testing. However, it does not stipulate how people should be trained to meet these standards or accredit training courses. The centre also conducts independent reviews of tests and has established a system of test registration. Finally, it develops guidelines on a number of issues in relation to psychological testing.

The UK approach responded to a number of factors:

- That demand for testing in areas like occupational assessment and educational assessment far outstrips the capacity for psychologists to meet it;
- That much testing is relatively straightforward and routine and not something psychologists wish to be engaged in;
- that professional associations and psychologists' registration authorities are limited in their powers to deal with the use of tests by non-psychologists.

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http://www.thepsychologist.org.uk/archive/archive_home.cfm/volumeID_19-editionID_141-ArticleID_1110-getfile_getPDF

Consequently, the development of competencies and qualifications began with the simplest tests (Level A) and was subsequently extended to Level B tests, with qualifications for the most specialised tests being developed last. The focus has been on ensuring the competence of test users to practice within the limited range of settings in which they operate. Level 1 qualifications relate to the use of tests under supervision, level 2 qualifications to independent use of tests in limited situations and Level 3 to specialists in test use.

4.3.1. Expected benefits

An approach that was based largely on a response to this issue from within the profession, with little or no reliance on government legislation, would have the advantage that standards could be set solely on the basis of professionally determined views of appropriateness, without the need to respond to constraints that may be imposed by the legislative process and context.

The essence of an accreditation-based system is that the professional bodies promoting the system use their public prestige to encourage stakeholders to adopt the standards that have been specified. Thus, this approach would normally be undertaken in combination with an education-based approach (see below) which would seek to convince all parties of the potential harms associated with the use of psychological testing by unqualified individuals and, as a corollary, would promote the use of accredited testers.

The effectiveness of accreditation-based system (and hence, the extent of the expected benefits of this option) is crucially

dependent upon the credibility of the professional body and its ability to persuade user groups of its view. In the context of a cohesive profession such as psychology, this alternative may potentially yield significant benefits.

A further benefit of the approach adopted by the British Psychological Society is that, as outlined above, it constitutes a multifaceted response to the problems arising in relation to the use of psychological testing. This approach, incorporating such matters as the publication of guidelines in relation to testing, can be considered to be a more comprehensive response to these issues than is likely to be possible through legislation alone. It follows that such broad ranging responses have the potential to be more effective in addressing at least some of the issues of concern.

That said, it is clear that the adoption of a legislative approach does not necessarily preclude the use of other, supplementary measures such as those highlighted here.

The British Psychological Society highlights the following major indicators of the success of its approach²⁰:

- Apart from the sheer volume of people who seek the qualification (approximately 35,000 to date), it has become a requirement in many areas of public and private sector contracting (i.e. contractors seeking assessment services will require the providers to hold the relevant BPS qualification).

²⁰ Private communication from Dr PA Lindley, Chair BPS Steering Committee on Test Standards, 2 March 2010.

- In industrial tribunals involving issues around the use of tests, it is standard now for the tribunal to expect the user to have been BPS qualified. If they are not, the issue of their competence becomes a key one.
- It has become the benchmark for test user registration with publishers for access to test materials – and has replaced a system where each publisher set their own requirements and did not recognise people trained by other providers.
- It has also become widely accepted abroad, with Level A and Level B training being provided in a range of countries including Hong Kong, and the Middle East. A recent survey showed that international test publishers will accept BPS qualifications as the basis for user registration outside as well as inside the UK (so long as this does not conflict with local regulations on access).
- The UK developments provided the basis for test user certifications schemes in Norway and Sweden and provided the basis for the more recently developed European Federation of Psychologists' Associations (EFPA) European Test User Standards (which we (BPS) are now introducing back into the UK as our revised standards).

In addition, the BPS notes that their approach has meant that psychologists remain in control of defining and setting standards for all those who use psychological tests, while at the same time raising the standard of test use across the board.

Notably, however, the qualifications offered by the BPS currently only cover the use of tests in educational and occupational settings. While they do have standards that cover test use in health and social care settings, they have not yet developed qualifications based on these.

4.3.2. Expected costs

As with any non-legislative approach, there would be limited opportunity to apply sanctions to those who operated outside of the accreditation arrangements. These might be limited to the possibility of highlighting the unaccredited status of certain parties, where concern existed as to harm arising from the use of psychological testing.

Given the lack of effective sanctions, there may be numbers of circumstances in which users face incentives to operate outside of the accreditation system. Hence, the effectiveness of the accreditation-based approach in dealing with the identified problems may be significantly lower than that of legislation, at least in some areas.

In addition, the approach taken by the BPS has involved the commitment of substantial resources over an extended period of time - albeit that the Psychological Testing Centre has been required to be self-funding in its operations. It is questionable whether an equivalent approach would be feasible and timely in an Australian context of a smaller profession and professional association and limited regulatory board resources.

Questions for stakeholders

1. *How effective do you believe that an accreditation-based approach would be in the Australian context?*
2. *Do you have any experience of the operation of an accreditation system in the UK or elsewhere? Can you provide data on its performance?*
3. *What you believe would be the key success factors in respect of an accreditation-based approach?*

4.4. Education-based approaches highlighting potential harms

An alternative to legislative approaches to restricting the availability and use of psychological tests is to attempt to educate test users and the public regarding the importance of ensuring that only qualified psychologists administer and interpret these tests.

A particular focus of such an approach would need to be on those organisations that make use of the results of psychological testing in various contexts. As suggested above, various arms of government, notably in the policy areas of education, health and welfare, would be one of the most important such groups. The key message that would need to be conveyed by such an education campaign would relate to the nature and extent of the risk of undermining different programs relying on classifications based on test results if those test results are unreliable due to incompetent administration and interpretation.

4.4.1. Expected benefits

A key advantage of this approach is that it can be implemented directly by the psychology profession (and potentially test publishers) and does not require government agreement as to the case for legislation and the practicality of implementing legislation. This approach also allows immediate action to be taken in identified areas of highest priority, without the need to obtain a consensus in favour of restrictions being adopted in all contexts.

To the extent that users of the results of psychological testing can be convinced of the case for restricting test administration and interpretation to registered psychologists they will inevitably have substantial incentives to act to ensure that any testing they carry out, or commission, is conducted only by psychologists. To the extent that users of test results are also the parties that pay for testing to be undertaken, this can be seen as a "market-based" approach to the issue. That is, such users will presumably be prepared to pay the increased costs of test administration by qualified psychologists if they are convinced that the benefits they receive, in terms of more reliable test outcomes, are sufficiently large to justify these additional costs.

Attempts to convince test users of the merits of using only registered psychologists would necessarily have to rely on context specific arguments and so would necessarily be undertaken on a somewhat piecemeal basis. This implies that progress in attaining the potential benefits of restricting the use of psychological tests will be somewhat slower than would be the case with general legislation and, potentially, also with context specific legislation. However, as with the latter option, this approach would imply that areas of highest priority would be addressed in the short-term.

An essentially voluntary approach can be expected to be somewhat less effective than legislation in changing behaviour, since compliance rates are ultimately likely to be lower. However, given that the legislative background is one in which restrictions on the use of tests have been removed in a number of jurisdictions, while others have explicitly declined to introduce them, there is clearly an argument that the voluntary approach is a more feasible one with greater potential benefits in the short term at least.

4.4.2. Expected costs

As with option two, above, this approach to the issue can be seen as a relatively targeted one. Thus, it shares with that option the expectation that a higher benefits/cost ratio will be achieved than would be the case in respect of a blanket legislative restriction, as proposed in option one. That is, users of test results will only voluntarily require test administration and interpretation by psychologists if they are convinced that the benefits of so doing clearly outweigh the costs in their particular testing contexts.

Conversely, the voluntary approach cannot be expected to deal effectively with all areas in which harms arise, or are greater, due to the use of tests by non-psychologists. This is because:

- in some circumstances harms will arise, but the costs of avoiding these harms will be judged as being too great in relation to the size of the harms;
- in some circumstances users of test results will view the benefits and costs differently from psychologists; and

- in some cases incentives to test users will reflect factors other than those directly relating to test results. For example, there may be political imperatives to ensure the high level of testing is carried out, even at the expense of the testing or its interpretation being carried out at lower quality levels.

Questions for stakeholders

1. *What you see as the merits of an education-based approach to this issue?*
2. *Do you believe that an education-based approach constitutes a sufficient response to the issues highlighted in this consultation paper?*

4.5. Reinforcing existing publisher-based restrictions

A 1994 report of the Canadian Psychological Association²¹ considered the performance of the self regulatory publisher-based restrictions and highlighted two basic concerns. These were that:

- not all publishers adopted the three-part test classification system, thereby effectively restricting access to tests where appropriate; and
- even where this classification system was adopted there were substantial differences in the allocation of particular tests to the different classification levels.

²¹ Simner, ML. (1994) *Recommendations by the Canadian Psychological Association for Improving the North American Safeguards that Help Protect the Public Against Test Misuse*. Canadian Psychological Association.

The result of these deficiencies was found to be that the degree of restriction of access to many tests was incomplete and inconsistent and that the system was therefore not functioning adequately. In response to these observations five recommendations were made. These recommendations are reproduced below as an indication of the form that an initiative aimed at reinforcing and improving existing publisher-based restrictions might take.

RECOMMENDATION 1. *The three-level test classification system currently used by firms to categorize tests should either be replaced or supplemented by a purchaser classification system which recognizes that tests typically are employed for different purposes and that it is these different purposes which should determine whether an individual is qualified to purchase a given test.*

RECOMMENDATION 2. *All first-time purchasers, regardless of background, should be required to complete a test user qualification statement. Hence, firms that publish and/or distribute tests should remove from their catalogues all waiver clauses based on occupation, professional membership, level of graduate training, etc. that exempt certain individuals from the need to complete such a statement.*

RECOMMENDATION 3. *The responsibilities assumed by test purchasers and by test distributors in order to safeguard the public against test misuse must be clearly defined.*

RECOMMENDATION 4. *Firms should be encouraged to insert in their catalogues the Who May Purchase Tests statement in Appendix D as well*

as the Test User Qualification Statement in Appendix E.

RECOMMENDATION 5. *In order to encourage firms to make use of the Who May Purchase Tests statement as well as the Test User Qualification Statement a system should be established whereby firms that reproduce this material (or a close approximation thereof) in their catalogues receive recognition. Such a system, however, should not imply an endorsement by the Canadian Psychological Association of either the products or the business practices of a particular firm.*

4.5.1. Expected benefits

Effective implementation of the five recommendations listed above could be expected to significantly improve the effectiveness of the existing publisher-based restrictions. However, significant questions inevitably arise as to whether effective implementation is likely to occur in practice.

At first glance, the incentives operating on publishers would appear to be weighted in favour of profit maximisation through increased sales of tests. However, the historical record demonstrates that the publisher-based offering a truce system appears to have been highly durable, if imperfect in its application. This suggests that publishers have, for whatever reason, recognised a compelling interest in maintaining the system of restrictions, at least to some degree. To the extent that this is so, concerted action by professional bodies could be expected to have a significant impact on the practices of publishers.

However, as noted elsewhere, the market for psychological tests is increasingly an international one. That is, test users are not limited to seeking access to tests from publishers within their own country but, rather, have international access through both the Internet and other distribution channels. This implies that any purely nationally-based approach to seeking to improve the operation of the existing self-regulatory model could, at best, hope to be partially effective.

In common with options 2 and 3, above, this option would involve a targeted approach to the issue of restrictions on psychological tests. This is a necessary corollary of recommendation 1, which proposes that a classification system based on the proposed use of the test should replace or supplement the existing purchaser based system of restrictions.

4.5.2. Expected costs

Development of a robust, a purpose-based classification system as proposed in Recommendation 1, above, would be a significant task. It would presumably require coordination between test publishers and involvement of the Psychology Board of Australia, the Australian Psychological Society and other stakeholders in order to achieve a consistent and widely endorsed outcome.

Moreover, this alternative places the primary responsibility for addressing the identified problem of the use of psychological tests by

unqualified individuals on commercial organisations. Given the fact that this issue is essentially one of protecting the public, it is arguably inappropriate to outsource the responsibility for action in this area to private companies.

An aspect of this issue is that publishers potentially face conflicting incentives in relation to sales of psychological tests. On the one hand, if tests become compromised, demand for those tests is likely to decline with their clinical value. On the other hand, restricting the sale of psychological tests to registered psychologists is clearly likely to reduce sales of those tests in the short to medium term. In the context of these conflicting incentives, there must be doubts as to the potential effectiveness of an approach which is based on moves to change publisher behaviours.

4.4.2. Questions for stakeholders

1. *What you see as being the merits of an approach to this issue that is based on working to improve publisher self-regulation?*
2. *Do you believe that this approach could constitute a sufficient response to the identified issues?*
3. *Do you believe that these steps outlined in the Canadian report discussed above constitute the best approach within this context?*
4. *If not, what other possible actions could be taken?*

5. Conclusion

The analysis presented above demonstrates the potential for substantial harms to the public to arise as a result of the incompetent and/or inappropriate use of psychological testing in a range of contexts, including within the legal system, in relation to the provision of educational and welfare services and in occupational contexts. These harms give rise to a potential case for action aimed at ensuring that complex psychological tests are only used by appropriately qualified and trained psychologists. In addition, there may be a case for action to improve the qualifications and competence of users of more generally applicable psychological tests.

However, such interventions entail potentially significant costs, while care must be taken to ensure that any restrictions on test use can be implemented effectively. To the extent that legislative action is contemplated, governments require that these be assessed in terms of benefits and costs, with the merits of a range of different options also being considered. More broadly, a responsible approach to policy-making requires this general approach to be taken, thus ensuring that the best possible solution to the problems identified is adopted and that it will, in practice, address the problems effectively and efficiently.

For these reasons, the Board is undertaking an extensive process of consultation with stakeholders. A key purpose of this consultation is for the Board to add to its current understanding of the nature and extent of the problems arising from the use of psychological testing by inadequately

qualified users. Hence, stakeholders are particularly requested to provide any available information on instances of harm of which they are aware.

In addition, the Board is seeking stakeholder views on the merits of the different policy options identified in this paper, as well as assistance in identifying any other possible responses to the problem of the misuse of psychological tests.

We encourage all stakeholders to participate in the consultation process.