

Submission to Psychology Board of Australia re:
Options for the protection of the public posed by the inappropriate use of
psychological testing

Carlton Peer Consultation Network

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Executive Summary

History has indicated that self-regulation of restricted psychological tests has not worked, at least in Queensland but also more widely on the internet. Whichever strategy is adopted for the restriction of these tests is fraught but one thing is for certain, and that is that the profession will have to pay for the strategy adopted. Therefore it is in the psychology profession's interests that these tests are legislatively restricted for the use of trained professional psychologists, to protect the public, with legislated implications for those who are not qualified as well as for those who are.

Questions for Stakeholders – Background

1. The extent of the problem regarding the nature and extent of harms to the public currently occurring may be difficult to gauge. For example in the case of the Department of Education in Queensland the clients are minors in most cases. Parents/guardians may be reluctant to complain, unable to complain to the board or ignorant of the problems that have occurred or will occur for many years in the case of a misdiagnosis of an intellectual disability (ID). Those who have complained may not be on the public record, as the Board had no power to intervene where a psychological test was conducted by a non-psychologist, which was and still is common practice in the Queensland Education Department. In the case of a diagnosis of an ID when there is none, the child may miss out on an education in a mainstream school. In the case of a missed diagnosis of an ID the child may miss out on the opportunities provided by an education required for their special needs.

In the public sector psychologists, including Guidance Officers and Senior Guidance Officers, who are required to sign off on non-psychologists' psychological reports are caught in a double bind. They are required to obey two masters. The first is their professional ethical guidelines, which restrict psychological tests for use only by psychologists. The second is their employer – the public service which directs them to follow lawful directions from their managers. To follow their ethical guidelines puts them at risk of

disciplinary action by their employer. To follow their lawful directions puts them at risk of breaching their ethical guidelines and potential breach and report to the registration board. For psychologists this is a no win situation. On the other hand, for the non-psychologists conducting the restricted psychological tests there is no such dilemma and there are no repercussions by the registration board since they are not answerable to the board and are not required to adhere to the ethical guidelines, which are in place to protect the public (the prime function of the registration board).

Psychologists who have been struck off the register of psychologists may be employed as Guidance Officers in Queensland schools. Guidance Officers are not required to be registered psychologists or even to have undertaken an approved pathway to become a psychologist. Therefore, such practitioners have the potential to continue to do harm to children and young people attending school.

The Senior Guidance Officer, who signs off on assessments is not required to be a registered psychologist or even to have completed three years of an undergraduate program majoring in psychology.

Secondly, the conduction of psychological assessments and the subsequent development of reports is the creation of a health record in the case of a diagnosis of an intellectual disability (as described in the DSM-IV-TR and the ICD-10). For a non-registered, non-health 'professional' to create a health record with no responsibility to answer to a health registration board is a mockery of the regulation of the health professions when non-health professions are not answerable or accountable to any of the registered health professions. Non-psychologists cannot be reprimanded by a health registration board for making mistakes. In some Queensland schools, health records such as Guidance files may not be confidential, particularly in remote locations, where other staff may access the information as the Guidance Officer may only visit the school on a limited basis (e.g. fortnightly or monthly visits).

2. It is strongly suggested that the PBA follow International Test Commission recommendations. This is of particular concern where the possible outcomes

of tests imply a medical condition, (for example intellectual disability, Autism Spectrum Disorder, etc) as outlined in the DSM-IV_TR or ICD-10.

The three level rating exists (Level C for psychological tests) should be adhered to. These tests should only be for use by psychologists because of the appropriate knowledge and skills that are required in the conduction and interpretation of such tests, as well as the accountability of psychologists to the registration board.

3. It is anticipated that all three options that have been put forward in the consultation paper will incur a cost to implement. Whether it be the establishment and updating of a list of restricted tests under legislation, the development of research to identify tests that have caused or have the potential to cause harm when conducted by non-psychologists, or the education of the users of test results with non-legislative approaches and working to reinforce existing publisher based restrictions. The latter two have not succeeded, as evidenced by the Department of Education in Queensland with a lot of effort by the Australian Psychological Society to remedy this situation over a long period of time.

The costs of each of the three options put forward in the consultation paper will most likely be provided, at least in part by psychologists' registration fees. If psychologists are to carry the cost of these options with no guarantee of restriction afforded by the latter two non-legislative options, psychologists should then have the legislative protection as well as the responsibility to conduct restricted psychological tests.

N.B. Legislation is no guarantee of restriction if the publishers effectively de-restrict their tests in favour of commercial outcomes (as has been done).

3.4 Questions for Stakeholders

1. Contexts of tests – Where there is inadequate interpretation of tests, for example in the education sector (i.e., schools), students are not fully assessed

and therefore are likely to receive lower levels of funding and lower levels of interventions to meet their special needs.

2. Where there are inadequate levels of interpretation and observation the possibility exists for inadequate levels of intervention with the likely consequence of poorer outcomes for students' education and welfare.

3. Major areas of concern about testing by non-psychologists. This data should be available from government departments as well as the Psychologist Registration Board in Queensland regarding a comparison of the number of complaints made about psychologists compared with non-psychologists, specifically regarding psychological tests. The Psychology Board of Australia is unable to pursue complaints, as it has no jurisdiction over non-psychologists.

4. There should be additional policy action to minimize harm by:

- providing only competent valid testing
- making competent recommendations
- implementing effective strategies based on sound psychological practice
- senior psychologists supervising intern psychologists

5. There should be no risks other than financial. For example in Queensland Education there would need to be more psychologists employed, which would involve training at university level. The supervisors of psychologists would need to be fully registered psychologists with the training and experience to supervise. In fact, the testing psychologists would need to be provided with a regular supervision program that addresses appropriate clinical matters.

4.1 Legislation Questions

1. A panel of specialists from each endorsed psychology practice area (e.g., clinical, counseling, organizational, etc) could develop lists of restricted tests for each area. One possible reason for not enforcing legislation in SA is that no mechanism was ever developed and preferred to rely on the publisher ratings to determine distinction between psychologist and non-psychologist tests (unfortunately, this reliance still does not apply for Queensland test

users in the Education Department). Alternatively, the comparatively prohibitive cost with a limited number of psychologists (and use of registration fees) in SA meant that an honor system was possibly preferred. However, when considering a national approach to legislation with upwards of 25,000 registered psychologists (using a percentage of registration fees) would enable a viable and funded legislative approach.

2. Non-legislative approaches incorporating education of the potential harms caused by misuse have not worked (e.g., Queensland Education). The Board has a mandate to protect the public. By legislating psychological tests for use only by registered psychologists to optimize validity and reliability of test conduction and interpretation the Board would be going a long way to protecting the public, with the added security of dealing with both non-registered and registered test users. Legislation will increase this public protection compared with no protection currently of the public by non-registered test users.

3. The idea of self-regulation of public sector employees is not a viable one as evidenced by Queensland Education. In fact, the lack of regulation under legislation ensuring no adverse or disciplinary consequences is incentive to continue to disregard publishers, registration boards, and professional association ethics and to continue to ignore best practice, not to mention the cost savings in not assisting the training and employment of psychologists in favour of readily available teachers to undertake restricted psychological tests. This was only meant to be a stopgap strategy but has continued for something like twenty years.

4. Publisher based restrictions have become less effective over time as evidenced by the de-restriction of a range of tests bought and used by Queensland Education. Level C tests are usually signed off by registered psychologists employed by Queensland Education. However, there are no quality control or audit processes that ensure that only staff trained psychologists administer and interpret these tests.

“Full registration as a psychologist within Queensland in accordance with the provisions of the Psychologists Registration Act 2001 or a fourth year qualification in psychology that will enable full registration as a psychologist within Queensland in accordance with the provisions of the Psychologists Registration Act 2001, following completion of the Supervised Practice Program”
(p.1). The Department does not ensure that provisional psychologists complete their supervision program.

Attachment 1: Background and support material for the arguments provided above in support of legislation for the protection of the public.

Test Guidelines

Pearson Clinical and Test Assessment state in their product guidelines that only psychologists can administer WISC-IVs. Many non-psychologists are unaware that when a **health record** is created, they need to observe the Psychologists Registration Act 2001. The Act defines a health records as follows:

“214 Definitions for div 1

In this division—

health records means documents, recording the health history, condition and treatment of users of the professional services provided by a person, made in the course of the person’s practice of the profession.

possess, a health record, includes having the record under control in any place, whether or not another person has custody of the record” (p. 129).

A health record is created every time a child undergoes a psychometric assessment e.g. an intelligence test, as the officer collects historical information and he/she may diagnose the child with an intellectual disability. Medical doctors may use these assessments to confirm their diagnosis of a child’s intellectual disability. The doctors may be unaware that inadequately qualified staff are administering these tests, which may result in the tests and the doctor’s diagnosis being challenged in the courts. Only Senior Guidance Officers who are fully registered psychologists should supervise staff in the creation of health records.

- In an Education Queensland report titled, “Report of the Review of Guidance Officer Staffing 2000–2001”, the following was stated: “The great majority of those submissions that commented on the appropriate use of psychological practices and psychoeducational assessment were very clear that it was the SGO role and responsibility to train, monitor and supervise guidance officers in these practices. Submissions were strongly in favour of SGOs receiving training, most particularly in supervision, but also in extended psychoeducational assessment, leadership and management, and that thorough induction to the position be provided.”(p.7).

- “These issues were addressed in 1992 in the *Report on the Use of Psychological Practices by Guidance Officers*. Though the report was accepted, its recommendations (covering maintenance of standards in guidance practices, training and qualifications, clinical and technical supervision, purchase and use of restricted tests and implementation processes) have not been fully implemented. Similarly, the *policy on psychoeducational assessment* (specifying a framework for access and use of restricted tests, training and supervision necessary for accreditation to use particular tests, and processes for managing test resources) has no official status after three years. Both these documents, if reviewed and implemented, would provide clear and rigorous guidelines for psychological practices, ensuring appropriate guidance practice and defensibility in the event of legal action.” (p. 9)
- “One of the roles of the Test Review Panel is to identify potential risks to the department brought about by guidance and other staff using tests which are unreliable or not valid for Education Queensland students, or through administering and interpreting tests without having the appropriate knowledge or training. Such actions could constitute unprofessional conduct, and could lead to litigation against the department. There is already reluctance by some test suppliers to continue to supply restricted psychoeducational tests. While the Test Review Panel’s recommendations have been circulated to guidance officers and senior guidance officers, they lack official status” (pp 17-18).