



## PSYCHOMETRIC ASSESSMENT – LEGAL CONSIDERATIONS AND PRINCIPLES

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### Psychometric Assessment- Legal Considerations and Principles

The purpose of this document is to provide information for agencies on psychometric assessment.

Assessment practices must be free from bias and discrimination and this should be demonstrated by agencies prior to use. No human resource practices should be unlawful or unethical. It is important to take great care particularly when the outcome of the practice has serious consequences (such as not being selected for a role compared to a team building exercise).

#### Relevant principles and legal obligations

The principles below apply to all assessment, whether it is undertaken in the context of recruitment, selection, capability assessments, individual development, or the management of change.

Any assessment processes for the workplace must adhere to and be consistent with the following:

#### Te Titiri O Waitangi

The Public Service needs to honour Te Tiriti O Waitangi when designing and implementing assessment processes in the workplace. Principles of whanaungatanga (partnership), kaitiakitanga (protection), and manaakitanga (participation) will be advanced and applied in the workplace.

In doing so, the Public Service should recognise the Treaty partnership as well as ensure that processes are not discriminatory.

#### Gender Pay Principles

- These principles have been agreed by unions, State sector agencies and the State Services Commission and aim to ensure working environments in the State sector are free from gender-based inequalities.
- Assessments used should reflect the gender pay principles. In particular, Psychometric testing should demonstrate freedom from bias and discrimination, (GPP 1), which includes paying particular attention to the compounding impacts of gender combined with other factors for example Maori, Pacific, Asian and other women and also that leaders and decision makers develop strong relationships with women to reduce opportunities for bias and discrimination to occur.
- Gender Pay Principle 4 states the commitment to integrating the principles of Te Tiriti O Waitangi and addressing the needs and perspectives of Māori women.

Note: under the Gender Pay Gap Action Plan

- Chief executives are committed to closing gender pay gaps in their agencies
- One of the critical actions is that “there is no bias or discrimination in remuneration systems or human resource practices”.

### **State Sector Act 1988**

Under section 56(1), department chief executives must operate a personnel policy that complies with the principle of being a good employer.

A personnel policy that meets the good employer principle includes:

- the impartial selection of suitably qualified persons for appointment (section 56(2)(c))
- recognition of the aims and aspirations of Maori, employment requirements of Maori and the need for greater involvement of Maori in the Public Service (section 56(2)(d))
- recognition of the employment requirements of women and persons with disabilities (section 56(2)(g) and (h))
- recognition of the aims and aspirations and employment requirements, and the cultural differences of ethnic or minority groups (section 56 (2) (f)).

### **Human Rights Act 1993**

Section 22 (1) of the Human Rights Act states that it is unlawful to refuse or omit to employ people, offer less favourable terms of employment, conditions of work, superannuation and other fringe benefits and opportunities for training, promotion and opportunities for transfer, or to terminate employment on any of the grounds of discrimination listed below, unless a permitted exception under sections 24 to 32 applies.

The prohibited grounds of discrimination (section 21) are:

- Sex including pregnancy and childbirth
- Marital status
- Religious belief
- Ethical belief
- Colour
- Race
- Ethnic or national origins
- Disability
- Age
- Political opinion
- Employment status
- Family status
- Sexual orientation

### **Privacy Act**

Agencies need to take reasonable steps to ensure information they collect on individuals is accurate, up to date, complete, relevant and not misleading in relation to the purpose for which the information is to be used (Privacy Principle 8). This requires transparency about the purpose of any assessment, and demonstrable assurance that the assessment method is fit for purpose, reliable and valid across all groups.

Personal information (for example assessment results, comments, assumptions and conclusions) about a person must be available to them in accordance with the Privacy Act. They should not otherwise be withheld.

The relevant information privacy principles include:

- only collect personal information that is necessary for a lawful purpose (Principle 1)
- take reasonable steps to ensure that the individual concerned is aware of the purpose for which the information is being collected (Principle 3)
- allow the individual concerned to access their personal information where it can readily be retrieved (Principle 6)
- take reasonable steps to ensure that the information is accurate, up to date, complete, relevant and not misleading (Principle 8).

The Public Service should not enter agreements with providers that restrict access to personal information in breach of the Privacy Act. Providers should not use the personal information gained for anything other than providing the Public Service agency with the required reports, and this should be explicit in the contract for service with the provider.

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## Frequently Asked Questions – Psychometric Testing Guidelines

**Q:** Does this apply to all psychometric testing?

**A:** These principles apply to psychometric testing that is undertaken in relation to recruitment and selection, change, capability assessment, individual development and similar processes.

**Q:** Should I review all the psychometric testing undertaken by my agency?

**A:** We recommend that you review the psychometric testing practises at your agency to ensure that human resource practices are in-line with legal and ethical expectations. Having in place a review process will help to ensure that your agency practice is demonstrably free from discrimination, and any mitigations are in place.

**Q:** How will we demonstrate that the psychometric tests are free from bias and discrimination?

**A:** We advise requiring testing providers to demonstrate that the tests proposed are free from bias and discrimination by providing evidence of validity and reliability across the New Zealand population, including by gender and ethnicity. Ensuring that the tests used are relevant and fit for purpose in the New Zealand context to ensure that Māori, Pacific and other peoples are not discriminated against.

**Q:** What are my alternatives if the testing is discriminatory?

**A:** You are unable to use psychometric testing that is discriminatory. We advise looking at your recruitment process to ensure that the process you have in place is free from bias and discrimination. There are alternative recruitment practises such as interviews and group assessments you could explore. See the recruitment Guidance developed for implementing the Gender Pay Principles [here](#).

**Q:** Should we be trained in administering and giving feedback in regard to psychometric tests?

**A:** It is really important that if you are administrating and giving feedback on psychometric tests that you are trained and qualified to do this. We would also encourage you to read the Code of Ethics from the New Zealand Psychologist Board should you need more information.



**Q:** Why aren't we given advice about which tests to use or not to use?

**A:** There are a vast number of tests available and it's the individual agency decision on which tests to use. It's important when using a test that you adhere to the principles outlined in the guidance.

**Q:** Does this guidance cover the recruitment of contracted or temporary workers?

**A:** All agencies should review all processes including those where an agency uses a recruitment agency to engage contracted or temporary workers to ensure they are non-discriminatory and avoid bias.

**Q:** What if a provider has a different policy around privacy?

**A:** Any provider must comply with the Privacy Act so you may need to ask the provider to modify their privacy policy or it may be necessary to use another compliant provider.

**Q:** Where can I find more information about bias, particularly in regard to gender in recruitment and other HR practises?

**A:** Research shows that compounding effects (gender, race) add to the likelihood of potential discrimination. Therefore, we should be particularly mindful that women and Pasifika for example are more likely to be discriminated against. This is something to be cognisant of when looking at where bias and discrimination may occur in your HR practices.

You should use mechanisms to eliminate bias and discrimination as listed in the guidance. This includes but is not limited to ensuring that team members involved in all recruitment processes have undertaken conscious and unconscious bias training. There is further information in the guidance published through the Gender Pay Taskforce – available on the SSC website [here](#).

**Q:** Does this mean our agency is able to use Psychometric testing?

**A:** We advise you in all cases to use a multi method approach when assessing an employee or potential employee. There should be a suite of evidence to draw on when assessing for selection, capability and development. You should also be following the SSC guidelines, ensuring that all HR practices are non-discriminatory.