

**Case related to current standards and guidance for workplace assessments in
safety-sensitive industries
20HDC01340, 6 December 2024**

Deputy Health and Disability Commissioner Dr Vanessa Caldwell recently concluded an investigation into the care provided to a man by a psychologist. In investigating the matter Dr Caldwell identified concerns with the current standards and guidance for workplace assessments, particularly those undertaken for people working in safety-sensitive industries.

In this case, the man was referred to the psychologist by his employer, for assessments of his fitness to return to work and for risk of harm to himself. Dr Caldwell considered that the man's role involved the ability to perform actions that carried an inherent risk of harm to self or others, and therefore that the role would be considered a safety-sensitive industry or role.

The psychologist relied solely on reports from the man about himself and did not obtain any collateral information during his assessments of the man.

The New Zealand Psychologist Board's (NZPB) Core Competencies¹ refers to assessment as the systematic collection of clinically relevant information for the purpose of understanding the client and all aspects of their presentation, and procedures include the use of collateral information. The Core Competencies² require that a psychologist is able to demonstrate application of theoretical and empirical professional knowledge to the selection of assessment methods and the analysis of data, and collection and analysis of data relevant to the problem.

Dr Caldwell noted that the wording of this competency suggests that the type of clinically relevant information gathered by a psychologist is discretionary. In line with this, the independent advice received on this case was that a third-party assessment, confirming fitness to return to work, without collateral information and based only on self-report, was considered adequate.

The NZPB told HDC that the wording was deliberate when the competencies were written, as the expectation is that psychologists exercise their judgement in carrying out assessments.

Dr Caldwell considers that obtaining collateral information is particularly important in third-party assessments, in which the outcome has significant ramifications for the person being assessed and given the inherent tendency toward self-assessment that leads to the outcome that is desired. In this present case, this meant that there was

¹ The New Zealand Psychologists Board's 'Core Competencies for the Practice of Psychology in Aotearoa New Zealand', under the 'Additional Core Competencies for Psychologists Practising Within the "Clinical Psychologist" Scope of Practice' around 'Framing, Measuring, and Planning: Assessment and Formulation':

[Microsoft Word - Core Competencies CURRENT 150218 \(psychologistsboard.org.nz\)](https://www.psychologistsboard.org.nz/Microsoft-Word-Core-Competencies-CURRENT-150218)

² Under 'Core Competencies for Psychologists Practising Within the "Psychologist" Scope of Practice'.

potential for the man not to be forthcoming about any thoughts of self harm if he believed it could affect his job and livelihood detrimentally.

Dr Caldwell referred to the case *NZ Amalgamated Engineering Printing and Manufacturing Union Inc v Air New Zealand Ltd*,³ to highlight her view that there are, and should be, consideration of different standards and requirements in safety-sensitive industries. That particular case discussed the lawfulness of testing employees for drugs and alcohol. The Employment Court held that in safety-sensitive areas where the exposure to hazards and risks was high and the consequences of an accident or incident could be catastrophic, the objection to the use of intrusive methods to monitor, in an attempt to eliminate a recognised hazard, must give way to the overriding safety considerations, and these factors take precedence over privacy concerns. It held that in non-safety-sensitive roles, it was unreasonable to submit these employees to suspicionless, random testing, but in safety-sensitive areas random testing is justifiable.

Dr Caldwell considered that the NZPB guidance should be strengthened to indicate that collateral information should be obtained in the context of third-party assessments for consumers in safety-sensitive industries. In her opinion, where there is a mental health assessment relating to risk of harm to self or others of a consumer in a safety-sensitive industry, there should be a similar lower threshold which necessitates the need to obtain collateral information in making a reasoned assessment.

Dr Caldwell considers that the current guidance allows for shifting the responsibility of the actual risk assessment onto others, namely the employer, which in the context of third-party assessment renders this assessment both meaningless and redundant. In effect, the process that was undertaken in this case provided no additional information of value to the employer and put the onus on the employer to interpret and implement the contradictory recommendations, which stated both that the man was considered fit and safe to return to work and also that the employer should treat the recommendation with caution as it was based only on the man's own words and nothing more.

Dr Caldwell stated that if the industry standard is to accept what is being stated by a person during an assessment without collateral information, and it is sufficient for a fitness to return to work report to be completed based only on self-report, this effectively seems to be an acceptance of the person's self-report. Particularly in a safety-sensitive industry, she considers this to be woefully inadequate, given the public safety risk. She acknowledged that a third-party assessment may be advisory rather than determinative, but also considered that the employer would quite reasonably place a lot of weight on an external, professional assessor's opinion.

The NZPB told HDC that it is partway through a process of reviewing the Scopes of Practice, and when this has been completed, the core competencies for each scope

³ *NZ Amalgamated Engineering Printing and Manufacturing Union Inc v Air New Zealand Ltd* [2004] 1 ERNZ 614.

will be reviewed. The NZPB also stated that the Core Competencies document is not intended to be a guideline for day-to-day practice, but it sets the parameters for training programmes of areas to be covered and is also used as a reference point when undertaking competence reviews. However, the document is not intended to provide a 'how-to' for carrying out activities such as workplace assessment, whether in a safety-sensitive industry or any other workplace.

The NZPB stated that specific advice would more properly belong in a clinical practice guideline, but to date, it has not produced clinical practice guidelines on topics such as how to undertake risk assessments, although it has produced broader professional practice guidelines that have recommendations concerning conduct and issues to be considered in particular areas of practice.

Dr Caldwell recommended that the NZPB provide HDC with an update on the progress of its review, and suggested that as part of its review, it consider whether a clinical practice guideline should be prepared, to supplement, or be read in conjunction with, current guidance; and seek input from Worksafe and the employer in this case on any amendments and changes to guidance.