



**Association of Test Publishers South Africa (ATP South Africa) : Position Statement on the Amendment Section 8 of the Employment Equity Act No 55 of 1998. (This Act has been updated to Government Gazette 37871 dated 25 July, 2014)**

The South African Association of Test Publishers was established in 2005 on request of the Health Professions Council of South Africa (HPCSA). The purpose of this was to ensure effective communication between the Test Publishers and the HPCSA. ATP represents the South African stakeholder group that specialises in developing, importing, validating, providing training in and distributing tests and assessments used in a variety of contexts in South Africa. ATP members are registered Psychologists in good standing with the HPCSA and align themselves with national and international best practice. For more information about ATP please visit [www.atp.org.za](http://www.atp.org.za).

We acknowledge that the recent amendment to the Employment Equity Act of 1998 (EEA) has been instituted to protect the South African public from the misuse of psychometric assessments and/or the use of inappropriate or below standard assessments.

The Amendment now reads as follows:

Psychological testing and other similar assessments of an employee are prohibited unless the test or assessment being used—

- (a) has been scientifically shown to be valid and reliable;
- (b) can be applied fairly to all employees;
- (c) is not biased against any employee or group; and

***[Paragraph (c) amended by section 4 of Act No. 47 of 2013]***

- (d) has been certified by the Health Professions Council of South Africa established by section 2 of the Health Professions Act, 1974 (Act No. 56 of 1974), or any other body which may be authorised by law to certify those tests or assessments.

***[Paragraph (d) inserted by section 4 of Act No. 47 of 2013]***

ATP supports the role of the Health Professions Council of South Africa (HPCSA), and we fully agree with the general principles of the EEA Amendment. The following practical realities in the implementation of the Amendment with regard to point (d) however need to be considered:

- The policy on test classification document on the HPCSA website (Form 208) dates back to 2006, and does not include the new process that is apparently in place for the submission of psychological tests. This updated process has not been communicated formally to the ATP or the psychology community, and no stakeholder engagement around the process has been done.
- Over the years, the professional Board for Psychology of the HPCSA has been requested on a number of occasions to consider alternative classification methods, to provide clear definitions of Psychological versus non-Psychological assessments and to provide the criteria

with which assessments are evaluated. The South African Association of Test Publishers has specifically offered to support the HPCSA in developing and using alternative test classification processes. There has been no discernible reaction or response to these questions, suggestions or offers of assistance.

- The cost of new submissions to the list is significant to the Test Developer or Test Publisher. After submission of such a test or assessment to the HPCSA there are no guarantees from the HPCSA in terms of criteria used for evaluation, the technical qualifications of the evaluator(s), the turnaround time or the protection of intellectual property rights of the owners of tests. There are examples of assessments submitted to the Professional Board for Psychology where no feedback was received and no registration resulted from such submission for up to 4 or 5 years and still pending.
- The criteria used for classifying tests have changed over the years. However, the specific psychometric criteria for a test or assessment to be included on the list have never been made available. There has also not been any “cleaning up” of the tests and assessments currently on the list. At a recent conference (SIOPSA 2014 conference) it was confirmed that only 2 assessments have been classified in the last 5 years. There is no transparency with regard to tests or instruments submitted, progress with the evaluation or registration process and associated timelines of these processes.
- The list currently available on the HPCSA’s website (Form 207) was last updated in June 2010. The judgement for the court case of ATP and SHL vs. The Professional Board for Psychology (2010) stated that the Board had to publish a Board Notice that lists the tests that may only be used by persons registered in the profession of psychology. Since 2010 no such Board Notice was published. The Board has, without any prior notice to of consultation with stakeholders, now gazetted the “List of tests classified for use by registered psychology professionals” (15 August 2014), catching most Professionals (distributors and assessment users) by surprise.
- Amongst a number of excellent assessments, this list still includes assessments that have not been updated or researched for many years and may possibly still have norms from the Apartheid period. These assessments negate the (a), (b) and (c) principles of the EEA. There are also assessments on the list that have been discontinued for many years and others that may be perceived to be violating international copyright laws.
- It is also not clear whether once classified on the HPCSA lists of tests, no one other than registered psychology professionals may use such assessments. In the same way it is not clear whether Psychologists/Psychometrists/Registered Counsellors may only use assessments specified on the list in all circumstances. If so, there seems to be no allowance for professional judgement and individual responsibility.
- The allied health professionals have not been provided any recognition for their assessment needs on the “list” and no allowances have been made to the constitutional rights of groups

such as those in Human Resources or Education to be able to do their work and use appropriate assessments.

The new Amendment to the EEA, and the recent publication of the amended list from the Professional Board for Psychology (HPCSA) therefore raises numerous practical dilemmas and ethical concerns. Questions such as the following need to be answered urgently:

- Will the HPCSA (Professional Board for Psychology) , in future, be prescribing to all disciplines (HR, Education, Teaching, Occupational Therapy and more) what tests they may or may not use?
- What are the exact criteria used by the HPCSA in terms of which tests should be submitted, what the requirements are for tests to be accepted onto the list and what will be expected in terms of regular updating of such an assessment. It should also be clear what the qualifications are of those who evaluate the assessments, within what period of time feedback will be provided, what guarantees the HPCSA can provide in terms of copyright and correct administration and what method of appeal would be available?
- In the absence of clear and consistent criteria for evaluation used by the HPCSA we would appreciate being provided with details of assessments submitted to the HPCSA but not placed on the list. Managing the submission, criteria, evaluation, feedback and right of reply process in an open and transparent manner that all registered individuals have access should be put in place as a matter of ethical principle and for promotion of good governance.
- How is the R10 000 per submission of a test used, given that it seems that evaluators are paid a nominal fee.
- Who are the other evaluation bodies and where and how do they function. What will they be evaluating and what criteria would they use? What are the criteria for individuals used for the evaluation process and are declarations of vested interests included to ensure transparency.
- How often will the law (published list) be updated to include new assessments that have been submitted and evaluated?
- How can assessments/tests be taken off the HPCSA list?
- How is the current list of assessments going to be updated (“cleaned”), by when and by whom? We strongly suggest a moratorium on the enforcement of these laws until such has been done.

### **The Way Forward**

ATP has requested an urgent meeting with the HPCSA with regard to the above Issues. The position of ATP is that until we can get clarity and resolve the above issues, a moratorium or grace period should be agreed to until the regulations can be enforced. We will keep our members and clients informed as to the progress of these discussions.

## In Summary

We take the professional, ethical, fair and appropriate use of tests and assessments very seriously. Well-developed instruments that meet scientific and best practice criteria accepted by international assessment bodies contribute to the development of individuals and the positive growth of society. In addition to adherence to the HPCSA ethical principles, we also take great care to serve the needs of our clients, acknowledge national and international best practices, ensure legal compliance and respect the copyright and intellectual property of the test and assessment owners that we represent.

There are assessments that we distribute that are not on the gazetted list of 15 August 2014. For specific instruments this may be because we are still collecting South African research data in order to be able to submit the assessment or test to the Psychometrics Committee of the Professional Board for Psychology of the HPCSA. Other assessments are non-psychological assessments falling outside the scope of the HPCSA.

There are also assessments and tests that have been validated for South African circumstances and adhere to the EEA requirements but have not been submitted to the Professional Board for Psychology due to the administrative issues described in this document. We could submit these as soon as the Professional Board for Psychology provide clear guidelines and guarantees of their processes.

We are however concerned that the Professional Board for Psychology may not have the capacity to provide timeous and informed evaluations and to manage the influx of assessments that will result from the publication of the gazetted list.

We are committed to scientific and professional best practice, professional ethics, the constitutional rights of our clients and legal compliance. We are committed to the development of individuals and the South African society as a whole and the role that assessment can play in this regard. A number of members are involved in community projects and pro bono work on assessment and development related projects in support of this commitment. We hope that the Professional Board for Psychology of the Health Professions Council of South Africa will help to clarify and solve existing dilemmas and those caused by the promulgation of the EEA and the Gazetted test list.

Prof Hennie Kriek

Chair: ATP South Africa

16 October 2014