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Glossary Of Terms

Abuse¹ – the harming (whether physically, emotionally, or sexually), ill-treatment, neglect, or deprivation of an individual

Actual abuse – the psychologist has evidence that an individual is being currently abused (e.g., the individual discloses current physical assaults to their body from a family member)

Suspected abuse – the psychologist does not have direct evidence that an individual is being currently abused but has good reason to suspect that they are (e.g., multiple, unexplained bruises on a child)

Vulnerable adult² – someone who is unable by means of detention, age, sickness, mental impairment, or any other cause, to withdraw themselves from the care or charge of another person

Is it mandatory to report current actual or suspected abuse in Aotearoa/New Zealand?

In Aotearoa New Zealand it is **not** mandatory (a legal requirement) for any registered health practitioner, including a psychologist, to report actual or suspected abuse of an individual of any age to any authority. This means that the health practitioner that learns of actual or suspected abuse of an individual has discretion to make a report (e.g., to the Police) or to take some other appropriate action.

An organisation may have a policy that any actual or suspected abuse must be reported to an appropriate authority or agency, which a psychologist employed in that organisation would have to comply with or they may be in breach of their employment obligations. If a psychologist had any concerns about reporting the abuse they should consider discussing the concerns confidentially with a senior colleague.

Psychologists have a duty under the Family Violence Act 2018 to **consider** disclosing relevant personal information about a victim or perpetrator of **family violence** to a “recipient agency” if they believe the agency may help ensure that a victim is protected from family violence³.

Although it is not legally required for a psychologist to report actual or suspected abuse to any authority the psychologist still has an ethical obligation to seriously consider the various options available to them and choose the most appropriate action to take in the particular circumstances they face.

What do I do if there is current actual or suspected abuse of someone I am working with?

Not having mandatory reporting means that a psychologist has the (sometimes inevitable) task of weighing up a lot of complex information about the situation of actual or suspected abuse of a client and the possible options for reducing the harm, before deciding whether or not to report this to an authority or agency. These situations can be very complex and if time allows, the psychologist should consider confidentially consulting with a senior colleague when making this decision.

In many cases it will be best practice to seek the client’s consent (where the client has capacity) or the consent of their legal guardian, before sharing their information or making a report to an authority that can take necessary action to address the abuse or likelihood of harm, unless it is unsafe or impractical to do so. If consent is given the psychologist may share relevant information with the authority concerned.

¹ Definition adapted from Oranga Tamariki Act 1989

² Definition from Crimes Amendment Act 1961

³ Section 24 of the Family Violence Act 2018. Recipient Agency is defined in s19 of the Act.

However, in some cases it may not be safe or appropriate to seek the client's consent to the proposed sharing of their information or making a report of actual or suspected abuse. In this case the psychologist would be making a non-consensual disclosure.

Psychologists should consider their duty of confidentiality when exercising a discretion to disclose a client's information without their consent. However, in cases of actual or suspected abuse the principle of safety may take precedence over the psychologist's duty of confidentiality. These are complex situations and psychologists should give careful consideration when deciding the best course of action in a particular case.

If a psychologist makes a notification or shares a client's information, with or without the client's consent, they must document this in the client's clinical file and should always state the justification (such as the psychologist perceiving there is a serious risk of harm as a limit of confidentiality).

Reporting actual or suspected abuse to an agency is only one option for the psychologist to consider when attempting to reduce the likelihood of further harm to the individual. Like any dilemma, the psychologist will have to consider many pieces of information before choosing the most appropriate option, including:

- The magnitude of the actual or suspected harm
- The vulnerability of the individual
- The competency of the individual
- The support systems of the individual
- The current safety of the individual and their capacity to engage in safety planning
- Whether reporting to an agency may increase the risk to the individual.

Are there special considerations if the individual is a child or vulnerable adult?

Yes, there are. Children and vulnerable adults can lack the capacity to engage in the necessary decision making and actions required to keep themselves safe from others who may cause them harm. This is often a material factor in a psychologist's decision-making about making reports to other authorities that can directly help to reduce the harm in these cases.

Oranga Tamariki Act

While it is not mandatory to report actual or suspected abuse of a child or young person, the Oranga Tamariki Act 1989 (s 15) **permits** reporting of actual or suspected abuse of children:

“Any person who believes that a child or young person has been, or is likely to be, harmed, ill-treated, abused, (whether physically, emotionally, or sexually), neglected, or deprived, or who has concerns about the well-being of a child or young person, may report the matter to the chief executive or a constable. “

Crimes Act s195A

Sections 195A of the Crimes Act may, in limited circumstances, apply to a psychologist. Failure to take steps to protect a child or vulnerable adult, where a psychologist is aware of the risk of particular harm to that individual, may result in criminal liability. Liability may arise if the psychologist:

- a) Is a staff member of a hospital, institution, or residence where the victim “resides”; and
- b) has frequent contact with the victim; and
- c) is aware that the victim is at risk of death, grievous bodily harm, or sexual assault as a result of an unlawful act of another person, or an omission by another person to perform a legal duty to the victim; and
- d) has omitted to take reasonable steps to protect the victim from that risk.

Section 195A will not apply to all psychologists but may apply to those psychologists who are employed in prisons, forensic units, Youth Justice facilities, or hospitals. Note that s 195A refers to ‘reasonable steps to protect the victim’ and does not stipulate that this must be a report to authorities.

Will I get into trouble if I make a report of actual or suspected abuse, and it turns out not to be correct?

If a psychologist decides to report actual or suspected abuse to an appropriate authority or agency that is in a position to lessen the actual or suspected harm, and does so in good faith, they will not be breaching any law or ethical standard by making such a report, even if it transpires that that information was incorrect.

A psychologist cannot face civil, criminal, or disciplinary liability for sharing relevant information to an appropriate authority when the disclosure has been made under the Oranga Tamariki Act 1989 or Family Violence Act 2018, unless the information was disclosed or supplied in bad faith.

What if the reported abuse is historical?

If a psychologist learns of historical abuse to a person and there is no evidence of current risk of harm, then it can be a very complex decision to decide to report historical abuse to a relevant authority. This is because a psychologist does not report abuse for punitive reasons, but in order to reduce the risk of harm to someone. Any decision should be carefully considered and documented.

What if the abuse is not physical or sexual?

If the abuse is of an emotional nature (e.g., you become aware that a parent is continually yelling at and belittling their child) or financial nature (e.g., you become aware that an adult child is stealing money off their elderly parent) it becomes even more important to carefully consider the magnitude of the abuse in your deliberations. Abuse of an emotional or other nature is still considered abuse in the relevant legislation (e.g., Oranga Tamariki Act 1989)

What if the abuse is not my client, but someone they tell me about?

These are always tricky situations to navigate and would depend on the particulars of the case. The closer the psychologist is to the 'source' of information, the more of a responsibility they carry for safety. A psychologist generally only owes a duty of care to the client they are working with. However, if a client tells a psychologist of serious harm being perpetrated to a child in the client's care, then the psychologist likely owes some ethical duty of care to help protect that child.

Legal Disclaimer: The information contained in this education piece does not constitute legal advice about a specific case. If a registered psychologist requires assistance with a specific case, they are encouraged to seek their own supervision and legal advice.