Artificial Intelligence Guidelines

Te Poari Kaimātai Hinengaro o Aotearoa — NEW ZEALAND PSYCHOLOGISTS BOARD

Guidelines for the use of Artificial Intelligence in Psychology in Aotearoa New Zealand

Acknowledgements

Drafting guidelines for a health profession takes a village approach. It is important that the guidelines are culturally, ethically, and legally sound, understandable and most of all useful for the field. A range of practitioners and advisors contributed to the development of the Guidelines for the use of AI in Psychology in Aotearoa New Zealand. Te Poari Kaimātai Hinengaro o Aotearoa / New Zealand Psychologists Board are very grateful to Vijaya Dharan, Rosie Dobson, Kobus Du Plooy, Desiree Grant, Jessica Gu, Thomas Jenkin, Claire Komatas, Tom Neser, Chris Neuenfeldt, Briony Pentecost and Aroha Waipara-Panapa for their assistance in drafting these guidelines. Brian Emery (cultural advisor to Te Poari) was generous in his feedback regarding Māori data sovereignty. Tūmāia Kaiārahi were also critical in the feedback stage and provided valuable input, both collectively and individually, to produce the final version of this document. Dentons Kensington Swan Law and Richard Best both provided very helpful legal advice and review of the guidelines. The guidelines were updated in September 2025 to reflect the swift evolution of Artificial Intelligence and its impact on the provision of psychological services.

Beginning the Korero: Purpose of the Guidelines

1. The Health Practitioners Competence Assurance Act (**the HPCA Act**) mandates Te Poari Kaimatai Hinengaro o Aotearoa / New Zealand Psychologists Board (**the Board**) to assure the public that psychologists are fit to practise in any field of psychology and that they provide competent, high quality and safe services. To meet these obligations, the Board has adopted the Code of Ethics for Psychologists Working in Aotearoa/New Zealand 2002 (**the Code of Ethics;** developed in conjunction with the New Zealand Psychological Society and the New Zealand College of Clinical Psychologists) as a guide to ethical practice. The Code of Ethics delineates the manner or the tikanga in which psychologists ought to carry out their practice. All other statements, including the current guidelines, of how psychologists should conduct their practice must be consistent with the Code of Ethics and its ethical principles of respect for the dignity of persons, responsible caring, integrity in relationships, and responsibility to society.

2. Guidelines adopted by the Board support psychologists in providing competent and ethical practice by translating or expanding on the Code of Ethics in relation to more specific aspects of their professional behaviour. Guidelines are not definitive, binding, or enforceable by themselves, however a disciplinary or review body may use the guidelines in evaluating a psychologist's knowledge and competency. Guidelines are recommendations rather than mandatory standards. They supplement the Code of Ethics which is the highest and most aspirational regulatory document. In addition, the Board's intent in developing guidelines is to assist practitioners in delivering "best practice" both for the safety of the public, and to lessen the likelihood of practitioners facing complaints about their practice from those with whom they work.

3. The central purpose of the Guidelines for the use of AI in Psychology in Aotearoa New Zealand (**the Guidelines**) is to promote psychology work consistent with ethical principles. Every AI scenario must be taken on its own merits by the psychologist, with critical thought and judgement applied to each individual circumstance. It is not possible for the Guidelines to provide an exact answer of what to do in the infinite number of possible scenarios and contingencies that might exist regarding AI. In addition, the extremely rapid progression in the AI domain would mean any prescriptive guidelines would very soon be outdated. Rather, these Guidelines set out Guiding Principles to assist decision-making in the possible use of AI within psychology, rather than specific detail or discussion about particular AI tools. Each Guiding Principle is supported by explanatory commentary to provide guidance on its application to psychologists in their practice. The Board cannot promote, endorse or recommend particular AI tools or engage in a discussion about the pros and cons of particular AI systems. However, it is intended that the

Guidelines will assist psychologists in their critical thought and judgement that they will apply to AI scenarios which may arise in their practice, research, teaching, or supervision.

4. Please note that the current Guidelines are regarding the potential use of AI, rather than the development of AI tools. While the Guidelines may be of use to those psychologists involved in the development of AI tools, it is recommended that specific legal advice is sought in the circumstance of a psychologist being involved in the development of an AI tool for psychological services or research.

5. Given the rapid pace in which AI is developing, the Guidelines will continue to be reviewed on an annual basis.

Main Messages of the Guidelines

- AI is an exciting new area of development, with potential risks and benefits to psychological work. Psychologists are encouraged to pause, reflect and do appropriate due diligence on any AI system they intend to use.
- Psychologists should be responsible in how they use AI, in a similar way that they are responsible in using psychometric measures. Psychologists remain accountable for the AI output they choose to use in the provision of psychological services, research and teaching.
- Psychologists should always review output from an AI tool due to its potential for bias and error. AI can be best conceptualised as a tool to work with a psychologist, not as a replacement for a psychologist.
- Psychologists need to do what is reasonable and realistic when using AI responsibly. There is no expectation that a psychologist must be an expert in AI technology to use AI responsibly.
- Psychologists are encouraged to seek supervision and/or training and to consult with peers or other professionals to ensure they are using AI responsibly, if this is an area that is unfamiliar to them.

Firstly, what is Artificial Intelligence?

Before the Guidelines are presented, the following brief definitions of Artificial Intelligence (AI) are offered:

- Put simply, AI is an umbrella term for technology that enables computers and machines to simulate human intelligence and problem-solving capabilities. This allows such technologies to perform tasks previously requiring human intervention. Digital assistants, autonomous vehicles, and generative AI tools (e.g., ChatGPT) are some well-known examples of AI in our daily lives. AI uses machine learning, involving the development of algorithms that 'learn' from available data, arriving at increasingly more accurate predictions or decisions over time.
- The NZ Government has adopted the Organisation for Economic Co-operation and Development (OECD) definition of AI: a "machine-based system that, for given explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments." This definition emphasizes that AI systems operate with varying levels of autonomy and adaptiveness.

Background

- AI has been around since the 1960s and has become increasingly sophisticated since 2019. Initially, AI systems focused on performing a specific task by following rules to analyse data and make predictions based on pattern recognition but did not technically create anything new (playing against a computer at chess would be an example of an early AI system). Generative AI is a more recent form of AI that can create something new (e.g., text, imagery, audio, video) from existing large data sets by learning underlying patterns to generate new pattern creation. ChatGPT is a well-known example of a large language model AI system where algorithms use enormous data sets to understand, summarise, and generate new content.
- The Office of the Privacy Commissioner (OPC) "Guidelines on Artificial intelligence and the Information Privacy Principles, September 2023", use the term "artificial intelligence", "AI", and "AI tools" to broadly cover computer systems where one or more of the following applies:
    - o Machine learning systems – developed or refined by processing training data
    - o Classifier systems – used to put information into categories (e.g., captioning images)
    - o Interpreter systems – that turn noisy input data into standardised outputs (e.g., deciding what words are present in speech or handwriting)
    - o Generative systems – used to create text, images, computer code, or something else
    - o Automation – where computers take on tasks that people have done until recently
- In Aotearoa New Zealand, as of 2025, AI is not regulated by government. The government has endorsed the OECD AI principles, which are the first intergovernmental standards on AI. These principles aim to harness the potential for AI technologies for economic growth, social welfare, and environmental sustainability while

protecting individuals and societal values. Psychologists are encouraged to review the five principles the OECD have developed for this purpose.

What are the Risks and Benefits of Artificial Intelligence for Psychology?

AI can significantly augment the breadth of knowledge in fields pertinent to psychology, presenting practitioners with an expanded understanding previously unexplored in depth. This enhancement has the potential to notably increase a psychologist's expertise. However, the integration of AI in psychological practice and research is not without its risks and challenges. These include:

- Variable Depth of Knowledge/Lack of Understanding: While AI offers commendable introductory insights, it often lacks a nuanced understanding of specific psychology- related fields. The effectiveness of AI is contingent on the quality and breadth of the data it processes.
- Bias and Inaccuracy: Identifying biases within AI algorithms can be challenging. Instances where AI inadvertently alters demographic characteristics of historical figures highlight the risk of incorporating unintentional inaccuracies, emphasizing the need for transparency and critical evaluation. AI can also generate errors or have errors by omissions which have the potential to cause harm if such errors are not picked up by the psychologist.
- Subtle Biases: The subtlety of biases in AI-generated content can complicate their identification, especially in areas unfamiliar to the psychologist. Awareness and critical scrutiny are essential in mitigating this issue.
- Misinformation and Ethical Misuse: The deliberate use of AI to fabricate or distort information, particularly with the intent of manipulating public opinion or for personal benefit, is ethically indefensible.
- Plagiarism and Intellectual Honesty: Employing AI to derive and summarize research, while ethically acceptable, contrasts sharply with presenting AI-generated content as one's original work. This distinction underscores the imperative for explicit ethical guidelines in the use of AI.
- Accountability: It is crucial that all users, including academic users and psychology students, employ AI responsibly, particularly in ensuring academic integrity when leveraging AI for coursework or research.

Conversely, when used responsibly, AI offers considerable potential benefits to a psychologist, including:

- Reviewing and synthesizing extensive information sets.
- Generating novel ideas and identifying gaps in research, alongside outlining potential research methodologies.
- Assisting in educational settings as a tutoring or coaching tool.
- Assisting in administrative tasks such as handouts and letters.

The responsible employment of AI can significantly enhance the efficiency and effectiveness of psychological practices, research, and teaching. Nonetheless, psychologists must remain vigilant regarding evolving ethical and moral challenges as AI technology progresses. The current Guidelines are intended to assist psychologists in navigating these challenges.

The Guiding Principles

The Guidelines have been structured into ten overarching Guiding Principles for the psychologist considering the use of AI in their psychological work. The Guiding Principles are listed below, with explanatory commentary on each Principle provided on the following pages.

1. Psychologists to consider the unique cultural context of Aotearoa New Zealand when using AI in their work.

2. Psychologists are encouraged to view their obligations in understanding an AI tool as similar to those when using psychometric measures.

3. Psychologists to consider implications of Te Tiriti and the evolving understanding of Māori Data Sovereignty when using AI tools.

4. Psychologists to consider the potential biases in results from an AI tool and avoid perpetuating any form of discrimination or other harm based on biased data sets.

5. Psychological services and opinions that a registered psychologist offers should not be exclusively delegated to AI.

6. Psychologists should only use AI tools responsibly and transparently, and where it is clear that any confidential inputs, including personal information, will be protected and not used or disclosed by the AI tool for its own purposes (such as further training of a large language model).

7. Psychologists should comply with the principles of the Privacy Act 2020 and rules in the Health Information Privacy Code 2020, and undertaking a privacy impact assessment is recommended when using AI tools in their practice.

8. Psychologists should obtain informed consent to the use of AI where the AI tool plays a substantial role in the psychologist's analysis of a person's information, assessment or diagnosis of the person, or choice of treatment for the person.

9. The psychologist is responsible and accountable for their professional practice, including any use or integration of AI tools. This includes providing sufficient information to persons about the use of AI in the services provided to them to enable them to make an informed decision.

10. Person(s) working with a psychologist should not be disadvantaged if they do not wish to have AI tools used in their care or their data entered into an AI system.

1-Psychologists to consider the unique cultural context of Aotearoa New Zealand when using AI in practice

Commentary

1.1 In the rapidly evolving landscape of technology, artificial intelligence (AI) brings both unique opportunities and complex challenges. As psychologists in Aotearoa New Zealand embark on considering the use of AI in their work, it has become important for the Board to publish this set of guidelines that not only aligns with the Code of Ethics and other relevant health legislation but also considers our obligations with Te Tiriti o Waitangi. The cultural tapestry of Aotearoa New Zealand, with its rich history and diverse communities, demands a nuanced approach to the implementation of AI in psychological practice and research. Therefore, while existing guidelines from other parts of the world were considered in the development of the current guidelines, careful consideration was paid to ensuring that it is appropriate for the unique Aotearoa New Zealand context.

1.2 As AI continues to weave itself into all spheres of our everyday lives, psychologists find themselves at the crossroads of innovation and ethical responsibility. This juncture necessitates careful consideration of how AI can be ethically and effectively integrated into psychological frameworks and services, ensuring that its benefits are maximized while minimizing potential risks.

1.3 The integration of AI, when approached with critical reflection and dedication to cultural sensitivity can become a catalyst for positive change, reflecting the enduring commitment of psychologists in Aotearoa to the holistic well-being of their clients and communities. As the future unfolds, these guidelines are a commitment to the profession's evolving responsibility in the face of continuing technological advancement.

2-Psychologists are encouraged to view their obligations in understanding an AI tool as similar to those when using psychometric measures.

Commentary

2.1 Psychologists are well-versed in the selection, evaluation, and communication of psychometric measures and the data they produce. Psychometrics are a common source of data that psychologists in all scopes of practice use to assist in the outcomes for people we work with (e.g., in measuring baseline levels of a construct, assisting diagnostic opinion, evaluating progress, and assessing risk). Given the high frequency in which psychometrics are used in psychological practice and research, psychologists are socialised early in their professional training to only use those measures that are robust across technical and ethical domains.

2.2 The current guidelines propose that psychologists take a similar critical approach when considering the use of AI tools in their practice and research. While it is unrealistic (and unnecessary) for all psychologists to have an in-depth understanding of the technical development of an AI tool, they must have sufficient knowledge, to the extent relevant in a given context, of the AI tool's:

- purpose and appropriateness in the specific context,
- use of data,
- accuracy,
- confidentiality and privacy mechanisms, and
- diversity and bias policies

and be satisfied that these are at a standard to both benefit and not cause harm to those with whom we work. Just as with psychometric measures, psychologists should consider that information should be provided to persons who they are providing services to in order to meet their obligations during the consent process set out in the Code of Health and Disability Services Consumers' Rights (Code of Rights).

2.3 Psychologists have been taught to critically evaluate psychometric measures prior to use, and the current guidelines encourage psychologists to apply the same capacity for critical analysis to any AI tools available now or in the future, to safeguard against potential harms to people with whom we work.

2.4 The development of AI tools in all spheres of society is likely to significantly escalate in the coming years. It is not a defence for a health professional to say, in the event of a complaint regarding the use of an AI tool, that they were not aware that the tool had a particular use of data that they were not aware of. Just like with psychometrics, psychologists must only use those AI tools that publish sufficient information for the user to critically evaluate whether the tool meets ethical, legal and privacy standards.

3-Psychologists to consider implications of Te Tiriti and the evolving understanding of Māori Data Sovereignty when using AI tools.

Commentary

3.1 The Government affirms that Māori as tangata whenua hold a unique place in Aotearoa New Zealand, and that te Tiriti o Waitangi/the Treaty of Waitangi is the nation's founding document. To secure the Treaty's place within the health sector is fundamental to the improvement of Māori health[1].

3.2 The Code of Ethics, in its preamble and guiding principles refers to the centrality of the Treaty of Waitangi/te Tiriti o Waitangi, and the importance of respecting the "dignity of people and peoples". The Code of Ethics thus explicitly recognises factors relating to the Treaty relationship between Māori and the Crown and its agents, and between ethnically and culturally distinct peoples in New Zealand, as central to safe and competent psychological education and practice.

3.3 Māori data is defined by the Waitangi Tribunal's WAI 2522 report as "Digital or digitizable information or knowledge that is about or from Māori people, language, culture, resources, or environments." The concept of Māori data sovereignty is an evolving area of the law. It refers to the inherent rights and interests of Māori, whānau, hapū, iwi and Māori organisations have in relation to the creation, collection, access, analysis, interpretation, management, dissemination, re-use and control of data relating to Māori, whānau, hapū, iwi and Māori. It can be further defined as Māori data governance which includes the principles, structures, accountability mechanisms, legal instruments, and policies through which Māori exercise control over Māori data.

3.4 Since 2016 there have been significant advancements for the protection and recognition of Māori data sovereignty, particularly with consideration of new technologies. Dr Karaitiana Taiuru, a leading authority and Māori technology ethicist, offers useful principles for persons to consider when developing AI tools when working with Māori (Taiuru, 2023 Te Tiriti Based Artificial Intelligence Ethical Principles. Available from: http://www.taiuru.co.nz/AI-Principles).

4-Psychologists to consider the potential bias in results from an AI tool and avoid perpetuating any form of discrimination or other harm based on biased data sets.

Commentary

4.1 AI bias or machine learning bias refers to AI systems that produce results that reflect and perpetuate human biases within a society, including historical and current social inequalities.

4.2 There are two main reasons why an AI system may produce biased results. The first is the quality of the training or input data that the AI system has learned from. This data input can include skewed human decisions or reflect inherent inequities. The second source of potential inequality is the representation in the training data sets. For example, a data set may have groups of the population that are over or under-represented. An AI system and its results can only be as good as the quality of the data it was trained on. Given the data that an AI is trained on will always originate from a human mind or systems (with their range of biases), it is unclear if creating truly unbiased AI is technologically possible.

4.3 It is critical that psychologists understand that the potential for bias in results from an AI system exists, and that this can negatively impact society's trust in AI. Human judgement is also subject to the same potential for bias and, in the field of psychology at least, has gone through its own period of scrutiny and research into

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[1] Rt. Hon. Jenny Shipley, (1996). Policy guidelines for Maori health 1996-1997. Wellington, NZ: Ministry of Health.

how to optimize both accuracy of prediction and minimise a range of biases. This can be seen in the rigorous development that goes into producing psychometric measures, for example.

4.4 Psychologists should approach the use of AI with the issue of potential bias in mind, just as they would look at normative data that a psychometric tool had been normed on. Doing this allows the psychologist to be informed about how applicable an AI system is for their needs. As with Principle 5 below, humans and machines need to work together for enhanced health outcomes in a "multidisciplinary approach" rather than machines replacing humans, or humans negating the positive impact machine learning can have for society.

4.5 Other practical strategies a psychologist can use to ensure that they are using AI systems that seek to minimise bias are:

- Ensuring the AI tool has a bias/fairness policy and a commitment to investing in research to minimise bias in their AI tool.
- The psychologist having an awareness of AI bias and ensuring they maintain oversight and critical analysis and review of any results produced by AI.
- Where possible, reviewing the type of training data used by an AI tool to ensure the data is representative of diversity across domains.

5-Psychological services and opinions that a registered psychologist offers should not be exclusively delegated to AI.

Commentary

5.1 Psychological services have relied heavily on human judgment, particularly in the infancy of the profession. As the profession evolved, a variety of objective tools (e.g., psychometrics) have been employed in the assistance of the psychologist offering services to a range of people. These tools have assisted psychologists, rather than replacing them in the overall services they provide.

5.2 It is clear there is a significant shortage of mental health professionals globally, and one of the potential benefits of AI is its capacity to increase access to mental health services and support. At the time the current guidelines were prepared there is already a growing market of AI tools that enable people to interact directly with an "AI therapist" via electronic devices. This is expected to increase significantly in the coming decade, with corresponding research into the efficacy of this mode of mental health intervention.

5.3 When a person interacts directly with an "AI therapist tool" it is reasonable to assume that the person understands that the service is with AI, and that a human is not involved. However, when a person procures the services of a (human) psychologist, it is with the expectation that a human is leading the provision of that service. Psychologists are encouraged to consider the extent to which any AI tool is being used to replace their own critical thought and ensure transparency around this. The use of AI should not exclusively replace a psychologist's service when that service is advertised or presented as a service offered by a human. In addition, particularly at this stage of the evolution of AI, there is the possibility of machine error and bias to occur, making the critical thought and review of a human an essential feature of psychological services.

5.4 In a report to OECD, Laukkonen et al (2019) point out that "AI is good at following rules, but many situations in life are embedded in specific contexts that change the rules. In such circumstances, the complex interactions between values, beliefs, and goals can provide axioms—and agency—for decision-making in thorny moral scenarios." Such decision making they emphasise will be unique to humans, as AI cannot be generalised nor is it wholly capable of dealing with ambiguity, uncertainty and complexity of situations. Arguably, psychologists will need to exercise this sense of agency and professional knowledge in every step of their practice which involves complex human contexts and interactions.

6-Psychologists should only use AI tools responsibly and transparently, and where it is clear that any confidential inputs, including personal information, will be protected and not used or disclosed by the AI tool for its own purposes (such as further training of a large language model).

Commentary

Privacy is an important but non-absolute right in Aotearoa New Zealand.

6.1 The emergence of AI highlights a tension between two competing interests: society's interest in the innovation of technology and individual interests related to privacy of information used in these technologies (Boniface, 2021). Too far in either direction could result in hindering the development of AI tools that could

enhance health outcomes or rendering the protections of privacy meaningless in action. What is the priority for our society? Research into the perspectives of health service users in Aotearoa New Zealand has shown support for AI in health but with clear conditions around intent, governance, privacy, security, transparency and restrictions on commercial gain (Dobson & Whittaker, 2023).

6.2   Privacy is not an absolute concept in law or ethics. In Aotearoa New Zealand, a health practitioners' code of ethics, in addition to the Code of Rights, the Privacy Act 2020, the Health Information Privacy Code 2020, and the Health Act 1956 provide for an individual's right to privacy and the execution of the parameters of this right in the context of the provision of health services. The legal protections related to privacy in Aotearoa New Zealand are designed to be flexible and are presented as principles and ideals rather than rigid requirements (Boniface, 2021). However, as stated in the Office of the Privacy Commissioner's Artificial intelligence and the Information Privacy Principles (published in September 2023), the Privacy Act 2020 applies to the use of AI when personal information is entered, used or disclosed.

AI presents challenges to an individual's right to privacy

6.3   The nature of AI means that there are likely new and extensive possibilities for breaches of privacy. In order to make connections rapidly and accurately AI requires enormous datasets which could easily be shared between different systems. An individual's data may potentially be moved and manipulated in a variety of ways that cannot possibly be anticipated at the point of collection. AI makes it harder to see, understand and explain how personal information may be potentially used in the future (OPC Guidelines, 2023).

6.4   These features of AI present numerous challenges for privacy, including the impossibility to apply conventional methods of protection to large scale and global technological systems. Privacy protections rely on people and organisations who can understand the context and take responsibility for their actions (OPC Guidelines, 2023). The further an individual's data is from a human agent, the less likely a privacy breach could be anticipated or identified.

6.5   The Office of the Privacy Commissioner (OPC) has published a set of guidelines in September 2023 regarding the use of AI[2] . The OPC guidelines remind the reader that in Aotearoa New Zealand privacy law applies to the use of AI tools. In our local context, this means that any use of AI needs to comply with the 13 information privacy principles provided in the Privacy Act 2020 and the parallel 13 health information rules in the Health Information Privacy Code 2020. These principles and rules govern the collection, storage, use and sharing of personal/health information. The OPC guidelines are clear that these principles and rules must be upheld if you are building an AI tool, using an AI tool to support decision making or using AI in any aspect of your work with people.

6.6   The reader is encouraged to read the OPC Guidelines as an adjunct to the Board's Guidelines on the use of AI as they give guidance regarding adhering to each of the 13 information privacy principles. The OPC Guidelines set out the Privacy Commissioner's expectations for agencies using AI tools, which includes:

- Have senior leadership approval based on full consideration of risks and mitigations of the AI tool
- Review whether a generative AI tool is necessary and proportionate given potential privacy impacts and consider whether you could take a different approach
- Conduct a privacy impact assessment before using these tools (discussed further in the next Principle 7)
- Be transparent, telling people how, when, and why the tool is being used
- Engage with Māori about potential risks and impacts to the taonga of their information
- Develop procedures to ensure accuracy of information and access by individuals to their information
- Ensure human review prior to acting on AI outputs to reduce risks of inaccuracy and bias
- Ensure that personal information is not retained (in any form) or disclosed by the AI tool.

      (These expectations should inform a psychologist's use of AI tools in their practice but are not in themselves legal requirements).

6.7   Many psychologists work within organisations who will have their own AI guidelines and policies which psychologists should be familiar with.

6.8   It is acknowledged that different uses of AI in psychology work will also present differing levels of risk that the psychologist needs to consider. For example, using AI to write a draft of a psychoeducation sheet without identifying details will present much lower privacy risks in comparison to using AI which requires input of sensitive health information.

7-Psychologists should comply with the principles of the Privacy Act 2020 and rules in the Health Information Privacy Code 2020 and undertaking a privacy impact assessment is recommended when using AI tools in their practice.

Commentary

7.1 The OPC Guidelines make the useful point that there is much excitement and urgency around new AI tools, despite best practices for these tools yet to be fully developed. They urge people to consider privacy prior to using AI that may require the input of personal information. The OPC Guidelines state that they expect organisations to do a privacy impact assessment prior to the use of AI.

7.2 The OPC Guidelines emphasise that the information privacy principles in the Privacy Act 2020 (and rules in the Health Information Privacy Code 2020 that replace the principles in relation to Health Information) govern the collection, use and sharing of personal information. The principles (or rule) apply when building an AI tool, using AI tools to support decision making, or have team members who are informally using AI in their work. They also apply where overseas organisations provide AI tools for use in New Zealand.

7.3 The OPC website offers guidance on writing and conducting a privacy impact assessment. A privacy impact assessment is a tool to help agencies identify and assess the privacy risks arising from their collection, use of and handling of personal information. Ways to mitigate or minimise these risks are also proposed in a privacy impact assessment. These assessments are particularly useful when an agency is considering introducing a new system (such as AI).

7.4 The OPC website has a resource: How to do a Privacy Impact Assessment that psychologists are directed to. In summary the main steps of a privacy impact statement include:

- Gather all the information you need and sketch out how and where the information you are collecting will go
- Check this information out against the Information Privacy Principles in the Privacy Act
- Identify any real privacy risks and how to mitigate them
- Produce a privacy impact assessment report
- Take action
- Review and adjust the privacy impact assessment as the project develops

7.5 Psychologists should be particularly mindful when providing services to Māori, as with all persons, about the choices they have over the collection, use New Zealand Psychologists Board | AI Guidelines 20 of 28 and disclosure of their information, within the limits of the law and subject to circumstances where a psychologist may be required or permitted by law to disclose personal information (e.g. to protect someone from a serious threat of harm).

8-Psychologists should obtain informed consent to the use of AI where the AI tool plays a substantial role in the psychologist's analysis of a person's information, assessment or diagnosis of the person, or choice of treatment for the person.

Commentary

Gaining Informed Consent is Essential for Whakawhanaungatanga

8.1 Engaging in the informed consent korero (conversation) is a clear sign of relationship building for those we work with and respect for their human dignity and autonomy/self-governance. It is an integral part of the initial engagement process and establishing a working partnership. Gaining informed consent means that the person has the right to choose whether to receive the psychological service (or to take part in research) based on the best information available, and to withdraw that consent should their opinion change. Informed consent should occur at the beginning of an engagement, should be documented so that there is a written record retained, and is often a dynamic process of partnership as the unfolding process requires revision of mutual understanding and agreement.

There is a Legal and Ethical requirement for Gaining Informed Consent in Aotearoa New Zealand

8.2 Gaining informed consent from people with whom you are working is both a legal and ethical requirement for all health practitioners working in Aotearoa New Zealand. The Code of Rights[2] provides the primary legal basis for consent in Aotearoa New Zealand in Rights 5, 6 and 7. These rights convey the two of the core pre-requisites for consent: whether the patient was given sufficient information to enable them to make an informed decision and give informed consent; whether they were competent to understand the information when making a decision.

8.3 The Tikanga Mataatika/Code of Ethics for psychologists working in Aotearoa New Zealand[3] recognises that obtaining informed consent is a fundamental expression of respect for the dignity of persons and peoples (Principle 1.7). Further relevant guidance is given in Principle 1.7.6 of the Code of Ethics: In obtaining informed consent, psychologists provide as much information as a reasonable or prudent persons, family, whānau, or community would want to know before making a decision or consenting to an activity. This includes warning of any potential risks or consequences. This reflects the requirements in the Code of Rights (Right 6) and in relevant case law.

8.4 AI presents a number of complicating features for the psychologist and the informed consent process, not least because of the emerging nature of AI. The following points are made to assist the psychologist in considering when and how to inform the people with whom they work about the use of AI in their work.

Does the psychologist always need to inform the client of their use of AI at the consent stage?

8.5 The answer to this will be partly contingent on the extent of the AI tool and its role in the psychological service provided. If the AI tool is used as an adjunct to the psychologist's reasoning, disclosure of its use at the consent stage may not be required. Psychologists, like all health practitioners, use many systems of information to inform their thinking (e.g., memories of past lectures, current readings, discussions with supervisors and colleagues). It would be unnecessary, in most cases, to disclose all of these to a client. In the case of AI being used as a partial tool in the overall service, the psychologist is still the main provider and "in charge" of the health service (Cohen, Attwood, & Williams, 2020).

8.6 However, if the AI tool is being used as a substitute for any of the significant roles the psychologist would reasonably be expected to perform, or is being used as the predominant or central method of reasoning or recommendation, or if results/advice from AI are automatically followed with limited input from the psychologist, then a person should be provided this information at the consent stage in order for the person to make an informed decision, give informed consent, and understand how their personal information may be used and or disclosed. The psychologist will retain responsibility for ensuring the service provided meets applicable legal, ethical and professional standards. Consider the example from Cohen, Attwood and Williams (2020): if you consented to a particular surgeon performing surgery on you and then awoke to find a completely different surgeon had completed the operation (without good reason), you would likely feel deceived and not informed about a significant part of the treatment.

8.7 A further point to consider is the emerging nature of AI and the significant place it currently holds in societal discourse and thought. As of 2024, AI and its various uses in health care does not yet appear to be commonplace, or business as usual, although this is likely to change rapidly in the near future. Because of this, and the likelihood that members of the public will have varying opinions and knowledge about the emerging use of AI, it may be wise to consider always mentioning when AI is used in any psychological service you provide at this stage in the evolution of AI. However, there may also be risks in 'over disclosure' of information at the consent stage, and this is discussed further in the following principle.

What information should be conveyed in the consent process?

8.8 As per the Code of Rights, the information conveyed in the consent process should be what a reasonable person, in the person's circumstances, needs to make an informed choice and give informed consent. There is no legal or ethical expectation that competent individuals have to understand the actual scientific and technological processes involved with their diagnosis, treatment or any other health service they are in engaged with. The expectation is that they are given the material information to make decisions regarding their self-determination and that they are given the opportunity to reach their own conclusion for their wellbeing without being misled or deceived (Boniface, 2021). This might include, why the AI is used and to what extent (e.g., if the output/decision from AI is reviewed by the psychologist).

8.9 In addition, the individual characteristics of a person (e.g., their level of cognitive functioning, their own expertise in the area of AI, their fears and anxieties) should all be considered in what is 'material' to them in making their decision about whether or not to engage in a psychological service that utilises AI (Boniface, 2021).

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[2] Under review as of December 2023
[3] Under review as of December 2023

8.10   There does not appear to be an expectation that all possible risks regarding the use of AI are identified and communicated to a client. All aspects of healthcare carry potential unknown risks and AI is no different to this. Overdisclosure of risks may make it difficult for clients to distinguish meaningful risks from trivial ones (Boniface, 2021). The risks that will be relevant to a particular client, in that person's circumstances, are the most important to communicate. A psychologist's experience with AI may also be a relevant factor to explore. A HDC case from 2009 (HDC decision 08HDC20258) found that a surgeon who used robotic assisted surgical technology on a 69 year old man (who later developed complications), had a duty to inform the patient that he had had limited experience with that technology.

8.11   When using AI tools, it is important that psychologists are transparent during the consent process about what information will be entered into and used by the tool. This includes being transparent about when it is intended that a person's personal information will be entered into the AI tool. Identifying New Zealand Psychologists Board | AI Guidelines 24 of 28 personal information should not be entered into an AI tool where the information may be used by the tool or operator for its own purposes (such as further learning), unless the person has been informed of the risks of their information being used in this way, is not in a vulnerable position, have time to reflect on it, and expressly consent to their information being used in this way. It should be clear to the person that they can opt out of their information being used in this way.

Psychologists need to be especially aware of the danger of using AI to help generate or revise articles intended for publication

8.12   The integration of AI into psychological research and journal publication presents both significant opportunities and ethical challenges. AI can inadvertently introduce errors or misinterpretations in research data or manuscript drafts, which could lead to flawed conclusions or misleading information. Ethical deployment of AI necessitates clear acknowledgment of its use in the final draft submitted for publication or other use, including the origins and limitations of the AI-generated content. Psychologists should ensure that all AI-assisted research undergoes rigorous peer review, maintaining high standards of accuracy and ethical integrity. Furthermore, informed consent protocols must evolve to cover the collection and use of data by AI systems, safeguarding confidentiality and participant rights. A person should expressly consent to being involved in research (Code of Rights) including their identifiable personal information being used in research (right 6(1)(d) and right 9)

9-The psychologist is responsible and accountable for their professional practice, including any use or integration of AI tools. This includes providing sufficient information to persons about the use of AI in services provided to them to enable them to make an informed decision.

Commentary

9.1   What if the AI is complex and the person with whom you are working is unlikely to be able to evaluate whether its use in their case furthers or stymies their healthcare interests? The decision maker should not be overwhelmed by technical information (Boniface, 2021). However, the psychologist should provide sufficient information about the role or use of any AI tool where this is information a person, in that person's circumstances, would need to have to be able to make an informed choice and give informed consent to the proposed service. The psychologist remains responsible and accountable for their professional practice, including any use or integration of AI tools.

9.2   The law does not require that patients are able to understand completely, or to the same level as a health practitioner. It would be unlikely a patient would fully understand or could explain the mechanisms of prescribed medication. Similarly, they do not need to fully understand or be able to explain the technical details of an AI tool

9.3   Although acquiring extensive knowledge of AI coding, programming, and functioning is unrealistic for most healthcare providers, those who plan to use these technologies in practice should be able to:
- Provide people with whom they are working an explanation of how the AI programme or system works, similar to how a psychologist explains how psychometrics are used in practice
- Explain the healthcare provider's experience using the AI program or system
- Describe to people the risks versus potential benefits of the AI technology (e.g., compared to human accuracy)
- Discuss the human versus machine roles and responsibilities in diagnosis, treatment, and procedures
- Describe any safeguards that have been put in place, such as cross-checking results between clinicians and AI programmes, and on-going monitoring or training of the tools and programmes

- Explain issues related to confidentiality of person's information including how the person's personal information may be used and/or shared by the AI tool including for future training or other purposes and any increased privacy risks with the use of the tool.

9.4 Taking the time to provide people with these additional details during the informed consent process and to answer any questions can help ensure that they have the appropriate information to make informed decisions about their treatment. Following the informed consent process, providers should document these discussions in health records and include copies of any related consent forms.

9.5 Additional care should be taken when a person has reduced capacity to consent. The Code of Rights outlines the required steps in the consent process for people with reduced capacity. The process of being transparent about AI needs to be adapted and flexible to people's differing levels of capacity.

10-Person(s) working with a psychologist should not be disadvantaged if they do not wish to have AI used in their care of their data entered into an AI system.

Commentary

10.1 One of the overarching and significant ethical principles in healthcare is the respect for the autonomy of a person and their decision making. Given the concerns of some people regarding the emerging nature of AI and the sensitive nature of their personal information, it is likely that psychologists will encounter people who wish to have psychological services, but do not consent to their information being used in an AI tool for any purpose. The psychologist will need to respect this decision and ensure the person can still access the psychological services that they require. If it is not practicable to offer a particular psychological service without the use of an AI tool, the psychologist should explain this to the person and make reasonable efforts to refer the person on to another equivalent service that does not rely on AI.

10.2 People may have a range of ideas and beliefs about AI that may or may not be accurate. The psychologist can offer the relevant information necessary for an informed choice to be made but should avoid trying to unduly influence or convince a person that a particular AI tool is safe. The person with whom the psychologist is working can be presumed competent (unless there is good reason to suggest otherwise) to make their own decision regarding whether they wish to engage with a service that uses, in part, an AI tool. This decision must be respected by the psychologist.

References:

AIHLEG. (2018). A definition of AI: Main capabilities and scientific disciplines. Bruxelles: European Commission.

Boniface, C. (2021). The legal impact of artificial intelligence on the New Zealand health system. A thesis completed for a PhD at the University of Canterbury

Cohen, G., Attwood, J.A. & Williams, L. (2020). Informed consent and medical artificial intelligence: What to tell the patient? Georgetown Law Journal, 108, 1425 – 1469

Dobson, R. & Whittaker, R. (2023). What Do Health Service Users Think About the Use of Their Data for AI Development? In: Bichel-Findlay, J. Otero, P. Scott, P. Huesing E. eds., 2023. MEDINFO 2023: The future is accessible. Proceedings of the 19th World Congress on Medical and Health Informatics. IOS Press.

Laukkonen, R.,Biddell, H., &Gallagher, R. (2019). Preparing humanity for change and artificial intelligence: Learning to learn as a safeguard against volatility, uncertainty, complexity, and ambiguity. OECD report.

Office of the Privacy Commissioner (2023). Artificial intelligence and the information privacy principles.

Taiuru, K. (2023). Te Tiriti Based Artificial Intelligence Ethical Principles. Available from: http://www.taiuru.co.nz/AI-Principles

Waitangi Tribunal's WAI 2522 Report on the comprehensive and progressive agreement for trans-pacific partnership (2023)