

Learning Assessment Guide

Unit Standard 14943 – Version 4

Demonstrate knowledge of te Tiriti o Waitangi / Treaty of Waitangi in respect to the State sector

Level 5 – 5 Credits

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|---|--|----------------|--|
| Assessment Summary | | | |
| Learner to complete | | | |
| Learner's name: | | | |
| Employer: | | | |
| NSN no. (ROL): | | DOB: | |
| Signed: | | Date: | |
| Assessor to complete | | | |
| <input type="checkbox"/> Meets requirements <input type="checkbox"/> More training required <input type="checkbox"/> More evidence required | | | |
| Assessor's name: | | Assessor's No. | |
| Signed: | | Date: | |

Before you begin...

- As well as this Learning Assessment Guide, you may also want to refer to the unit standard from the NZQA website (<http://www.nzqa.govt.nz>).
- Read the Trainee Information Kit. The kit contains important information and guidelines for Learners and can be found on the Learning State website (<http://www.learningstate.govt.nz>) under Learners, then Learning Assessment Guides.
- Check the learning resources available for this unit standard on the Learning State website (<http://www.learningstate.govt.nz>) under Learners, then Learning Assessment Guides.

The tasks in this assessment are designed to show your assessor that you can:

- Explain the importance of te Tiriti o Waitangi/Treaty of Waitangi and its principles with regard to the State sector.
- Describe the influence of the Treaty on the State sector.
- Outline the functions and authority of government agencies that manage Treaty issues.

This Learning Assessment Guide is made up of:

- Tasks for you to complete
- Assessment Guide that the assessor will use to assess your competence.

Special notes relating to this unit standard

1 This unit standard is intended for people who are employed in the State sector.

2 Definitions

Te Tiriti o Waitangi refers to the Māori language text of the Treaty.

Treaty of Waitangi refers to the English language text of the Treaty.

The Treaty refers to both Māori and English language texts considered as a whole;

The Principles of the Treaty refers to the core concepts that underpin the Treaty. The Court of Appeal and the Waitangi Tribunal have developed a number of detailed principles, of these the principles of 'partnership', 'active protection', and 'redress' are considered dominant;

State sector refers to and encompasses only the institutions of central government, as opposed to the larger Public Sector, which includes institutions of both central and local government. Specifically, the State sector comprises a large group of quite distinct institutions included in the annual financial statements of the government that are prepared under the Public Finance Act 1989. The role of the State sector is to implement government policies, provide services or operate business as agreed by a democratically elected government.

3 Legislation relevant to this unit standard includes but are not limited to: Treaty of Waitangi Act 1975, Resource Management Act 1991, State-owned Enterprises Act 1986, Education Act 1989, Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, Māori Fisheries Act 2004, State Sector Act 1988, Conservation Act 1987, Environment Act 1986, Māori Language Act 1987, Fisheries Act 1996.

4 Resources include but are not limited to:

He Tirohanga o Kawa ki te Tiriti o Waitangi: A guide to the Principles of the Treaty of Waitangi (Wellington: Te Puni Kōkiri, 2001) available at <http://www.tpk.govt.nz/en/in-print/our-publications/publications/>. This publication gives a detailed list of the Treaty principles that have been developed.

Joseph, Philip, A., *Constitutional and Administrative Law in New Zealand* 2nd ed. (Wellington: Brookers Ltd, 2001).

Palmer, Sir Geoffrey and Matthew, Palmer, *Bridled Power: New Zealand's Constitution and Government*, 4th ed. (Auckland: Oxford University Press, 2004).

Assessment Task One – Elements 1, 2 & 3

Introduction

This assessment task is designed to assess your ability to:

- Explain the importance of te Tiriti o Waitangi/Treaty of Waitangi and its principles with regard to the State sector.
- Describe the influence of the Treaty on the State sector.
- Outline the functions and authority of government agencies that manage Treaty issues.

Instructions

- You are required to complete the tasks for the assessment, and
- any further questions that the assessor asks on the completion of this assessment to confirm and, or, clarity responses.

Your completed assessment for this task will consist of:

- Written responses to questions, and
- other documentation as required.

Task One Questions

Question One

The position of the Treaty of Waitangi in New Zealand's constitutional framework is an intricate issue. The Rt Hon Sir Geoffrey Palmer¹ has suggested that any revision of New Zealand's constitutional arrangements will require the place of the Treaty to be settled and the prospect of securing anything approaching consensus on it appears to be remote.

It is generally accepted that the Treaty of Waitangi has constitutional importance and is a part of this country's constitutional arrangements. But there is major disagreement on its precise role and the nature and extent of its importance. Its formal legal status may be less important than its influence on the way governmental power is exercised in New Zealand.

This question requires you to demonstrate your knowledge of the significance of te Tiriti o Waitangi/Treaty of Waitangi to New Zealand's constitutional arrangements. Discuss its significance in terms of **three** of the following:

- Founding document
- Expressing the on-going Māori and Crown relationship
- references to the Treaty in legislation
- recognition of the Treaty in the conduct of government and the courts
- the Treaty as intertwined in New Zealand's constitutional arrangements

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Two:

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¹ Rt Hon Sir Geoffrey Palmer. The Treaty of Waitangi - Where to from here? Looking back to move forward. Presentation to the Te Papa Treaty of Waitangi Debate Series, 2 February 2006.

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Question Two

A number of statutes refer to the principles of the Treaty, however there is much discussion and debate as to what these principles mean. Various institutions such as the Courts and the Waitangi Tribunal have commented on the principles to give assistance as to what is required to ensure compliance with the principles of the Treaty.

This question requires you to describe **four** findings relating to the principles of the Treaty, two from the courts and two from the Waitangi Tribunal.

Court finding – one:

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Court finding - two:

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Waitangi Tribunal finding - one:

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Waitangi Tribunal finding - two:

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Question Three

Statutes refer to the principles of the Treaty with varying emphasis. Identify **three** statutes and describe the reference to the Principles of the Treaty, the significance of that reference, and explain how the obligation is applied in a State sector organisation.

You may discuss, but are not limited to, to the following Acts:

- Education Act 1989
- Treaty of Waitangi Settlement Act 1992
- Māori Fisheries Act 1989
- State Sector Act 1988
- State Owned Enterprise Act 1986
- Conservation Act 1987
- Environment Act 1986
- Māori Language Act 1989
- Resource Management Act 1991
- Constitution Act 1986

The following is an example answer that may help you structure your answer:

Statute (full reference):

Hazardous Substances and New Organisms (HSNO) Act 1996, Section 6(d)

Describe the reference:

The HSNO Act provides that persons exercising powers shall "...take into account...the relationship of Māori and their culture and traditions with their ancestral lands, waters, sites, wāhi tapu, valued flora and fauna, and other taonga..."

Explain the significance of the reference:

The wording "take into account" is considered a moderately worded clause that gives moderate weight to the obligations that flow from it.

Explain or give an example of how it is applied:

The Environmental Risk Management Authority, that was established under the HSNO Act 1996, requires people who have applied to introduce hazardous substances or new organisms to New Zealand to consider the risks and benefits their application may pose to Māori culture or our traditional relationships with our ancestral lands, water, sites, wāhi tapu, valued flora and fauna or other taonga.

Applicants are often required to consult with Māori at either a local or national level, depending on the nature of the application.

Statute One:

Statute (full reference):

Describe the reference:

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Explain the significance of the reference:

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Explain or give an example of how it is applied:

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Statute Two:

Statute (full reference):

Describe the reference:

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Explain the significance of the reference:

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Explain or give an example of how it is applied:

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Statute Three:

Statute (full reference):

Describe the reference:

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Explain the significance of the reference:

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Explain or give an example of how it is applied:

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Question Five

Provide **four** examples that illustrate the affect of the Treaty of Waitangi on the principles, conventions and practice of the State sector. You may provide examples from the same organisation. Examples may be based on, but are not limited to:

- Statutory obligations
- Claims processes
- Good processes
- International obligations
- Fiduciary duty
- Aboriginal title

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Example two:

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Example three:

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Example four:

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Question Six

The Office of Treaty Settlements is a separate group within the Ministry of Justice. Briefly outline the functions of the Office of Treaty Settlements and its authority.

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Question Seven

Various government organisations provide advice to the Crown on Treaty issues. Briefly outline the functions of **two** organisations and the services they provide with respect to Treaty issues. The organisations you discuss may include but are not limited to: Te Puni Kōkiri and the Crown Law Office.

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Agency two:

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Question Eight

Consider your own organisation and your own role. What does your organisation do and what do you do (an individual) in response to obligations under the Treaty?

Your answer will need to link your organisations response to your work. You may discuss, for example, working relationships with Māori, policy delivery, programmes and services, formal and informal interaction, capability building initiatives, service delivery, organisational responsiveness to Māori.

You may wish to attach supporting material to support your answer.

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This is the end of the assessment

Please return this Learning Assessment Guide to your assessor

Assessment Guide

These are the evidence and judgements that your assessor will use to assess your competence in unit standard 14943.

| Task / Element | Evidence required | Judgement | |
|--|---|--|---|
| <p>Task 1 / Elements 1, 2 & 3</p> <p>In this task the learner must:</p> <p>Explain the importance of te Tiriti o Waitangi / Treaty of Waitangi and its principles with regard to the State sector</p> <p>Describe the influence of the Treaty on the State sector</p> <p>Outline the functions and authority of government agencies that manage Treaty issues</p> | <p>Written responses to questions, and</p> <p>Answers to any further questions that the assessor asks on the completion of this assessment to confirm and, or, clarity responses.</p> | <p>That the learner's answers in task one adequately show knowledge of the:</p> <p>Constitutional importance of te Tiriti o Waitangi / Treaty of Waitangi</p> <p>Courts and the Waitangi Tribunal finding in regards to the principle of the Treaty</p> <p>Statues that that deal with Crown obligations under te Tiriti o Waitangi/Treaty of Waitangi and the significance of those obligations</p> <p>Jurisdiction of the Waitangi Tribunal and it's role in the claims process</p> <p>Affect of te Tiriti o Waitangi / Treaty of Waitangi on the principles, conventions and practices of the State sector</p> <p>Functions and authority of the Office of Treaty Settlements</p> <p>Functions and services of government organisations that provide advice to the Crown on Treaty issues</p> <p>How the learner, in their role, and the organisation they work for, respond to obligations to the principles of te Tiriti o Waitangi / Treaty of Waitangi.</p> | <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> |