



NZQA Assessment Support Material

Unit standard	27837				
Title	Evaluate a concept of democracy and government in relation to restraint on state power				
Level	3	Credits	4	Version	2

Note

The following guidelines are supplied to enable assessors to carry out valid and consistent assessment using this internal assessment resource.

Assessors must manage authenticity for any assessment from a public source, because students may have access to the assessment schedule or student exemplar material. Use of this assessment resource without modification may mean that students' work is not authentic. The assessor will need to change figures, measurements or data sources or set a different context or topic.

While this ASM lends itself to written assessments, there are other activities and approaches that could be taken.

See Generic Resources and Guidelines at <https://www.nzqa.govt.nz/providers-partners/assessment-and-moderation/assessment-of-standards/generic-resources/>

Assessor guidelines

Context/setting

In this activity, students will present a research report in order to evaluate concepts of democracy and government in relation to restraint on state power.

A concept of democracy and government may include but is not limited to – rule of law, civil liberties, parliamentary sovereignty; legal relationship includes one of – individual versus state power; checks and balances within government; international versus state power.

For example, the students could base their report on the following specific situations:

- Police accessing an individual's social media account (rule of law, individual versus state power);
- Government agency privacy breaches (rule of law, individual versus state power);
- Kim Dotcom and the Government Communications Security Bureau (rule of law, individual versus state power);
- New Zealand's endorsement of the Declaration on the Rights of Indigenous Peoples (parliamentary sovereignty, international versus state power).

A W A R D O F G R A D E S



- For award with **Achieved**, a concept of democracy and government is evaluated in terms of restraint on state power and the legal relationship to a specific situation; differing viewpoints are compared in relation to democracy and government and the restraint on state power.
- For award with **Merit**, the comparison of differing viewpoints about the restraint on state power within democracy and government is developed by including relevant supporting detail in relation to the specific situation. Supporting detail may include but is not limited to any one of: media reports, case commentary, expert commentary.
- For award with **Excellence**, the evaluation justifies a position on the restraint on state power within democracy and government by weighing up the arguments and counter-arguments related to the specific situation.

C O N D I T I O N S O F A S S E S S M E N T

Assessors will set the conditions of assessment as appropriate.

Assessment activity

This assessment activity has **one** task.

Students must complete a report that is based on a specific situation where the right to privacy appears to have been breached by the state. The report should use the specific situation provided to:

- Identify the legislation related to this specific situation and explain how it applies to the restraint of state power.
- Explain how the right to privacy is a balance between state power and individual rights.
- Discuss whether the right to privacy has been breached. They must compare at least two differing viewpoints in their discussion.

- Justify a position in relation to the specific situation. The following questions will help to guide this:
 - are the arguments and counter-arguments valid in terms of the rule of law and the legal relationship?
 - are the arguments and counter-arguments opinion or fact?
 - what standing does the person expressing their viewpoint hold? As a result, what weight can you give the argument or counter-argument when justifying your own position?

Resource requirements

Students will need access to the Internet and other research resources, such as the library.

Useful information on privacy, including press releases and cases can be accessed on the website of the NZ Privacy Commissioner <http://privacy.org.nz/>.

Additional information

Teaching and learning guidelines that inform legal studies as it is taught in New Zealand can be found at <http://seniorsecondary.tki.org.nz/Social-sciences/Legal-studies>.

Assessment Schedule

Unit standard		27837			
Title	Evaluate a concept of democracy and government in relation to restraint on state power				
Level	3	Credits	4	Version	2

Privacy in the digital world

Judgements for achievement	Judgements for achievement with merit	Judgements for achievement with excellence
<p>A concept of democracy and government is evaluated in terms of restraint on state power and the legal relationship to a specific situation.</p> <p>A concept of democracy and government may include but is not limited to – rule of law, civil liberties, parliamentary sovereignty.</p> <p>Legal relationship includes one of – individual versus state power; checks and balances within government; international versus state power.</p> <p>The evaluation compares differing viewpoints in relation to democracy and government and the restraint on state power.</p> <p>Note – For this sample assessment the rule of law (Privacy Act 1993) in relation to individual versus state power has been selected.</p>	<p>The comparison of differing viewpoints about the restraint on state power within democracy and government is developed by including relevant supporting detail in relation to the specific situation. Supporting detail may include but is not limited to any one of: media reports, case commentary, expert commentary.</p>	<p>The evaluation justifies a position on the restraint on state power within democracy and government by weighing up the arguments and counter-arguments related to the specific situation.</p> <p>As the excellence criteria requires candidates to take a position on an issue, it can be expected, and should be accepted, that candidates will give very different responses to the task. Any well-argued position should be accepted, as long it:</p> <ul style="list-style-type: none"> • clearly presents at least two viewpoints on the balance between state power and individual rights in New Zealand (with reference to at least one such right) • takes a clear position on the balance between state power and individual rights by evaluating the viewpoints that have been presented • is presented in the candidate's own words.

Task	Evidence for achievement	Evidence for achievement with merit	Evidence for achievement with excellence
One	<p>A part answer evaluating restraint on state power could include:</p> <ul style="list-style-type: none"> - In their report the student identifies the appropriate parts, section(s) and/or clauses of legislation relevant to the specific situation and explains how it applies to the restraint on state power. <p>For example, in the specific situation of Facebook and privacy:</p> <p><i>The New Zealand Bill of Rights Act 1990</i> <i>Section 14 Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.</i></p> <p><i>Section 21 Everyone has the right to be secure against unreasonable search or seizure, whether of the person, property, or correspondence or otherwise.</i></p> <p><i>This would suggest that there would be some protection for individuals under the Bill of Rights Act 1990 for information on Facebook being accessed by authorities. As Section 21 states that “everyone has the right to be secure against unreasonable search” the question that could be posed is</i></p>	<p>A part answer comparing differing viewpoints by including relevant supporting detail could include:</p> <p><i>In a column in the New Zealand Herald, human-rights lawyer Tim McBride discusses how section 21 of the Bill of Rights Act 1990 has been interpreted to cover privacy. However, he suggests that “most of us accept that privacy is not an absolute entitlement”. McBride also indicates that New Zealanders view privacy as..... “the privacy of their communications and information relating to them, together with freedom from unwanted surveillance” and presents the Law Commissions two main dimensions of privacy – informational and spatial.</i></p> <p><i>In a press release dated 24 May 2010, privacy commissioner Marie Schroff expressed concern at Facebook changing privacy settings to allow third part access to information but indicated they had received no complaints about this. The commissioner specifically requested feedback from New Zealanders if they had concerns about Facebook, however it appears that there has been no further consideration of this by the commissioner.</i></p> <p><i>In a speech to the Auckland United Future members the Hon Peter Dunne outlined his strong belief that agencies such as the Police must act within the laws they are pledged to uphold and that protecting personal</i></p>	<p>A part answer justifying a position could include:</p> <p><i>I would argue that in this specific situation, the Police have not breached people’s privacy.</i></p> <p><i>The North Shore police are using Facebook as a communication tool in a similar way to how they would use other forms of media. I would argue that this does not beach the Bill of Rights or the Privacy Act. I would be more concerned at the statement that they are looking to “get around the legal and functionality issues that have so far limited their Facebook usage”.</i></p> <p><i>As noted by the Hon Peter Dunne, “Police must act within the laws they are pledged to uphold and that protecting personal information from abuse or misuse is part of that”. Given the Hon Dunne was an architect of the Privacy Act his viewpoint supports the notion that Police would have to have good reason to access someone’s profile.</i></p> <p><i>An example of good reason would be the Matthew Hall murder (see http://www.stuff.co.nz/national/crime/6401235/NZ-police-access-Facebook-evidence) where it could be argued police had good reason to access information providing they follow proper process.</i></p>

<p><i>what is reasonable? It would also suggest that Police should be able to access online profiles, but need to have good reasons for this.</i></p> <p><i>The Privacy Act 1993 Part 2 Section 6 Information privacy principles Part 8 Complaints The right to make a complaint to the Privacy Commissioner where an individual believes an action of an agency or organisation interferes with their privacy.</i></p> <p>Note – the student should explain how the privacy principles they identified may apply in this specific situation. For example, they may reference principle 2, clause 2(d) as allowing non-compliance with the principle that information should be sourced directly from the individual concerned.</p> <p><i>Official Information Act 1982 Section 6 Conclusive reasons to for withholding official information Section 24 The right to access personal information Section 26 Correction of information The right to access the internal rules of an organisation which affect decisions made by the organisation about that person.</i></p> <p><i>Search and Surveillance Act 2012 Section 111 Remote access search of thing authorised by warrant</i></p>	<p><i>information from abuse or misuse is part of that. The Hon Dunne outlined his belief in the “liberal democratic commitment to upholding and protecting the rights of the individual.....As citizens, we tolerate the authority of the state because we believe it will be exercised in our best interests”.</i></p>	<p>Note – for excellence the student would also have to discuss a counter-argument and include comment on Media report B.</p>
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Section 130 Computer System Searches

- The report includes an explanation of how the right to privacy is a balance between state power and individual rights. For example:

In New Zealand, the right to privacy is recognised by both national and international law (Privacy Act, 1993 & Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights.

The basic notion of this law is the idea that individual citizens own their personal information and as such, should be able to control the circulation and storage of that information.

While some laws allow people to own their own information there are times when the right to privacy needs to be balanced against the fact that at times the state will need to intervene into a citizen's private affairs in order to protect the rights of other individuals in society.

- The student compares differing viewpoints that could provide an argument and counter-argument to a specific situation.

For example:

In a column in the New Zealand Herald, human-rights lawyer Tim McBride discusses how section 21 of the Bill of Rights Act 1990 has been interpreted to cover privacy. Retrieved from:
http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10854893

In a press release dated 24 May 2010, privacy commissioner Marie Schroff expressed concern at Facebook changing privacy settings to allow third part access to information.

Retrieved from:
<http://www.privacy.org.nz/news-and-publications/statements-media-releases/media-release-facebook-and-privacy-settings/>

In a speech to the Auckland United Future members the Hon Peter Dunne outlined his strong belief that agencies such as the Police must act within the laws they are pledged to uphold.

Retrieved from:
<http://www.scoop.co.nz/stories/PA1211/S00422/speech-dunne-protecting-privacy.htm>

In various comments in blogs, contributors suggest that if people have nothing to hide they should not be concerned.

Note – for achieved the student would have to compare **differing** viewpoints.

Final grades will be decided using professional judgement based on a holistic examination of the evidence provided against the criteria in the unit standard.