



17 August 2022

Tēnā koe

On 18 June 2022, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982 (the Act), the following information:

- *Under the OIA I would like to enquire what the statutory and or case law backing is for this statement:*
 - *Note financial interdependence also exists if the client and the other person have a mutual understanding as to how the family unit will be supported*

The Ministry has looked into your request for information and can advise that the statement you have inquired about is based on the Ministry's understanding of Section 8 of the Social Security Act 2018 and 29A of the Interpretation Act 1999 (now repealed and incorporated into the Legislation Act 2019) and the case law in succeeding cases, which endorsed and refined the statements made by the Court of Appeal in *Ruka v Department of Social Welfare* (1997) 1 NZRL 154.

The Ministry is further providing you with 'Determining a client's relationship status' information and guidelines from the Ministry's intranet. Please find this enclosed.

This is used as a resource tool for staff to make sound decisions. This information can also be found on the Ministry's website on the following link: www.workandincome.govt.nz/map/income-support/core-policy/relationship-status-for-benefit/introduction.html.

You may also find helpful, other case law relevant to the Ministry's policy in relation to relationship status for benefit purposes:

- *Excell v Department of Social Welfare* (1991)
- *Thompson v Department of Social Welfare* (1993)
- *DW Ray v Department of Social Welfare* (2000)

- Batt v Department of Social Welfare (2000)

It is open to you to seek independent legal advice on this matter.

The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter and any attached documents available to the wider public. The Ministry will do this by publishing this letter and attachments on the Ministry's website. Your personal details will be deleted, and the Ministry will not publish any information that would identify you as the person who requested the information.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with this response, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Ngā mihi nui

Bridget Saunders

Bridget Saunders
**Manager, Issue Resolution
Service Delivery**

Home » Helping You » Fraud resources for Ministry staff » Fraud Investigation Support » Resources for clients - forms and templates » **Determining a client's relationship status**

Determining a client's relationship status

This page sets out information and guidelines for determining clients' relationship status for benefit purposes. This is a difficult and sensitive area and these instructions are a guide to clarify the approach.

On this Page:

Definition of Relationship

Knowing a client's relationship status is important to ensure they are receiving the correct benefit at the correct rate.

[Definition of Relationship Core Policy \[http://doogle/map/income-support/core-policy/relationship-status-for-benefit/introduction.html\]](http://doogle/map/income-support/core-policy/relationship-status-for-benefit/introduction.html)

Legislation

The general provisions for determining whether people are to be treated as a couple (married, civil union or de facto) or single for benefit purposes are set out in [section 8 \[http://www.legislation.govt.nz/act/public/2018/0032/latest/DLM6783126.html\]](http://www.legislation.govt.nz/act/public/2018/0032/latest/DLM6783126.html), of the Social Security Act 2018 and [section 29A \[http://www.legislation.govt.nz/act/public/1999/0085/latest/DLM31861.html\]](http://www.legislation.govt.nz/act/public/1999/0085/latest/DLM31861.html), of the Interpretation Act 1999.

Section 8 of the Social Security Act 2018

The purpose of [section 8 \[http://www.legislation.govt.nz/act/public/2018/0032/latest/DLM6783126.html\]](http://www.legislation.govt.nz/act/public/2018/0032/latest/DLM6783126.html) is to ensure that, for benefit purposes people who are legally married or in a civil union but who in fact live apart are treated the same as those who are single.

Section 29A of the Interpretation Act 1999

The purpose of [section 29A of the Interpretation Act \[http://www.legislation.govt.nz/act/public/1999/0085/latest/DLM31861.html\]](http://www.legislation.govt.nz/act/public/1999/0085/latest/DLM31861.html) is to allow us to define a de facto relationship. Under this section, a de facto relationship is "a relationship between two people (same or opposite sex) who are not legally married or in a civil union but who live together in a relationship in the nature of marriage or the nature of civil union".

Once it is decided that a couple is in a de facto relationship they can be treated in the same way as those who are married or in a civil union for benefit purposes.

Historical cases: Domestic Purposes Benefit

In relation to Domestic Purposes Benefit, the provisions of section 27B of the Social Security Act **1964** are also relevant, and in particular sections, [27B\(1\)\(a\) and 27B\(2\)\(c\). \[http://www.legislation.govt.nz/act/public/1964/0136/217.0/DLM361221.html\]](http://www.legislation.govt.nz/act/public/1964/0136/217.0/DLM361221.html)

The Act gives no definition of the terms "living apart" in sections [63\(a\) \[http://www.legislation.govt.nz/act/public/1964/0136/217.0/DLM363101.html\]](http://www.legislation.govt.nz/act/public/1964/0136/217.0/DLM363101.html), and [27B\(1\)\(a\). \[http://www.legislation.govt.nz/act/public/1964/0136/217.0/DLM361221.html\]](http://www.legislation.govt.nz/act/public/1964/0136/217.0/DLM361221.html) or "not living together" 27B(2)(c). However, the Courts have considered these terms and provided direction. When considering Domestic Purposes Benefit eligibility the term 'not living together' means 'not living together in the nature of marriage' or 'in the nature of a civil union'.

People who are not legally married or in a civil union

[Section 29A \[http://www.legislation.govt.nz/act/public/1999/0085/latest/DLM31861.html\]](http://www.legislation.govt.nz/act/public/1999/0085/latest/DLM31861.html), of the Interpretation Act provides broad guidance about what to consider when examining a de facto relationship to see whether it is in the nature of marriage or civil union.

In cases concerning social assistance, existing criteria used by the Ministry to examine whether 'relationships are in the nature of marriage', and case law such as Ruka, can continue to be used to determine whether 'relationships are in the nature of marriage or civil union'.

Also, the Courts have deemed that to be in a 'relationship in the nature of marriage' or 'relationship in the nature of civil union' there must be both:

a degree of companionship demonstrating an emotional commitment
financial interdependence.

The commitment must go beyond mere sharing of living expenses, as platonic flatmates or siblings living together may do. It must amount to a willingness to support if the need exists, as well as a degree of companionship demonstrating an emotional commitment.

From the legislation and case law we can see that when considering whether a relationship is 'in the nature of marriage or civil union' there are a number of indicators we can use to help determine the situation.

Financial interdependence

direct financial interdependence such as joint bank accounts or assets or joint loans/credit
willingness to support if the need exists
mutually agreed financial arrangements.

Mental / emotional commitment

emotional commitment and support for each other
joint decision making and plans together
period of the relationship
sharing of one dwelling - full-time - part-time
sharing of one bedroom
a sexual relationship
sharing of parental obligations
sharing of household activities
sharing of companionship / spare time
sharing of leisure and social activities
presentation to outsiders as a couple
a relationship exclusive of others.

Case Law

[\[Ruka v DSW \(1996\) - \[1997\] 1 NZLR 154 * \(Court of Appeal\)\]](http://doogle/resources/helping-clients/policies-standards/integrity/nfiu/legal/case-law/case-law-ruka-v-department-of-social-welfare.html) [<http://doogle/resources/helping-clients/policies-standards/integrity/nfiu/legal/case-law/case-law-ruka-v-department-of-social-welfare.html>]

"The expression "relationship in the nature of marriage" necessarily requires a comparison with a legal marriage. The comparison must seek to identify whether there exists in the relationship of two single or sole parent persons, those key positive features which are to be found in most legal marriages which have not broken down (cohabitation and a degree of companionship demonstrating an emotional commitment). Where these are found together with financial interdependence there will be such a merging of lives as equates for the purposes of the legislation to a legal marriage.

The phrase "relationship in the nature of marriage" clearly cannot be equated with the worst marriage relationship which may be envisaged or with the common denominator of both good and bad marriages. In a real sense the reference to a relationship in the nature of marriage refers to an abstraction of the marriage relationship which, in essence, is a commitment to a sharing of the parties' lives in a manner which gives rise to an assumption of responsibility to and for each other."

Where a relationship is marked by physical or other violence, to the extent that a woman remains in the relationship out of fear rather than from a genuine emotional commitment, then the relationship could not be considered to be in the nature of marriage or civil union.

People who are legally married or in a civil union

For people who are legally married or in a civil union, the assessment required is to determine whether they are "living together" or "living apart" rather than determining whether the relationship is "in the nature of marriage" or in the nature of civil union.

In a legal marriage or civil union, it is a very short step from physical proximity to an assumption of continued or renewed cohabitation, especially if the alleged cohabitation has not been preceded by any lengthy separation and where there are other ties such as children in common.

If a couple who are legally married or in a civil union are shown to be residing in the same place, it would be difficult (though not impossible) for them to substantiate a claim that they are 'living apart' for the purposes of section 103 or 27B Social Security Act 2018.

Where the spouse or partner is not living permanently at the same location, an assessment of the indicators used for single or sole parent people can be used to determine their relationship status for benefit purposes.

Relevant Case Law suggests that for legally married or civil union people to be regarded as living apart, one party must intend to sever the relationships (DGSW v W, HC Wellington, McGechan, J 22/10/96) and that without that demonstrable intention, the parties must be regarded as still living together.

Refusal to support in order to claim benefit

A couple cannot qualify for single benefits if there is a refusal to support, or an arrangement that support will not be given, which is motivated by the knowledge that the dependent partner will then be able to claim a benefit. This cannot create a genuine absence of financial support.

Case law

The leading case on the issue of relationships in the nature of marriage under section 8 is *Ruka v Department of Social Welfare* (1997) 1 NZLR 154, decided in 1996 by the Court of Appeal.

A number of succeeding cases have endorsed and somewhat refined the statements made in *Ruka*.

[Case Law - Ruka v Department of Social Welfare \[http://doogle/resources/helping-clients/policies-standards/integrity/nfiu/legal/case-law/case-law-ruka-v-department-of-social-welfare.html\]](http://doogle/resources/helping-clients/policies-standards/integrity/nfiu/legal/case-law/case-law-ruka-v-department-of-social-welfare.html)

[Case Law home page \[http://doogle/resources/helping-clients/policies-standards/integrity/nfiu/legal/case-law-index.html\]](http://doogle/resources/helping-clients/policies-standards/integrity/nfiu/legal/case-law-index.html)

Content owner: [Client Service Integrity](#) Last updated: 01 December 2021

RELEASED UNDER THE
OFFICIAL INFORMATION ACT