

Home » Resources & Tools » Helping Clients » Policies and Standards » Integrity Services Policies and Standards » National Fraud Investigation Unit Guidelines and Standards » Legal Section » **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/relationship_status_for_benefit.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 63](http://doogle/map/legislation/acts/social_security_act_1964-260.htm) of the Social Security Act 1964 and [section 29A](http://www.legislation.govt.nz/act/public/1999/0085/latest/DLM31861.html) of the Interpretation Act 1999.

Section 63 of the Social Security Act 1964

The purpose of section 63 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](http://www.legislation.govt.nz/act/public/1999/0085/latest/DLM31861.html) of the Interpretation Act 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.

Domestic Purposes Benefit

In relation to Domestic Purposes Benefit the provisions of [section 27B](http://doogle/map/legislation/acts/social_security_act_1964-63.htm) of the Social Security Act 1964 are also relevant, and in particular, 27B(1)(a) and 27B(2)(c).

The Act gives no definition of the terms "living apart" in 63(a) and 27B(1)(a), 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'.

Determining relationship status

Section 29A 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.

People who are not legally married or in a civil union

In order to determine that a relationship is in the nature of marriage or civil union, it must be shown that there are 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]

"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 63A \[http://doogle/map/legislation/acts/social_security_act_1964-261.htm\]](http://doogle/map/legislation/acts/social_security_act_1964-261.htm) or [27E \[http://doogle/map/legislation/acts/social_security_act_1964-63.htm\]](http://doogle/map/legislation/acts/social_security_act_1964-63.htm) Social Security Act 1964.

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 63(b) 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)

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PEACE Guidance for Client Interviews

SAY "My name is [Investigator name]" "I am an Investigator with the Ministry of Social Development"
SAY "My colleague [Colleague name] is also present"
SAY "It is [Time] on [Date]"
SAY "We are at [Place or Office]"

SAY "Please state: **(Include as required)**

Your full name:

Your address:

Your date of birth:

Your telephone number:

Your email address:

Your occupation:"

EITHER SAY: "Can I also ask your support person (and/or legal representative), who is here with you today, to state their name and their contact address?"

OR SAY: "Are you prepared to continue this interview without a support person?"

SAY "This interview is being audio recorded"

CAUTION

SAY "This is a voluntary interview, you are not being detained and you are free to leave at any time. You do not have to answer my questions; however anything you do say may be given in evidence."

SAY "To ensure that you understand what I have just said to you could you please explain it back to me?"

SAY "Do you wish me to further explain what we have just discussed about your rights?"

OPENING QUESTION – Should outline the allegation / information and be put to the client as an open question to elicit best response.
Conduct the interview using your interview plan - Account, Clarification, Challenge and Summarise

CLOSURE – ensure:

Mutual understanding about what has taken place

Verify that all aspects have been sufficiently covered

SAY "Is there anything you wish to add before we finish this interview? Would you like to correct or change anything you have already said?"

Explain what will happen in the future:

- Advise that they are entitled to a copy of the recording
- Give the time that the interview concluded
- Switch off the Dictaphone



Introduction

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

Clients are considered to be part of a couple when they are in a relationship with another adult. This includes a couple who are married or in a civil union and they are not "living apart", or a couple who are living in a de facto relationship.

The client's marital status helps you decide whether or not they are in a relationship where there is uncertainty.

There are three types of relationship that are defined as:

- **Marriage** - is a legally recognised union between two people (regardless of their sex, sexual orientation or gender identity), for the purpose of: the formation of a family unit; social stability; education and development of offspring; economic stability; security; companionship or various combinations of these purposes.
- **Civil Union** - is a legally recognised union equivalent to marriage that provides couples with rights, benefits and responsibilities equal to those enjoyed by married couples. Civil unions are available to same and opposite-sex couples.
- **De facto relationship** - a de facto relationship exists where two people live together as if they were married but they have not been legally married or entered a civil union. It can apply to both same and opposite-sex relationships.

Note if one of the two people is under 18 years, special requirements must be met before a de facto relationship exists. See: [Partners under 18 years](#)

For more information see:

- [Clients who are married or in a civil union](#)
- [Clients living in a de facto relationship](#)
- [De facto relationship \(definition\)](#)
- [Changes and reviews](#)

Legislation

- Conjugal status for benefit [section 63](#) Social Security Act 1964
- Meaning of de facto relationship [section 29A](#) Interpretation Act 1999



[Map](#) [Income support](#) | [Core policy](#) | [Relationship status for benefit](#) | [Clients who are married or in a civil union](#) [Menu](#)

Living apart

Generally, if a client is married or in a civil union you can accept that a couple is living apart when it is **clear** the relationship has ended and they live in different homes.

Note the term "living apart" does not refer solely to living in separate homes.

Living in separate homes

When a client advises the relationship with their spouse or civil union partner has ended and they are living in separate homes, you need to look at the reasons why they are not living together. Sometimes couples live apart for reasons other than a breakdown in their relationship or rearrange their circumstances to qualify for a benefit.

Some couples may live in separate homes because of (but are not limited to):

- financial reasons
- health reasons
- one party lives overseas **or**
- business/employment reasons (eg truck driver, shearer etc)

You can only pay a single or sole parent rate of benefit if the relationship has ended.

Living in the same home

Generally, when a married or civil union couple are sharing the same accommodation they will be considered a couple. When a client advises the relationship with their spouse or civil union partner has ended, but they still share the same accommodation you need to look at the reasons why they are still cohabitating. If the arrangement is transitional (eg the spouse or partner is looking for separate accommodation and will move out) and the client considers that they have separated, you can accept this for a short period.

If the arrangement is not transitional, you need to assess whether they are **living together** or whether they are living apart in the same home.

Note that unless the relationship has ended you cannot assess the client as a single or sole parent.

If you are unable to make a decision regarding the client's relationship you can discuss the case with your Regional Solicitor or local National Fraud Investigation Unit Investigator.

For more information see:

- [Relationship status for benefit](#)

Legislation

- Conjugal status for benefit [section 63](#) Social Security Act 1964
- Sole Parent Support: standard eligibility requirements [section 20D](#) Social Security Act 1964

[▲ Top](#)

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[Income support](#) | [Core policy](#) | [Relationship status for benefit](#) |



[Menu](#)

Clients who are married or in a civil union

Clients who are married or in a civil union and are living together are considered a couple unless it is clear the relationship has ended.

A client who is married or in a civil union may be assessed as single or a sole parent if they can show they are **living apart** from their partner.

Note the term "living apart" does not refer solely to living in separate homes.

When a client considers their marriage or civil union has ended but is unable to leave the relationship because of domestic violence, discuss the client's circumstances with your Regional local Solicitor or local National Fraud Investigation Unit Investigator.

For more information see:

- [Living apart](#)



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[Income support](#) | [Core policy](#) | [Relationship status for benefit](#) | [Clients living in a de facto relationship](#) |



De facto relationship (definition)

Section 29A of the Interpretation Act 1999 defines a de facto relationship as a relationship between two people (whether a man and a woman, a man and a man, or a woman and a woman) who:

- live together as a couple in a relationship in the nature of marriage or civil union
- and**
- are not married to, or in a civil union with, each other
- and**
- are both aged 16 years or older

Clients who are aged 16 or 17 years are not in a de facto relationship unless proof has been obtained showing:

- written consent of each of their guardians to living together as a couple with the other party to the relationship
- or**
- an order giving consent by a Family Court Judge



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[Core policy](#) > Relationship status for benefit

Clients living in a de facto relationship

Clients in a de facto relationship are assessed as a couple.

Note it is important to establish whether a de facto relationship exists or not **before** benefit entitlement is determined or reviewed.

A client who was in a de facto relationship may be assessed as single or a sole parent if they can show a genuine breakdown in the relationship. As with married or civil union couples, people sometimes live separately for reasons other than a breakdown in their relationship or rearrange their circumstances to qualify for a benefit.

Living in separate homes

Some couples may live in separate homes because of (but are not limited to):

- financial reasons
- health reasons
- one party lives overseas **or**
- business/employment reasons (eg truck driver, shearer etc)

This does not mean they are no longer in a de facto relationship. You can only pay a single or sole parent rate of benefit if the relationship has genuinely ended.

Features of a de facto relationship

For a de facto relationship to exist the client and the other adult must have a relationship that has similar characteristics to a marriage or civil union. When considering whether a client is in a de facto relationship these characteristics can be used to help determine relationship status. These are:

- [Emotional commitment](#)
- [Financial interdependence](#)

Note the absence of either of these characteristics means that the client is not in a de facto relationship for benefit purposes.

If you are unable to make a decision regarding the client's relationship with the other adult you can discuss the case with your Regional Solicitor or local National Fraud Investigation Unit investigator.

For more detailed information see:

- [De facto relationship \(definition\)](#)
- << [Determining a client's relationship status](#) >> [\[link not available\]](#) procedures
- [Relationship status for benefit](#)

Legislation

- [Conjugal status for benefit section 63 Social Security Act 1964](#)
- [Meaning of de facto relationship section 29A Interpretation Act 1999](#)



[Income support](#) | [Core policy](#) | [Relationship status for benefit](#) | [Clients living in a de facto relationship](#) | [Emotional commitment](#) |



Domestic violence

When a client has advised they are a victim of domestic violence, extra care must be taken when considering if a relationship with another adult exists and the impact the violence has on the relationship. If the client only stays with the other adult because they are fearful or powerless, then they are not in a de facto relationship for benefit purposes.

Note that if you believe a client has been, or is likely to be harmed (physically, emotionally or sexually), ill treated, abused, neglected or deprived, discuss the situation with your local Family Violence Response Co-ordinator.

When determining if a client is in a relationship you will need to consider if the required level of emotional commitment is present.

Before making a decision, you should encourage your client to provide proof of the domestic violence. This may include:

- the client's doctor
- statements from family and friends
- Police reports
- Community Family Violence prevention agency (eg Women's Refuge)
- Court papers
- a social worker
- the client's church
- any other reputable person or organisation that is in a position to support a client's statement

When the client provides proof of the domestic violence you must then consider whether a relationship with another adult exists.

Client unable to provide written proof

Where the client is unable to provide written proof of the domestic violence, you should consult with your regional family violence response co-ordinator for advice.

From this discussion you should make a recommendation whether the client is in a relationship with another adult or not, to your service centre manager for sign-off.

For more information see:

- [Family Violence Intervention Programme](#)
- [Emotional commitment](#)
- [Relationship status for benefit](#)



Emotional commitment

When considering if a client is in a de facto relationship you need to determine whether they have an emotional commitment to each other. The relationship must demonstrate a degree of companionship and a level of emotional commitment that is ongoing.

Every relationship is different and to assist you determine if a client and another adult are emotionally committed to each other a list of possible indicators is provided. Not all relationships will have all these indicators, but this list is provided to help you discuss the relationship with the client:

- **client perception** - the client and the other adult see their relationship as a relationship in the nature of marriage or civil union; they consider the relationship is likely to continue
- **public perception** - they are viewed as a couple by their community (this may include their family, local church, sports clubs etc)
- **history** - the length of time the client and the other adult have known each other and/or have resided at the same address; shared children
- **extent to which their lives are merged** - socialising together and how often this occurs; going out as a family; belonging to and attending the same clubs/sports teams or interest groups together; having meals together as a couple/family; their sleeping and sexual relationships
- **shared responsibilities** - arrangements for domestic duties such as gardening, cleaning, cooking; the caring arrangements for any children including when children are sick; joint decision making and plans together
- **support** - the emotional support that the client and the other person provide to each other; the nature of any companionship and support that the client and the other person provide to each other

Note that when considering if a client is in a relationship and the client indicates they are a victim of domestic violence, extra care must be taken when determining if the required level of emotional commitment is present.

If you are unable to make a decision regarding the client's relationship you can discuss the case with your Regional Solicitor or local National Fraud Investigation Unit Investigator.

For more information see:

- [Financial interdependence](#)
- [Clients living in a de facto relationship](#)
- [Domestic violence](#)
- [Relationship status for benefit](#)

Legislation

- Conjugal status for benefit [section 63](#) Social Security Act 1964
- Meaning of de facto relationship [section 29A](#) Interpretation Act 1999

Financial interdependence

When considering if a client is in a de facto relationship, you need to determine if the client and the other person are financially interdependent. This includes the sense of at least a willingness to support the other person if that person cannot support themselves. This does not mean that the financial support already exists, but that it would if needed.

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.

You can only pay a single or sole parent rate of benefit if there is a genuine absence of financial interdependence. This means that a couple cannot rearrange their circumstances just to qualify for a benefit for which they would otherwise not qualify.

Determining financial interdependence

Every relationship is different and to assist you to determine if a client and another adult are financially interdependent a list of possible indicators is provided. Not all relationships will have all these indicators. To help you discuss the relationship the client may have with the other adult, you may consider:

- joint bank accounts, assets or joint loans/credit
- joint ownership of real estate or other major assets and any joint liabilities e.g. both the client and the other adult own a rental property
- significant pooling of financial resources especially in relation to major financial commitments eg saving for a house, car or holiday
- legal obligation owed by one person in respect of the other person eg the other adult is the guarantor for a TV hire purchase
- joint ownership of a car. Do they both use it?
- items the other adult pays for, if any? eg SKY television rental, internet broadband
- arrangements for paying bills or for groceries
- the sharing of day to day household expenses

If you are unable to make a decision regarding the client's relationship you can discuss the case with your regional solicitor or local National Fraud Investigation Unit investigator.

For more information see:

- [Emotional commitment](#)
- [Clients living in a de facto relationship](#)
- [Relationship status for benefit](#)

Legislation

- Conjugal status for benefit [section 63\(b\)](#) Social Security Act 1964
- Meaning of de facto relationship [section 29A](#) Interpretation Act 1999



[Income support](#) | [Core policy](#) |
[Relationship status for benefit](#) |



Partners under 18 years

If a client aged 18 years or older qualifies for a benefit and has a 16 or 17 year old partner, the partner can be included in the benefit (without parental consent) when:

- they are legally married or
- they are in a civil union

If a client is in a de facto relationship, with a person aged 16 or 17 years old, the partner can be included in the benefit if:

- the partner's parents or guardians give their consent for the relationship or
- the Family Court gives consent for the relationship (where no parental consent is required)

Note consent for the relationship is required regardless of whether or not the couple has a dependent child.

If consent from the young person's parents or a Family Court judge is not given you can consider the young person's eligibility to Young Parent Payment or Youth Payment as a single person.

For more information see:

- [De facto relationship \(definition\)](#)
- [Young Parent Payment De facto relationships](#)
- [Youth Payment De facto relationships](#)

Legislation

- [Jobseeker Support: standard eligibility requirements section 88B Social Security Act 1964](#)

[Top](#)

Relationship status verification form



Work and Income
Te Hiraanga Tangata

A service of the Ministry of Social Development

This form is used to record information from someone nominated by you, about your relationship status when applying for Sole Parent Support.

Applicant to complete

Tell us your details

1

What is your full name?

First and middle names

Surname or family name

2

What date were you born?

Day Month Year

Your signature

I understand that the person providing the statement about my relationship status may be contacted.

I have read and understood the Privacy Statement in my application form.

Your signature

Date

Day Month Year

Please read this important information

People giving information about a person's relationship status must:

- be 18 years or over
- have known the applicant for at least two years
- be currently living in New Zealand
- not be the applicant's ex-partner
- not be an immediate family member of the applicant, that is, not be their:
 - parent, step-parent, in-laws
 - child, step-child, whāngai child
 - sibling (brother or sister)
 - grandparent
 - grandchild/mokopuna.

If you have any questions about eligibility for benefits or Work and Income's definition of a relationship:

- visit www.workandincome.govt.nz
- call **0800 559 009**.

Nominated person to complete

Tell us your details

1 What is your full name?

First and middle names

Surname or family name

2 What date were you born?

Day Month Year

Tell us how we can contact you

HOW TO ANSWER Q3:
If you live in a rural area, flat/house number could include your: RAPID number, fire number, emergency services number.

3 Where do you live?

Flat/House number Street name

Suburb

Town/City

4 Is your mailing address different from where you live?

 No

 Yes

Tell us your mailing address

HOW TO ANSWER Q4:
Mailing address can include a postal box (PO Box), rural delivery details, or C/O address.

5 Can we contact you about the information you are providing?

 No

Go to question 7

 Yes

HOW TO ANSWER Q6:
Please only give us contact details you would like us to use.

6 How can we contact you?

Tick the best way for us to first contact you

Home phone	()	
Mobile phone	()	
Other mobile phone	()	

7 What is your relationship to the person named on page one?

Privacy Statement

The legislation administered by the Ministry of Social Development allows us to check the information that you give us in this form. This may happen when a person submits this form as part of their application and at any time after that. The Privacy Act 1993 requires us to tell you why we collect the information and what we will do with it.

Why we collect information

The information you give us is collected under the authority of the legislation administered by the Ministry of Social Development. The information will be held by the Ministry of Social Development.

The information is collected for the purposes of the legislation administered by the Ministry of Social Development (including Work and Income, Child, Youth and Family and other service lines of the Ministry), and in particular for:

- granting benefits and other assistance under the Social Security Act 1964
- providing employment related services
- statistical and research purposes
- providing advice to Government
- care and protection needs of children
- providing support and services to families
- providing education related services.

You are not required to give Work and Income information, but if you do not give us all the information we ask for, a person's application for benefits and other assistance may be declined.

We may compare the information you give us with other government-held information

The information you give us may be compared with information held by other government agencies such as Inland Revenue, the Ministry of Justice, the Department of Corrections, the New Zealand Customs Service, the Department of Internal Affairs, the Accident Compensation Corporation, Housing New Zealand Corporation, Ministry of Health and Immigration New Zealand. It may also be compared with social security information (for example, pension or benefit information) held by other governments (including Australia and the Netherlands).

We may share information with Inland Revenue

Under the Tax Administration Act 1994, if the person has dependent children, the information you give us may be shared with Inland Revenue for the purpose of administering Working for Families Tax Credits. Inland Revenue may also:

- use the information for the purposes of child support, student loans and taxation
- disclose it to the Ministry of Business, Innovation, and Employment, Statistics New Zealand, the Ministry of Justice, the Accident Compensation Corporation, and the Ministry of Education
- disclose information you have provided on this form to the person's partner.

We may share information with the applicant

The information you give us may be disclosed to the applicant.

You have the right to see and correct your information

Under the Privacy Act 1993 you have the right to ask to see all information we hold about you and to ask them, or us, to correct that information.



[Income support](#) | [Main benefits](#) | [Sole Parent Support](#) |
[Qualifications](#) | [Verification of relationship status](#) |



Client to provide details of a nominated person

Clients applying for Sole Parent Support are asked on their application form to provide details of a nominated person who has known them for at least 2 years prior to their application and can verify the client's relationship status.

Note it is not mandatory for a client to provide details of a nominated person on their application form.

If a client is not willing to name a nominated person, you should discuss with the client the reasons why they are unable or unwilling to do so.

From this discussion with the client, you will need to decide if you have enough information to assess whether the client meets the relationship qualification for Sole Parent Support.

In some cases, it is not reasonable for a client not to name a third party.

For more information see:

- [Determining eligibility without details of a nominated person](#)
- [Not reasonable for client to provide details of a nominated person](#)
- [Relationship Status Verification form may be required](#)
- [Who can verify a client's relationship status](#)

Legislation

- [Application process for benefits section 11D Social Security Act 1964](#)
- [Sole parent support: meaning of application section 20A Social Security Act 1964](#)
- [Sole parent support: standard eligibility requirements section 20D Social Security Act 1964](#)



Not reasonable for a client to provide details of a nominated person

There are some situations where it may not be reasonable for the client to name a nominated person. These include (but are not limited to):

- clients applying because their spouse or partner has died (These clients are **not** to be asked to provide details of a nominated person)
- [Client has recently changed locations](#)
- [Client is experiencing family violence](#)
- [Partner in prison](#) (These clients are not to be asked to provide details of a nominated person)

Where it is not reasonable for a client to provide details of a nominated person, you still need to be satisfied the client meets the qualifications for Sole Parent Support before granting the benefit.

For more information see:

- [Qualifications](#)

Legislation

- Application process for benefits [section 11D](#) Social Security Act 1964
- Sole parent support: meaning of applicant [section 20A](#) Social Security Act 1964
- Sole parent support: standard eligibility requirements [section 20D](#) Social Security Act 1964

▲Top

[Map](#)

[Income support](#) | [Main benefits](#) | [Sole Parent Support](#) | [Qualifications](#) | [Verification of relationship status](#) | [Determining eligibility without details of a nominated person](#) | [No details of a nominated person provided](#) |

[?](#) [Menu](#)

Relationship status interview questions

To help determine whether a client meets the relationship eligibility criteria for Sole Parent Support, a case manager may ask questions including (but not limited to) the following:

- Were you previously in a relationship? How long were you in that relationship?
- What type of relationship were you in?
- Can you tell me anything more about the reason or event in your relationship that resulted in separation? (use the application as a prompt for discussion)
- Can you tell me anything more about your attitude to the relationship, and how you feel about the separation?
- Can you tell me anything more about what you consider the future of the relationship to be? (use the application as a prompt for discussion)
- Is there, or has there been any domestic violence?
- Do you have any joint financial commitments? Who pays for what?
- Do you support each other financially, if so in what way?
- If your former partner is not the parent of any of the children does he/she help support the children in any way and act as a father/mother figure to the children?
- Do you attend any regular social gatherings/activities together? (e.g. clubs, church, or committees, sports played, pubs/bars frequented, holidays you've been on together)
- Do you attend family functions together? (eg weddings, funerals, birthdays, holidays e.g. Christmas)
- Do you attend parent/teacher meetings together or any other school events?
- Do you socialise at home together with friends/family?

Note case managers need to focus on asking questions to determine the client's relationship status based on their financial and emotional commitment to another person.

For more information see:

- [Examples of using relationship status verification](#)

[▲Top](#)

Map

[Income support](#) | [Main benefits](#) | [Sole Parent Support](#) | [Qualifications](#) | [Verification of relationship status](#) | [Client to provide details of a nominated person](#) | [Relationship Status Verification form may be required](#) |

Menu

Relationship Status Verification form contents

A Relationship Status Verification form is required to be completed in writing and Work and Income should receive the original form.

It will include the following information:

- a statement confirming that the nominated person meets the criteria listed on the form
- the full name and the birth date of the client whose relationship status the nominated person is verifying
- a statement of what the nominated person considers the applicant's current relationship status to be
- the nominated person's signature
- the date the nominated person signed the statement
- contact details for the nominated person and an indication of whether or not they give permission for Work and Income to contact them
- acknowledgment from the client that the nominated person may be contacted about the client's application directly

For more information see:

- [Relationship Status Verification form received](#)
- [Nominated person makes contact after completing form](#)
- [Who can verify a client's relationship status](#)

▲Top

Map [Income support](#) | [Main benefits](#) | [Sole Parent Support](#) | [Qualifications](#) | [Verification of relationship status](#) | [Client to provide details of a nominated person](#) | [Menu](#)

Relationship Status Verification form may be required

Clients will be assessed at the point of application to see whether they meet the targeting criteria for needing to provide verification. You must not ask the client for this information. You should look for the information in the application form and the applicant's existing SWIFTT and UCVII records.

The targeting criteria are:

- Has the applicant separated and reconciled with a partner in the last 12 months?
- Was the applicant included in a couples' benefit that was cancelled in the last six months?
- Does the applicant have a postal address that is different to their residential address? (not including a PO Box address)
- Has the applicant been included in the Low Trust Service?

Note applicants that have not received a benefit before are unlikely to meet the targeting criteria, as there will be no historical information held in the system. However, the targeting criteria assessment must still be completed.

For information about how to assess whether a client meets the targeting criteria, please see Work and Income procedures.

Clients who meet the targeting criteria need to be asked to get their nominated person to fill in a Relationship Status Verification form.

The client is responsible for getting this form completed by the third party and for returning the form to Work and Income.

The client has 20 working days from their date of first contact to get the form completed and return it to Work and Income.

When a Relationship Status Verification form is required, Work and Income will generally make a decision about whether to grant Sole Parent Support once client has returned the form.

If a client refuses to complete the form, you will need to consider the available information and determine whether the client qualifies for Sole Parent Support.

For more information see:

- [Extending the 20 working day period](#)
- [Not reasonable for client to provide details of a nominated person](#)
- [Relationship Status Verification form contents](#)
- [Relationship Status Verification form received](#)

Legislation

- Application process for benefits [section 11D](#) Social Security Act 1964

- Sole parent support: meaning of applicant [section 20A](#) Social Security Act 1964
- Sole parent support: standard eligibility requirements [section 20D](#) Social Security Act 1964

[▲Top](#)

RELEASED UNDER THE
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Map [Income support](#) | [Main benefits](#) | [Sole Parent Support](#) | [Qualifications](#) | [Verification of relationship status](#) | [Client to provide details of a nominated person](#) | [Menu](#)

Relationship Status Verification form received

If you have requested that your client provides a completed Relationship Status Verification form, the client should get this completed and bring it back within 20 working days of the date of their first contact.

When you receive the form, you should consider the form alongside the other information you have about the client to make a decision about whether the client qualifies for Sole Parent Support.

Relationship Status Verification form does not clearly support application

In some cases the form may not clearly support the client's application for Sole Parent Support. This may include (but is not limited to) when the form:

- appears to have been altered
- is inconsistent with the information the client has provided about their relationship status
- is incomplete

If this occurs, you will need to factor this in to making your decision about whether the client has provided enough information to grant Sole Parent Support.

You may need to ask the client more questions about the form's content to determine whether the form indicates that the client meets the relationship status qualification for Sole Parent Support. For more information see:

- [Relationship status interview questions](#)

Nominated person does not complete form

If the client informs you that their nominated person refuses to complete the verification statement, you can ask them to nominate someone else, or you can ask them more questions to determine whether they meet the relationship status qualification for Sole Parent Support. For more information see:

- [Relationship status interview questions](#)

If the client refuses or is unable to get the form completed, you should talk to the client about why they have not provided a completed Relationship Status Verification form.

Making a decision when a client has been asked to provide the form

Based on the available information, you can:

- ask for more information to determine whether the client is eligible for Sole Parent Support if it is not clear whether the client is eligible
- grant Sole Parent Support if there is enough information to determine that that the client is eligible for Sole Parent Support or
- decline Sole Parent Support if the information available indicates that the client is not eligible for Sole Parent Support
If this occurs, you need to discuss this with the client and determine whether they are eligible for other forms of assistance.

For more information see:

- [Extending the 20 working day period](#)
- [Qualifications](#)
- [Nominated person makes contact after completing form](#)

Legislation

- Application process for benefits [section 11D\(8\) Social Security Act 1964](#)
- Sole parent support: meaning of applicant [section 20A Social Security Act 1964](#)
- Sole parent support: standard eligibility requirements [section 20D Social Security Act 1964](#)

Top

[Map](#) | [Income support](#) | [Main benefits](#) | [Sole Parent Support](#) | [Qualifications](#) | [Menu](#)

Verification of relationship status

Relationship status is a qualification for Sole Parent Support. Work and Income needs to understand a client's relationship status to ensure that they are receiving the correct benefit. Applicants for Sole Parent Support are asked to provide the details of a nominated person who is willing to verify their relationship status.

Verification of relationship status provided by a nominated person is used to help determine eligibility for Sole Parent Support along with other information about the client.

Note if you determine that a client does not meet the qualifications for Sole Parent Support (including relationship status), you should consider if they meet the qualifications for another benefit.

For more information see:

- [Client to provide details of a nominated person](#)
- [Determining eligibility without details of a nominated person](#)
- [Not reasonable for client to provide details of a nominated person](#)
- [Who can verify a client's relationship status](#)

Legislation

- Application process for benefits [section 11D](#) Social Security Act 1964

[▲Top](#)

INVESTIGATION UNIT TRAINING PACKAGE

(S)

INTERVIEWS AND STATEMENTS MODULE

Units

<i>Unit S1</i>	<i>Interviews</i>
<i>Unit S2</i>	<i>Recorded Statements</i>
<i>Unit S3</i>	<i>Written Statements</i>

Unit S1: INTERVIEWS

CONTENTS

INTRODUCTION	2
What is an Interview?	2
Qualities & Attributes of an Interviewer	2
Interviewing Tips.....	4
The Principles of Interviewing.....	4
PEACE Interviewing Model	6
Interviewing Method.....	7
The Ministry's Caution.....	7
Notes of an interview.....	11
Sample of Contemporaneous notes.....	12

Objectives

When you have completed this module you should:

- know how to plan, conduct, and record the interview of a witness and a suspect

INTERVIEWS

INTRODUCTION

What is an Interview?

An interview is: *"...a conversation with a purpose, to obtain information and facts."*

Interviewing in general is a skill that is learned. Some people have a natural talent to interview, but the majority of people who need to conduct interviews will have to learn the necessary skills to become a successful interviewer.

While there may be principles to follow and methods to use when interviewing, it is difficult to lay down any hard and fast rules to use in every given situation. There are many factors the interviewer has to deal with in any interview, and it is only in using ones own personality, persistence and patience that an interview can succeed.

Experience comes with practice and only by interviewing constantly and often can the necessary skills be developed. An interview is documented or preserved by:

- audio recording an interview, *or*
- the taking of a signed written statement,

These methods will be discussed throughout this module.

Qualities & Attributes of an Interviewer

To obtain the relevant information and the facts the interviewer must:

- know the facts of the inquiry
- know the ingredients of the offence being inquired into
- know what information is wanted
- control, direct and guide the interview
- be objective, open minded and impartial
- continually analyse the information being supplied

When interviewing, the interviewer must ask the right questions in the right way to get the information that is needed. Responses to questions lead to further questions that bring out more and more information as the interview progresses.

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The interviewer should be constantly asking him/herself:

"What am I looking for?" (determine what information is required)

"How does it fit with what I already know?" (continually analyse the information supplied)

MODULE 3: INTERVIEWS AND STATEMENTS
Unit S1: INTERVIEWS

The **qualities** of an interviewer include:

INTEGRITY

Tell the facts as you know them. Honesty is the main virtue of a good interviewer.

SALESMANSHIP

Sell yourself use your own personality to build rapport and get the best from the interviewee and the best result for your case.

SELF CONTROL

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Have patience even when all seems a failure. Never argue or use abusive tactics to regain control.

THOROUGHNESS

Most important. Cover all aspects or angles. Knowing what you require and when you have got it, are the hallmarks of thoroughness.

The **attributes** of a good interviewer include being:

COURTEOUS
HONEST
FIRM/FAIR
PRACTICAL

OPEN/FRANK
DECENT
ANALYTICAL

SINCERE
FLEXIBLE
SENSITIVE

Interviews will take place in a variety of places:

No matter where the interview is conducted, the qualities of an interviewer will at times be put to the test.

Whatever the circumstances, always be prepared to listen attentively to a person whether they be:

- an informant
- a witness
- a suspect or offender

Never

- use force/threats/abuse, promises or inducements
- tell lies or use tricks to obtain information
- show anger or aggression

s 6(c) OIA Maintenance of the law

MODULE 3: INTERVIEWS AND STATEMENTS
Unit S1: INTERVIEWS

Interviewing Tips

The interviewer is responsible for the outcome of the interview. As such, the interviewer must possess good communication skills and highly developed interpersonal skills to obtain all necessary information.

To achieve this, the interviewer **MUST**:

- allow the interview to flow
- use questions to prompt and probe at appropriate times
- use silence and pauses to good advantage

Always ensure the person you are interviewing, understands the questions you ask. Choose the right words and use the proper language appropriate to the circumstances.

Hints & Tips

- Use plain language
 - Explain the aim and/or purpose of the interview
 - Establish a rapport with the interviewee
 - Listen to the interviewee
 - Use summaries to confirm information received
 - Clarify and appropriately challenge inconsistencies
 - Use short crisp questions
 - Ensure the proper pronunciation of the words you use
 - Use familiar words appropriate to the subject
 - Use open ended and probing questions
 - Watch the use of closed questions. Unless you want a specific yes/no answer, closed questions will stop the flow of the interview.
 - Don't
 - be ambiguous
 - do all the talking
 - anticipate answers
 - skirt around the issue
 - become judgmental
 - Record the interview using a digital device like a dictaphone or in written format (see unit S2: Recorded Statements and S3: Written Statements)
- Use your own personality to assist and foster the interview.

The Principles of Interviewing

Plan the Interview

There are many differing types of interviews that an investigator will conduct. The interview may vary from helping a case manager discuss marriage type relationship with a client through to interviewing a client when you are considering taking legal action.

The later of the two would require thorough planning prior to commencing the interview. In most cases the investigator would need to plan with some degree a structure which will include preparation as set out below:-

- the circumstances and background of the case thoroughly;
- the ingredients of the offence which is being investigated;
- what facts are required from the person to be interviewed;

MODULE 3: INTERVIEWS AND STATEMENTS

Unit S1: INTERVIEWS

- if any exhibits need to be obtained from, or presented to, the person to be interviewed.
- consideration of responses that may be given

Note down any points that need to be clarified by the person to be interviewed; and note the areas which need to be covered.

Comprehensive preparation and a sound Interview Plan can determine the course of the interview through its content and the order in which questions are presented. It is the interviewer's most important tool and deserves a great deal of care in its construction.

Time & Place of Interview

- Do not rush into any interview.
- Make sure enough time is allowed to conduct the interview in private and without distraction.
- Ensure that the interview is not interrupted by other persons present at the interview.

A number of interviews conducted by the Ministry's investigators will involve parents with young children and babies in their company. This situation can become uncontrollable as it may lead to the interviewee:

- being distracted by the child, *or*
- avoiding answering questions, *or*
- responding to questions quickly, leading to misleading or untruthful answers.

Always consider these factors when arranging an interview. Do not hesitate to organise alternative activities for children, or arranging for children and/or babies to be cared for during the interview. Do not hesitate to rearrange an interview to reduce distractions.

During the Interview

- Adopt a courteous, positive and confident approach.
- Ensure the witness/suspect is at ease, but maintain control of the interview.
- Allow breaks if the interview is lengthy. Cigarettes, coffee or food may make all the difference.
- Consider eliminating barriers such as desks, between the interviewer and the person being interviewed.
- Be sympathetic and show concern with any personal problems the person being interviewed may want to discuss.
- Most importantly, be fair.

The Principle of Fairness

- All interviews must be conducted fairly.
- Interviews involving suspects/offenders in particular must be shown to have been conducted professionally.
- Make no promises, threats, lies, tricks or inducements to obtain admissions or confessions.
- Consider whether the suspect is able to read, write and understand English, or the language in which the interview is conducted.
- Always afford the opportunity for the suspect/offender to have a support person present during the interview.

MODULE 3: INTERVIEWS AND STATEMENTS
Unit S1: INTERVIEWS

- The suspect/offender may have legal representation present during the interview.

Some interviews may take longer than initially anticipated. In these instances you should provide the client with an opportunity to continue with or reschedule the interview, to ensure that you are complying with fairness.

PEACE Interviewing Model

There are many interviewing models and techniques for interviewing people including witnesses or suspects. While attributes and principles of a good interview won't change much, the models and methods will. For many years the Ministry has used the question and answer interview technique, and this was usually recorded in writing.

The PEACE Interviewing model is now the preferred model used by the National Fraud Investigation Unit. The model provides the following structure:

P Planning and preparation

This will require you to prepare a written plan including your aims and objectives. It should also include documentary evidence that you may wish to introduce during the interview and working out your 'points to prove' any offence. Detailed planning would have included consideration of the right time and of the interview and assurance that the equipment you need is in working order.

E Engage and explain

Engaging with the client and explaining the processes that occur in this phase of the model. During this part of the interview your inter-personal and communication skills should allow you to develop a rapport and create the right atmosphere. It is your responsibility to explain the interview process. You will also work through the relevant interviewee preamble and introduce the Caution where necessary.

A Account

The account phase of the interview is where you will ask the client of their account. The initial part of this interview will be using a well thought out opening question to obtain an uninterrupted account from the client. You will then work through your Interview Plan, asking questions about the topics you want to cover. Following this you may need to seek expansion and clarification of their account. Lastly you may be required to challenge some or all the client's account.

C Closure

During closure you will need to ensure that you have explained what may happen in the future and ensure that there is an understanding of this. This is also the time to allow the interviewee to add, change or clarify anything they have said and also for them to ask you any questions they may have.

MODULE 3: INTERVIEWS AND STATEMENTS
Unit S1: INTERVIEWS

E Evaluation

This part of the model ensures that you review the information that you obtained in context with the overall investigation. This is also the time to review your own performance in the interview.

Your trainer will provide you with a practical training PEACE interviewing model session.

For more information on PEACE Interviewing, see:
<http://doogie.ssi.govt.nz/resources/helping-clients/procedures-manuals/integrity/nfiu/peace-index.html>

Interviewing Method

As mentioned earlier a record of interview will be preserved by an audio recording of such an interview or where not possible, a written and signed statement.

The Ministry's preferred method of preserving an interview is to audio record the entire interview. Where this is not agreed to by the client then a written statement (taken in a question and answer format) should be made.

The Ministry's Caution

Where there is good cause to suspect a benefit crime has been committed then the Ministry's caution must be administered.

As discussed previously in the legislation module, the Ministry has created a caution to be administered to suspects/offenders.

An audio recorded interview has a different format to that of written question and answer statement. When recording an audio interview the caution that should be administered

"This is a voluntary interview and you are not being detained and you are free to leave at any time. You do not have to answer my questions; however anything you do say may be given in evidence."

"To ensure that you understand what I have just said to you could you please explain it back to me?"

"Do you wish me to further explain what we have just discussed about your rights?"

When using the question and answer statement format the caution that you would administer is set out below;

"We have received information regarding your benefit entitlement and I would like to talk to you about it.

MODULE 3: INTERVIEWS AND STATEMENTS

Unit S1: INTERVIEWS

*You are not being detained and you are free to leave OR you can ask me to leave at any time.
You do not have to answer my questions however anything you do say may be written down and used in evidence."*

Purpose of the Caution

The purpose of the caution is to ensure that suspect/offender is properly and fairly informed of their rights and consequences of the answers to any questions.

The Timing of the Caution

The timing of administering the caution to a suspect/offender is critical, and must be given at the earliest opportunity once the investigator is satisfied that the suspect/offender may have committed an offence. This point could be reached prior to interview and therefore the caution should be given before any further questions are asked.

It would be common for a caution to be given at the commencement of an interview where the client's case originated from National Data Match Centre, as these cases are generally referred to an investigator solely to decide on a possible sanction.

If, during the course of an interview, the suspect/offender makes admissions as to the commission of an offence prior to being cautioned (ie, that the investigator had not previously been satisfied that the suspect/offender may have committed the offence), then the caution should be read to the suspect without delay and before proceeding with any further questioning.

When conducting an initial interview with a client following the receipt of an allegation it may not be clear that an offence has been committed until the client offers some form of confession. Care must be given to identify this and the investigator must give the caution without delay.

If the caution is not given at the correct time, any admissions/confessions or statement made by a suspect/offender, may be rendered inadmissible in court.

The Delivery of the Caution

The caution must be given to the suspect/offender clearly and so that it is understood. This is done by verbally reading or reciting the caution to the suspect/offender, ensuring that what has been said is understood by the suspect/offender.

The Ministry's caution must be audio recorded or written in full into the notes of interview or statement as it is given.

Interviewing Using Interpreters

There will be occasions when interviewing both witnesses and suspects that language problems will be encountered. If an interview or the taking of a statement

MODULE 3: INTERVIEWS AND STATEMENTS

Unit S1: INTERVIEWS

are to be recorded in a language other than English and the services of an interpreter is required, the following procedures are to be observed:

- Ensure that the person being interviewed genuinely cannot speak English.
- Ensure that the interpreter can speak and write in the other language.
- Ensure a court appointed or authorised interpreter is used.

Advise the interpreter of their role:

- to translate(word for word) only
- not to enter into discussion with the person being interviewed
- to relay back each reply to questions asked by the interviewer

The interviewer must also be satisfied that the:

- truth is elicited and that the interpreter does not favour the person being interviewed
- full circumstances surrounding the ingredients of the offence are covered
- principle of fairness is applied

NOTE: Interviews/statements involving interpreters should be recorded using a recoding device like a dictaphone, or could be in writing if required. Due to the time factor it may pay to record the interview using a dictaphone.

Audio Interviews using an Interpreter

When interviewing and taking a written statement from a witness in a language other than English, ask the question in English, ask the interpreter to ask the same question, after the client has provided a response ask the interpreter to translate that exact response in English.

Audio recordings that will become the subject of evidence in a District Court will be transcribed. The transcription service for the Ministry will provide a transcription of the English only. (You will also need to provide a copy of the audio recording during disclosure).

Interviewing Witnesses using an Interpreter

When interviewing and taking a written statement from a witness in a language other than English, have the:

- interpreter read the statement aloud in English to ensure that nothing has been missed out or is unclear
- person making the statement read it, correct and initial any errors, then sign it
- interpreter must make a written English translation

Interviewing Suspects/Offenders using an Interpreter

When interviewing or obtaining a written statement from a suspect/offender in a language other than English:

- the interview should be conducted in a questions and answers format:

MODULE 3: INTERVIEWS AND STATEMENTS

Unit S1: INTERVIEWS

- ensuring each question is as concise as possible, and answered fully
- where possible avoid asking questions inviting a 'yes/no' reply
- write down each question in English and have the interpreter write the translation of the question directly after
- when the interpreter has asked the suspect/offender a question in the other language, have the interpreter write down the answer in that language with the English translation immediately after
- this procedure should be carried out for the duration of the interview/statement
- at the end of the interview the interpreter will certify on the document that the English version is an accurate translation of the questions and answers recorded in the other language
- invite the suspect/offender to read the other language version of the interview/statement and endorse the record accordingly (endorsements are covered further on in the module)

Interviewing in the Presence of a Solicitor/Support Person/Advocate

Generally a Solicitor/Support Person or Advocate will only be present during an interview at the request of a suspect/offender. When this occurs during an interview, observe the following.

Solicitors are obligated to work within an ethical code and where a solicitor advises that they act for a client written authority from the client is not needed, however you should satisfy yourself that the person you are talking to is a practising solicitor. This is not the case where a client opts for assistance/advice from a support person or advocate and written authority should be sought from the client prior to entering into any discussions or interviews with the support person or advocate.

- Ensure that the interview is conducted with the other person present.
- If a request is made for a solicitor, in general, treat the request with respect and allow them time to obtain advice and a suitable meeting time.
- Do not recommend any particular solicitor/support person or advocate.
- Allow the person being interviewed to consult with a solicitor without delay and in private.
- Do not be intimidated by the presence of a solicitor/support person or advocate. Be polite but firm.

A solicitor/support person or advocate is not party to the interview but is there to advise or instruct his/her client. Therefore do not allow the solicitor/support person or advocate to:

- answer questions on behalf of his/her client
- put words into the mouth of the person being interviewed
- distract you with matters which are irrelevant

Put all questions to a suspect even if a solicitor/support person or advocate advises the person not to answer questions or to make no comment.

While the client should be able to nominate who their support person will be, it is not appropriate that a co-offender is a support person. An example of this would be if you are interviewing a client about whether he/she was in a relationship in the nature of marriage with their alleged partner, and the partner was nominated as a support person.

MODULE 3: INTERVIEWS AND STATEMENTS
Unit S1: INTERVIEWS

REMEMBER: *a suspect who has been cautioned does not have to answer your questions.*

Notes of an interview

Every interview is commenced by way of conversation.

It is the responsibility of the interviewer to ensure that the interview is recorded.

Whilst it is desirable that a recorded or signed written statement be obtained from material witnesses and suspects, there will be occasions when for various reasons a statement will not be forthcoming. This does not mean that notes of an interview cannot be recorded.

The Witness Interview

A witness who is prepared to give evidence in Court will generally agree to a recorded or signed narrative statement being taken when being interviewed. When a witness agrees to give evidence in court include confirmation of this in the audio or written statement.

If a witness is not prepared to make statement, record his/her version of the events but take care not to rely on the information for evidence unless there is an assurance that the witness will acknowledge what has been said.

The Suspect/Offender Interview

If the notes of interview of a suspect are recorded properly they may be introduced as evidence as well as a written statement. It is the Ministry's practice to record notes of interview even if the suspect later agrees to make a written statement.

All notes should include the following:-

- time, date and place of the interview
- suspect's full name, age, address, occupation, etc
- caution if it is administered during the interview

You should take notes while you are talking with the suspect as the discussion takes place. The notes taking in this manner must be as accurate as the circumstances allow. When it is possible to record notes of your interview/conversation in a Question and Answer format it is desirable to do this.

Should you need to caution the suspect because an offence has been committed then your notes must include that fact that the caution was given and you should also record in you notes the time that the caution was given.

When the interview is completed the suspect should be given the opportunity to read, or have the notes read to him/her and then sign the notes.

The interview should also record whether the suspect has read or had the notes read to him.

Once a written statement is to be taken from the suspect, observe the procedures as explained later in the module, relating to the taking of suspect statement, especially that the suspect has been cautioned.

MODULE 3: INTERVIEWS AND STATEMENTS

Unit S1: INTERVIEWS

There will be occasions when you are unable to take notes of the interview concurrently when having discussions with a suspect. If this is the case write up notes of what was said immediately or as soon as practicable after the interview is completed, by recording:

- time, date and place of interview
- the questions and answers of the interview
- time and date the notes were recorded

Notes made in this manner as the result of an interview with a suspect, may be admissible in Court if it is shown that they were made **contemporaneously** with when the interview took place.

Contemporaneously – means **an accurate record, made at the time, or as soon after the event as practicable** and usually refers to minutes and hours (not days) after the interview.

The recording of notes of interview in this situation is not the most accurate however if you have to write up your notes in a contemporaneous manner asking relevant questions in a logical manner will assist your recall of information given.

Records of conversations or statements must be accurate and as close to verbatim as possible and in the first person.

It will be necessary during the interview to note times that certain things were done (eg, interview start time, when caution administered, interview breaks, interview finish time, etc).

If documents are shown to suspects, note the full description of the documents and the order in which they were shown.

Sample of Contemporaneous notes

Notes of Interview recorded at 11.45am 13 December 2011 at Work and Income, Avondell, by Mary Smith, Investigator, Ministry of Social Development.

13 December 2011

9.40am

Jo Bloggs calls at office as arranged - for interview concerning employment by Degra Industries whilst receiving Unemployment Benefit.

9.42am

*Interview Room 3
Work and Income Office
10 Mystro Place, Avondell*

Present

*Jo Bloggs
Mary Smith - Investigator, NFIU, Avondell*

Personal Details

*Jo Bloggs DOB 25/01/1947
2b Orchard Grove, Avondell Ph 428-1234
Sales representative
Degra Industries
34 Grogan Place
Avondell. Phone 345-3456*

9.47am

Delivered the caution

MODULE 3: INTERVIEWS AND STATEMENTS
Unit S1: INTERVIEWS

Advised Mr Bloggs that I wish to talk to him about working at Degra Industries and getting his unemployment benefit. I told Mr Bloggs that I had some questions to ask him and that I would like to record those questions and his answers using a Dictaphone.

Mr Bloggs said that he would answer my questions only if I not record his answers and that he didn't have to make any kind of statement. I agreed to this.

I advised Mr Bloggs that my inquiries had established that he had been working for Degra Industries as a Sales Rep whilst receiving an unemployment benefit to which I believed he was not entitled.

9.50 am I cautioned Mr Bloggs

I asked Mr Bloggs if he would like to consult with a lawyer or have a support person present both of which he declined.

During the meeting I asked Mr Bloggs the following questions and recall with certainty, the answers he gave in response:

- Q: *Where are working?*
A: *At Degra Industries in Avondell*
Q: *For how long?*
A: *2 years*
Q: *Are you also in receipt of an unemployment benefit?*
A: *Yes*
Q: *Were you receiving your unemployment benefit when you started work?*
A: *yes*
Q: *Were you also receiving an Accommodation Supplement of \$45.00 per week when you started work?*
A: *Yes. It's been the same all the time*
Q: *Did you tell Work and Income that you had commenced work?*
A: *No*
Q: *Why not?*
A: *I don't know. I just didn't*
Q: *Why did you carry on getting your unemployment benefit while you were working?*
A: *Because I didn't know at first whether my job was going to be permanent*
Q: *What about when you knew your job was permanent?*
A: *By then I was too scared to tell and I needed the money*

I then told Mr Bloggs that I had some documents I wanted him to look at and verify his signature and handwriting. I showed him the following documents To which he commented "....."

I then asked Mr Bloggs if he realised the consequences of his actions. His reply was: "Yes. I know I've ripped you off and I'll have to pay it back.

I then explained to Mr Bloggs that not only would he have to pay the money back but that a penalty of up to three times the amount of the overpayment could be imposed or he could be prosecuted.

MODULE 3: INTERVIEWS AND STATEMENTS
Unit S1: INTERVIEWS

I told him that the overpayment of benefit and accommodation supplement amounted to \$13,894.86, and that he would be advised of what action would be taken by the Ministry.

*Interview concluded at 12.05pm 13 December 2011
Mary Smith
Investigator*

NEXT UNIT - UNIT S2: Recorded Statements

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(S)

INTERVIEWS AND STATEMENTS MODULE

Units

<i>Unit S1</i>	<i>Interviews</i>
<i>Unit S2</i>	<i>Recorded Statements</i>
<i>Unit S3</i>	<i>Written Statements</i>

Unit S2: RECORDED STATEMENTS

<i>INTRODUCTION</i>	2
What is a recorded statement?	2
Principles of a recorded statement	2
Ministry Policy and Procedures	2
Dictaphones	3
Transcriptions	4
Non verbal communication	4
Storage of recorded interviews	4

CONTENTS

Objectives

When you have completed this module you should:

- be able to take a recorded statement

RECORDED STATEMENTS

INTRODUCTION

What is a recorded statement?

A statement is defined as: "...a formal account of facts - either verbal or written."

The formal recording of an interview or conversation can be recorded and is known as a "recorded statement".

The Ministry uses dictaphones to record statements. The dictaphones we use are password protected to ensure the security of recording. These devices are able to record a verbal statement and have been specially designed to prove that the recordings could not have been corrupted. This ensures that they are admissible evidence in a District Court.

Audio recording is the preferred method of recording an interview and taking statements.

Previously Ministry staff used the triple deck tape recorder and the "For the Record" (FTR) recorder to record interviews and statements. These statements were never challenged in a District Court.

Principles of a recorded statement

The principles of recording a statement are the same as taking any written statement. The qualities and attributes of an interviewer are unchanged. The reasons for taking a statement and who would take a statement are the same whether the statement is taken in writing or recorded using a device like a dictaphone.

The difference is the method used. There are some specific rules that differ slightly when taking a recorded statement. There are also differences in the care and custody of the recorded statement as an exhibit. This is to reduce the ability of a defence challenge that a recorded statement has been corrupted and therefore not admissible.

Ministry Policy and Procedures

The Ministry has strict policy and procedural guidelines in relation to the use of dictaphones.

MODULE 3: INTERVIEWING AND STATEMENTS

Unit S2: RECORDED STATEMENTS

These policies and procedures must be adhered to and are a guide to maximise admissibility of evidence and to minimise the risk of breaches of privacy. The policy, procedure and use of dictaphones can be found at the site below:

<http://doogie.ssi.govt.nz/resources/helping-clients/procedures-manuals/integrity/nfiu/analyse-interview-and-decide/audio-recording-of-interviews.html>

Dictaphones

A distinct advantage of recording statements reduces the time needed to conduct and record an interview. It provides an absolute true account of the interview and will capture attitude and demeanour of both the interviewer and the interviewee.

However, an interviewer who has usually taken written statements will notice a distinct difference in the flow of a recorded interview. These interviews generally progress in a much quicker manner. This needs to be taken into account when preparing for these interviews. You will need to respond quickly to issues and good preparation is essential.

The recorded statement requires a format which must be followed at the commencement of the interview and be recorded.

The format must include:-

- Interviewer stating the location, date and time of the interview
- Introduction of the interviewer: name, position and Business Unit
- Interviewee to clearly state their name and the spelling of their name
- Interviewee to state their personal details; date of birth, address and occupation
- Any other person present must identify themselves
- Interviewee to confirm that no one else is present (if the case maybe)
- Interviewer to confirm the reason of the interview
- Reconfirmation that the suspect has no objections to the recording of the interview
- Interviewer to read the caution (if applicable)

After all of this has been completed the interviewer can then progress the interview and discuss the facts of the case.

The Ministry's policy and procedures guide have templates which will help the interviewer incorporate all of these aspects.

MODULE 3: INTERVIEWING AND STATEMENTS
Unit S2: RECORDED STATEMENTS

Transcriptions

When a case is being referred to District Court or is the subject of judicial review the audio recording may need to be transcribed. The Ministry contracts this service. Guidelines and policy in relation to this can be found at the site below:

<http://doogie.ssi.govt.nz/resources/helping-clients/procedures-manuals/integrity/nfiu/analyse-interview-and-decide/audio-recording-of-interviews.html>

Non verbal communication

A recorded statement can not record non verbal communication (ie a nod of the head) and therefore the interviewer needs to clarify all non verbal communication offered during the interview. Care must be taken to ensure that there is no conflict between non verbal communication and the client choosing not to answer questions when being interview under 'caution'.

It is also essential that the oral communication is clear and at an optimum level to be recorded satisfactorily. When recording interviews the interview can easily turn into conversation. The interviewer needs to be mindful of this and minimise incidences of over talking during the interview.

Storage of recorded interviews

Upon completion of your interview the recording of the interview needs to be saved, burnt sealed and referred for storage. The process may be carried out with or without the presence of the interviewee. The interviewee may request a copy of the interview in which case a copy may be provided to them at the end of the interview or within a few days following the day of the interview. The following steps should be followed:

- Always use a new CD
- Place the CD in the disc drive
- Burn the interview to the CD
- Sign and date the CD
- Place the CD into its cover
- Label the cover
- Log and hand the CD to the relevant person for storage
- Burn two further copies, one for the client and one to be used as your working copy.

MODULE 3: INTERVIEWING AND STATEMENTS
Unit S2: RECORDED STATEMENTS

Once you have finished copying the recorded interview, the client may want a transcribed copy or you may need a transcript to analysis the information given during the interview.

NEXT UNIT - Unit S3: Written Statements

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INTERVIEWS AND STATEMENTS MODULE

Units

<i>Unit S1</i>	<i>Interviews</i>
<i>Unit S2</i>	<i>Recorded Statements</i>
<i>Unit S3</i>	<i>Written Statements</i>

Unit S3: WRITTEN STATEMENTS

<i>INTRODUCTION</i>	2
What is a Statement?	2
Why take a written statement?	2
When should a written statement be taken?	2
Who may take a written statement?	3
Truthfulness of written statements	3
<i>CATEGORIES OF WRITTEN STATEMENTS</i>	4
Witness Statements	4
Format and composition of the witness statement	5
NB: Sample Witness Statement	7
SUSPECT/OFFENDER STATEMENTS	8
The principle of fairness	8
Format and composition of the suspect/offender statement	8
Documents	10
Admission/Explanations	10
Endorsement by Maker of Statement	11
Endorsement by Taker of Statement	11
NB: Sample Questions and Answers Statement (Suspect/Offender)	12
Other Forms of Endorsement	16
Maker refuses/declines to sign written statement	16

CONTENTS

Objectives

When you have completed this module you should:

be able to take a written statement

WRITTEN STATEMENTS

INTRODUCTION

What is a Statement?

A statement is defined as: "...a formal account of facts - either verbal or written."

The formal recording of an interview or conversation in writing is known as "taking a statement". What is produced as a result of this is a *written statement*.

Confirmation of a person's account of facts is sought by having that person endorse and sign the statement as a mark of good faith.

Not all persons will give a written statement and there is nothing in law that requires any person to make or sign a written statement. All written statements must be *given voluntarily* and must be taken fairly.

Why take a written statement?

The Ministry's preferred method of taking a statement is to record it using an audio device like a dictaphone. There may be instances when an audio device is not able to be used so a written statement may be taken instead.

A written statement is a formal account of the facts regarding the matter under inquiry, and the information supplied may be valuable as a means of:

- providing a basis for an investigation
- recording observations
- gaining evidence
- providing other avenues for inquiry
- corroborating or negating other evidence
- weighing and comparing evidence
- revealing mitigating circumstances
- serving a basis for prosecution

When should a written statement be taken?

As a general rule, where there is a possibility that a person's account of an incident may be of evidential value, should an audio recording not be possible, then a written statement should be obtained (whether the person is a witness, informant, suspect or offender).

As far as suspects and offenders are concerned should an audio recording not be possible, a written statement should be taken every time they are willing to give one.

Written statements should be taken at the first available opportunity.

Taking a written statement at the first point of contact will generally provide the investigator with a spontaneous account of the facts. This reduces the risk of a person (particularly a suspect) changing their version of the facts to disguise their involvement in the matter under inquiry.

MODULE 3: INTERVIEWING AND STATEMENTS

Unit S3: WRITTEN STATEMENTS

Should a person wish to change their version of the facts at a later date, a further written statement should be taken.

Never discard any written statement made previously. That statement may be of future evidential value, particularly if varying accounts have been given.

Who may take a written statement?

Any person may take, write or make a statement. However, no person can be compelled to make a written statement.

NB: (Although section 12 Social Security Act compels every person to answer questions put to them by an officer of the Ministry for the purposes of investigating any claim for benefit, it does not require the person to make a statement in writing).

While some people may wish to write their own statements, the information in the statement will probably be biased towards the maker, and may not cover all the aspects necessary to prove or disprove the fact under inquiry. The statement may therefore be of little use, as far as the prosecution proof is concerned, but tends to "fossilise" any explanation. Thus, a suspect will find it either difficult or awkward to change the story at some later stage. Do not report any material collected as useless or a waste of time.

If a statement is to be recorded in writing the investigator should record the statement. This will ensure that control is maintained and all relevant points are clarified as the statement progresses ensuring the facts are obtained.

Truthfulness of written statements

When taking a written statement, you will need to come to a judgement as to whether the witness or suspect is telling the truth. In the main, informants and witnesses have little reason to lie when making written statements. There are, however, some reasons which would cause untruthful statements to be made. These include:

- dislike of the Ministry or enforcement agencies
- dislike of another person – personal or otherwise
- pressure from suspect or offender, perceived or real
- pressure from peers or co-workers
- deliberate actions or omissions to pervert the course of justice
- covering up more serious offences
- self protection

Sometimes suspects/offenders may lie and make written statements which are untrue. Reasons for this may include:

- self protection
- placing the blame on another
- protecting another suspect/offender
- for reasons of amusement or obstructiveness
- Cultural reasons

For these reasons, it is helpful to record why you came to a judgement as to the truthfulness of a witness or suspect and particularly helpful to record why you

MODULE 3: INTERVIEWING AND STATEMENTS
Unit S3: WRITTEN STATEMENTS

believe the witness or suspect to be lying. You can still use effective challenges to illustrate and clarify any discrepancies you may have from information already to hand.

CATEGORIES OF WRITTEN STATEMENTS

There are basically two categories of written statements.

- Witness Statements (include informants, allegors) – in a narrative format
- Suspect/Offender Statements – in a Q & A format

Witness Statements

These statements are usually taken in:

- narrative format
- the witness's own words
- the first person (ie, I did, I saw, I heard, I went, etc)
- chronological order

When taking a statement from a witness it is important to obtain as much personal information about the witness as possible. This will ensure that you will be able to contact them to write a brief of evidence if required.

Once you have obtained the witnesses identity you should then confirm the relationship between the witness and the suspect. This will help substantiate the dependability and worth of the information provided by the witness.

You would also need to clarify with the witness how they know the information that they are supplying or why they have a particular view of the suspect's circumstances.

Note:

- Witnesses are not cautioned.
- Make sure that the witness can read and write. If not, another witness will be needed to verify the contents of the statement and endorse accordingly.
- Identify and number each page of the statement eg, "Statement of John William Brown continued, page 2"
- Witness statements will not generally be produced in court as the witness will be called to give evidence. Therefore, always record everything a witness has to say even if it is hearsay -
eg, "Joe Brown down the road told me that he sees him going to work every morning."

This information may provide other avenues of inquiry. The information provided by one witness has created an avenue of inquiry with a further potential witness.

The witness should be advised that the statement may be used to form the basis of a brief of evidence for that witness and that the witness could be required to appear in court. Where the witness requests that the information be kept confidential he/she should be advised that the Ministry has a statutory requirement to release the statement. Only record information that the witness will confirm and sign and is happy for it to be released.

MODULE 3: INTERVIEWING AND STATEMENTS
Unit S3: WRITTEN STATEMENTS

- Avoid asking leading questions. This could result in a false or misleading answer by a witness who thinks they are saying what is wanted to be heard - *eg, rather than ask "Did he only work for a week?" ask "How long did he work for?"*

Format and composition of the witness statement

A statement written correctly consists of a number of sections, each serving a particular purpose.

[Section 1] Place, Date, Time.

Place: The place where the statement is being taken

Date: The date the statement is taken

Time: The time that the statement is commenced

The above details will be recorded in the top right hand corner of the first page.

[Section 2] Name of person making the statement, and personal details

As there may be the possibility of further legal documents being completed at a later stage (Summonses/Informations/Briefs of Evidence), ensure that the full name is recorded

ie, John William Brown states...

The first paragraph of a statement contains the personal particulars of the maker, such as address, telephone number, occupation, details and place of employment. The age and date of birth of the maker may also be relevant on some occasions –

eg, "I live at 4 May Road, Debern, phone 345-6443. I am employed as a sales manager by Degra Industries, 34 Gregan Place, Avondell, phone 345-3456. I have been employed by Degra Industries for 5 years.

It is important to establish these details as other legal documents may need to be prepared from this information. It also assists in positively identifying the witness, for further contact, and for continuing contact during any Court action.

[Section 3] Reason for making the statement

It is important to confirm that the witness knows that the statement may be released and used as evidence in Court.

While it is of no evidential value, the reason for making the statement provides a preamble as to what the statement is about. The maker has been identified and the person taking the statement is now also identified - *eg, "I am making this statement to Mary Smith, Investigator with the Ministry of Social Development concerning Jo Bloggs, who is employed by our company. I understand that this statement may be released to Jo or used as evidence in Court....."*

MODULE 3: INTERVIEWING AND STATEMENTS
Unit S3: WRITTEN STATEMENTS

[Section 4] Body of statement

Facts in chronological order

This section contains the subject of the statement, that is the recording of the facts required to prove or disprove the matter under inquiry. This will include the nature of the relationship between the suspect and the witness, how long the witness has known the suspect, observations assumptions, what was said, seen, done or heard, and how the offence was committed, and any other relevant information. The facts and relevant details elicited in this section of the statement are recorded in a chronological sequence.

Remember:

- Confirm the relationship between the suspect and the witness
- Clarify how the witness knows what they are telling you
- Clarify why the witness has there particular view
- It is better to obtain too much information than too little
- Keep yourself and the witness focused on the subject of the statement

[Section 5] Endorsement of statement, name and designation of taker.

Time statement concluded.

Once all the facts and relevant details have been recorded and the maker of the statement has nothing further to add, the statement is concluded as follows:

- the maker is invited to read the statement through and make any alterations or corrections in their own handwriting
- all alterations and corrections made are to be initialled by the maker of the statement
- if there is more than one page to the statement the maker should sign the bottom of each page
- the maker should be directed to read the statement and confirm in their own writing that they have read the statement and whether it is a true record
- the maker should then sign the last page immediately under the last line of the statement
- finally, the taker of the statement must verify that the statement has been taken and the signature of the maker witnessed as follows:

Statement taken and signature witnessed by:

(Taker's signature)

Print name and designation

MODULE 3: INTERVIEWING AND STATEMENTS
Unit S3: WRITTEN STATEMENTS

NB: Sample Witness Statement

*Degra Industries
34 Gregan Place
Avondell
10.20am 8 December 2004*

John William Brown states:

That is my name, I live at 4 May Rd, Debern, phone 345-6443. I am employed as a sales manager by Degra Industries, 34 Gregan Place, Avondell, phone 345-3456.

I have been employed by Degra Industries for 5 years. I am being spoken to by Mary Smith, Investigator of the Ministry of Social Development concerning Jo Bloggs who is employed by our company. I understand that this statement may be released to Jo or could be used as evidence in Court.

I am Jo Bloggs' direct Manager. I first met Jo Bloggs when he started working at our Gregan Road Wholesale Warehouse as a Sales Rep on 10 January 2002.

I am in charge of the Sales Department and Jo comes under my control. I employed him as a sales rep and started him off on a trial basis for two months then appointed him to our permanent sales team in March 2002. Jo has been working for me ever since.

He is part of the team selling our lines of handyman tools to retailers. About 6 weeks ago we advised our reps that we would have to lay off 3 of the six we had working, due to the decline in our Sales. Yesterday, one of the Reps who doesn't want to be named came and saw me. He said that if anyone should be given the bullet it should be Jo. When I asked why, he told me that Jo had been getting an Unemployment Benefit for the whole time that he had been working for us.

I can confirm that Jo has had full time employment with us since January 1998 and could provide wage details if you require these. I understand that this information and statement may be used in evidence or could be released to Jo if he requests a copy of this.

This statement has been read by me and I confirm that the information is true and complete.

J. W. Brown

(Signature of maker)

Statement taken and signature witnessed by:

Mary Smith (Signature of taker)

Investigator – Ministry of Social Development

MODULE 3: INTERVIEWING AND STATEMENTS
Unit S3: WRITTEN STATEMENTS

SUSPECT/OFFENDER STATEMENTS

Should audio recording not be possible, a suspect/offender statement may be taken using a series of questions and answers. This is known as a Q&A.

Question and Answer statements minimise the misinterpretation of facts and minimise allegations that could come from the suspect/offender at a later date, or from defence counsel during court proceedings.

Because the content of suspect/offender statements are directed at admissions and confessions and could later be produced in court and used as evidence, then it follows that there are some clearly defined rules and procedures in the taking of such statements.

The principle of fairness

- All written statements must be taken fairly
- Statements from suspects/offenders in particular must be shown to have been obtained professionally.

Some important points to remember when deciding that a written statement may be taken from a suspect/offender:

- the suspect/offender is prepared to give the statement voluntarily
- no promises, threats, lies or inducements are used to obtain the statement
- the suspect/offender is properly cautioned before a statement is obtained

Format and composition of the suspect/offender statement

The Questions and Answers Suspect Statement

As previously discussed, should an audio recording not be possible the questions and answers suspect/offender statement has been accepted by the courts as giving the most accurate and fair account of what was said during the interview.

The composition of the "Q & A" statement differs somewhat to the narrative statement but it is still divided into sections so that all relevant points are covered.

[Section 1] Place, Date, Time of Interview

Place: The place where the statement is being taken
Date: The date the statement is taken
Time: The time that the statement is commenced

The above details will be recorded in the top right hand corner of the first page.

[Section 2] Name of person making the statement and personal details

The first paragraph or setting out of a statement contains the personal particulars of the maker, such as full legal name, date of birth, address, telephone number, occupation, details and place of employment.

MODULE 3: INTERVIEWING AND STATEMENTS
Unit S3: WRITTEN STATEMENTS

Note: It is important that the maker of the statement is positively identified, especially if court proceedings are to be commenced. These personal details will also be needed at a later stage for preparation of legal document.

[Section 3] Reason for making the statement

The reason for making the statement provides a preamble as to what the statement is about. The maker has been identified, and the person taking the statement is now also identified. - eg, "I am making this statement to Mary Smith, Investigator with the Ministry of Social Development about working for Degra Industries when I was getting the Unemployment Benefit."

[Section 4] Inclusion of the Caution

It is at this point in the statement that confirmation of the caution having been given verbally, must be written into the statement, and that the suspect/offender acknowledges their understanding of what has been said.

When writing the caution into the statement the time that the caution is given needs to be noted and the caution needs to be recorded in full and word for word.

Naturally, if the investigator is not satisfied that the suspect has committed an offence, the statement would progress without the caution being given or included.

If at a later stage during the taking of the statement, it becomes apparent that the suspect is the offender, the caution would then be given verbally and immediately included in the statement.

[Section 5] Body of the statement, facts of the matter under inquiry in chronological order. Documents, and admissions.

This section of the statement contains the questions and answers which will establish the suspects involvement in the offence, the presentation of documents to the suspect, and any admissions or explanations the suspect may offer.

There are a number of points to consider when completing this part of the statement.

- Questions should be asked and recorded one at a time
- Answers to questions are to be recorded on the line immediately below the question
- Do not pre-format the questions in the body of the statement and expect to fill in the spaces
- Do not leave lines between the questions and answers. This will eliminate the possibility of any argument that the content of the statement was altered after being completed
- Do not leave large gaps/lines at the top and bottom of each page used
- Record all slang and swear wordings ie 'um' 'ahh'
- All questions and answers must be recorded in full.
- Number each page.

MODULE 3: INTERVIEWING AND STATEMENTS
Unit S3: WRITTEN STATEMENTS

Documents

Some suspect/offender statements taken relating to benefit fraud will have the inclusion of documents completed or used by the suspect/offender, before, during, or after the commission of an offence.

When a suspect/offender is shown documents during the taking of a statement, the following must be established and acknowledged:-

- Each document is properly identified
- Each document is shown to the suspect separately
- Who completed the document
- If the document has been completed and signed by the suspect and they acknowledge this
- Whether the suspect acknowledges (if applicable) that at the time of completing/using the document he/she knew that some or all the information supplied was true or false
- Whether the suspect continued to receive a benefit and/or a supplementary allowance after supplying information known to be false

Note:

- Each document and its contents will require questions and responses to that specific document. It is therefore important that the questions relating to each document shown to a suspect are carefully formulated to ensure that it is clear by the suspect's responses that any intent to defraud is established.
- The sample suspect/offender statements following will show the lines of questioning relating to documents.

Admission/Explanations

It will be in the body of the statement that the suspect will make any admissions or give explanations for their actions.

It is helpful if admissions are corroborated to establish if the acts or omissions of a suspect were done deliberately and with the intention to defraud.

When an admission is made, the suspect should be invited to explain his/her actions

eg, *Why did you do it?*

Why didn't you advise the Ministry of your employment/relationship?

Using the 5WH line of open questioning: What, Where, Why, Who, When and How questions will help to establish the intentions of the suspect's actions.

Another tool that may be used as well or instead is **TED** which stands for **T**ell me, **E**xplain to me and **D**escribe to me.

When explanations have been given the suspect should be asked if he/she wishes to add anything further to what has been said.

MODULE 3: INTERVIEWING AND STATEMENTS
Unit S3: WRITTEN STATEMENTS

[Section 6] Endorsement by maker and taker of statement

This section concludes the statement and the format is below.

Endorsement by Maker of Statement

Invite the maker of the statement to:

- read the statement through making any alterations or corrections, initialling them as identified
- sign the bottom of each page of the statement (excluding the last page at this stage)
- endorse the statement by writing across the page, directly under the last line of the statement
I have read the (number of pages) pages of this statement. They are true and correct and I have nothing further to add.
- sign the statement directly under the endorsement

Endorsement by Taker of Statement

The endorsement by the taker of the statement is verification of the contents of the statement and was made to the taker with the maker's consent.

- The endorsement by the taker is made immediately below the maker's signature as follows:

Statement taken and signature witnessed by:
(Taker's signature)
(Print name and designation)
(Time and date statement concluded)

However, as said previously, if the suspect refuses to sign the question and answer statement, merely record this fact at the end of the statement and **retain the statement on file.**

MODULE 3: INTERVIEWING AND STATEMENTS
Unit S3: WRITTEN STATEMENTS

**NB: Sample Questions and Answers Statement
(Suspect/Offender)**

Work and Income
10 Mystro Rd
Avondell
10.30am Friday 20 December 2002

Jo Bloggs

I live at 2B Orchard Grove, Avondell, phone 428-1234 my date of birth is 25 January 1947 am a sales rep employed by Degra Industries, 34 Gregan Place, Avondell, phone 345-3456. I am being spoken to by Mary Smith, Investigator of the Ministry of Social Development about working whilst also receiving an Unemployment Benefit. 10.34 Caution given by Mary Smith

You are not being detained and you are free to leave OR you can ask me to leave at any time. You do not have to answer my questions however anything you do say may be written down and used in evidence.

Q. Do you understand this?

A. Yes

Q. Please explain to me your understanding of the caution

A. I don't have to answer your questions, I'm free to leave at any time and anything I say can be used in evidence.

Q. Thank you. Are you happy to continue?

A. Yes

Q. Do you want to have a support person present?

A. No I just want to get on with it

Q. Jo, do you have any difficulty reading, writing, or understanding English?

A. No

Q. The Ministry has received information that you have been in fulltime employment whilst also being in receipt of unemployment benefit. What can you tell me about this?

A. Yeah, I guess that's pretty much the truth of it. I'm sorry. I know I shouldn't have done it but um, well there you go.

Q. Ok, thanks for that Jo. I want to discuss this in a bit more detail now and firstly want to talk about your benefit. What benefit do you receive?

A. It was Unemployment Benefit?

Q. When did you apply for this Benefit?

A. Umm 1997 I think

Q. Our records show that the Ministry granted Unemployment Benefit and Accommodation Supplement to you on 13 October 1997. Would this be correct?

J Bloggs (signature of maker)

Page 1

MODULE 3: INTERVIEWING AND STATEMENTS
Unit S3: WRITTEN STATEMENTS

- A. Yeah it sounds right
- Q. When you applied for benefit what did you understand about your obligations?
- A. To tell if I started working
- Q. Are you currently in employment?
- A. Yes
- Q. Who do you work for and what is your occupation?
- A. I am Sales Rep for Degra Industries
- Q. How long have you worked for Degra Industries?
- A. About 2 years
- Q. Who else have you worked for during that period?
- A. No-one else, just Degra Industries.
- Q. What is your weekly wage?
- A. \$443.00 a week after tax.
- Q. How do you get paid?
- A. Automatic payment into my Westpac Account
- Q. Jo, were you also receiving an Unemployment Benefit while you were working?
- A. Yes
- Q. What account was your benefit being paid into?
- A. It was paid into my Kiwibank Account
- Q. Did you tell Work and Income that you commenced work?
- A. No
- Q. What would have happened to your benefit if you had told Work and Income that you had started work?
- A. I don't know - it would have stopped
- Q. Why did you have separate accounts for your wages and your benefit?
- A. I don't really know. I thought I'd leave my Kiwibank account just for my benefit.
- Q. Have you spent the benefit money paid to you?
- A. Yeah I've paid bills and I had to fix my car.
- Q. Did anyone at Degra Industries know that you were getting a benefit and working?
- A. I don't think so
- Q. Thanks for that. I want to show you some documents now. I have an Application for Unemployment Benefit dated 29 September 1997 in your name. Did you complete this application?
[show UB application]
- A. yes
- Q. In whose handwriting is the application completed?
- A. It's in my handwriting
- Q. Whose is the signature at the end of the application?
- A. It's my signature.
- Q. Did you get an Unemployment Benefit as a result of completing this application?
- A. Yes
- Q. What employment were you undertaking at the time when you completed and signed this form?
- A. None – I was genuinely unemployed.

J Bloggs

(Signature of maker)

Page 2

MODULE 3: INTERVIEWING AND STATEMENTS
Unit S3: WRITTEN STATEMENTS

- Q. I also have an application for Accommodation Supplement dated 29 September 1997 in your name. Did you complete this application?
[Show AS application]
- A. Yes
- Q. In whose handwriting is the application completed?
- A. Mine
- Q. Whose is the signature at the end of the application?
- A. It's mine
- Q. Did you receive an accommodation supplement as a result of completing this application?
- A. Yes
- Q. I have 2 applications for continuation of Unemployment Benefit in your name. The first is dated 1 July 1998. Did you complete this application?
[Show first application]
- A. Yes
- Q. In whose handwriting is the application completed?
- A. Mine again
- Q. Whose is the signature at the bottom of the application?
- A. It's mine
- Q. Look at the question on the form that says "Have you been working?"
What has been written in the box after that question?
- A. "NO."
- Q. Who wrote "NO."?
- A. I did
- Q. What employment were you undertaking at the time when you completed and signed this form?
- A. I was working full time for Degra Industries
- Q. So was this information true?
- A. No
- Q. Why did you provide false information on this form?
- A. I wanted to keep getting the benefit
- Q. I will now show you an application for continuation of Unemployment Benefit in your name dated 1 November 1999. Did you complete this application?
[Show 2nd application]
- A. Yes
- Q. In whose handwriting is the application completed?
- A. It's mine again
- Q. Whose is the signature at the bottom of the application?
- A. It's mine again
- Q. Look at the question on the form that says "Have you been working?"
What has been written in the box after that question?
- A. "NO."
- Q. Who wrote "NO"?
- A. It would have been me again
- Q. What employment were you undertaking at the time when you completed and signed this form?

J Bloggs

(Signature of maker)

MODULE 3: INTERVIEWING AND STATEMENTS
Unit S3: WRITTEN STATEMENTS

- A I was still working for Degra Industries
Q. Ok. Was the information you provided true?
A: No
Q: Why did you put No when you were in fact working
A. I don't know, at first I didn't know whether I would have a permanent job, so I thought I would just carry on getting the benefit in case.
Q: But in August 1999 you had been employed for over a year?
A: Yeah I know I just got used to the extra money
Q. What would have happened to your benefit if you had said yes?
A. I don't know it probably would have stopped

11.45am - interview interrupted so Jo Bloggs can go to the toilet.

11.54am - interview resumed

- Q. Why did you carry on taking the benefit then?
A. After a while it was easy. For the first time in about 10 years I was able to start paying some of my debts off and get my car fixed. The Unemployment money just helped me get things done quicker.
Q. So, what are you saying?
A. I knew I wasn't allowed to get a benefit when I was working but it was easy just to say nothing and get the extra money. It just made things so much easier for me.
Q. Do you understand that you will have to pay the money back and that a penalty could be added or that you could be prosecuted for defrauding the Ministry?
A. Yes I do
Q. Do you have anything further to say about what has happened?
A. Not really. I knew I shouldn't have done it and I probably would have cancelled the benefit in about a month, because I would have been on top of things. I guess I'll lose my job now.

I have read the four pages of this statement and they are true and correct. I have nothing further to add.

Jo Bloggs (Signature of maker)

Statement taken and signature witnessed by:

M. Smith (Signature of taker)

Investigator

Statement completed at 12.26pm 20 December 2002

MODULE 3: INTERVIEWING AND STATEMENTS
Unit S3: WRITTEN STATEMENTS

Other Forms of Endorsement

There will be times when a written statement is taken from a witness or a suspect and other forms of endorsement will be necessary.

Maker refuses/declines to sign written statement

A witness supplying information by way of a written statement will generally agree to sign the statement. A suspect making a voluntary statement will also usually sign his/her statement. However, if a witness or suspect does not wish to sign the statement, a brief endorsement of the statement by the taker can be made as follows:

.....declined/refused to sign;

Statement taken by:
(Signature)
(Name and designation)

Maker unable to read/write

A written statement taken from a person who is unable to read or write requires another form of endorsement.

When the statement has been completed have the statement read to the maker by a witness (colleague).

Alterations or corrections will be made and initialled by the witness, who should also sign the bottom of each page.

The witness then endorses the statement as follows:

"I confirm that I have read the () pages of this statement taken by (name of taker), to (name of maker). (Name of maker) has acknowledged that the contents of the statement are true and correct and that he/she has nothing further to add."

(Witness signature)
Print name and designation

The taker of the statement will then endorse the statement in the normal manner.

The witness will need to give evidence of the method used if the matter comes to Court.

MODULE 3: INTERVIEWING AND STATEMENTS
Unit S3: WRITTEN STATEMENTS

CONGRATULATIONS!!

You have now finished the **Interviewing and Statements Module**

NEXT MODULE:

EVIDENCE

RELEASED UNDER DISCOVERY ACT
OFFICIAL INFORMATION

INVESTIGATION UNIT TRAINING PACKAGE

(L)

LEGISLATION & CASE LAW MODULE

Units

Unit L1	Making and Accessing Legislation
Unit L2	The Acts Administered by the Ministry
Unit L3	Investigative Powers and Information Gathering
Unit L4	Obligations, Reviews and Debt
Unit L5	Offences
Unit L6	Reviews and Appeals
Unit L7	Conjugal Status
Unit L8	Official Information and Privacy Acts
Unit L9	Other Relevant Acts
Unit L10	Case Law Policies and Precedents

Unit L5: CONJUGAL STATUS

Contents

Section 63 of the Social Security Act.....	2
The section	2
Regarding a married person as unmarried [S63(a)].....	2
Regarding an unmarried person as married.....	3
Indicators to be taken into account in S63(b)	5
Domestic Violence.....	7
Defacto relationships and civil unions.....	9
Relationship status and the Education Act.....	11

Objectives

By the end of this unit you will be able to:

- recognise & assess a situation where a married person can be regarded as unmarried
- recognise & list factors in determining when an unmarried person can be regarded as married
- understand the effect of case law in section 63 of the Social Security Act and be familiar with it
 - understand how relationships are treated in the Education Act

Conjugal Status

Section 63 of the Social Security Act

Under Section 63 the Chief Executive is empowered, in his or her discretion, to regard any married applicant as unmarried who is living apart from their spouse or to regard any man or woman who are not legally married as living in a marriage type relationship. This power to regard married persons as unmarried and vice versa is a power that has been delegated to officers of the Ministry.

The section

There are two discretions contained in Section 63. The first discretion is to regard a married couple as unmarried or to consider a man or woman as husband and wife if they have entered into a relationship in the nature of marriage.

Once the first discretion is exercised the Chief Executive (or officer) may determine the date on which they commenced living apart or together as the case may be. The Chief Executive (or officer) may then in his or her discretion grant, refuse, terminate, reduce or increase a benefit from that date. This is the exercise of the second discretion.

Regarding a married person as unmarried [S63(a)]

The original purpose of paragraph (a) was to provide the benefit rights of unmarried persons to those married persons who were permanently apart. This means that the income of the applicant's spouse would not be taken into account in determining eligibility for benefit.

The usual requirement is that a married couple must have chosen to live apart before the application for benefit is made but there are times when the circumstances of the case require this criteria to be waived (*SSAA decision 36/93 unreported*).

As a guideline, married applicants can be regarded as unmarried when they are living apart by virtue of a legal separation, agreement or order. If the parties are living apart but there is no legal agreement to support this, you must look at the degree of permanency of the separation.

In determining whether a husband and wife are separated there exist guidelines set down through decided court cases. This is commonly known as case law.

The following guidelines were set out in the case of *Edwards v Edwards (1979) 2 MPC 51*.

These are:

- whether or not the parties are living in the same house

MODULE 1: LEGISLATION & CASE LAW
Unit L7: CONJUGAL STATUS

- how long they continue to live in the same house
- whether they provide a home for their children in that home
- the extent to which they share the expenses of the home and of living
- the extent to which they share the household tasks
- the extent to which they communicate
- whether they have ceased to engage in sexual relations
- the manner in which they appear and hold themselves out to the public

Parties living apart due to housing difficulties, absence due to business pursuits, illness of relatives, hospitalisation of one partner or where they occupy separate accommodation during the week due to employment in different towns but are together at weekends would not, as a rule, be regarded as having severed their relationship permanently.

Permanent separation with the express or implied intention of ending the marriage would clearly be enough to treat the parties as unmarried under paragraph (a). Conversely, it is clear from the case law that a temporary separation of finite duration would be unlikely to lead to the couple being treated as unmarried.

Where a separation is of uncertain length you would need to look at all the circumstances of the case before exercising your discretion to treat them as unmarried under paragraph (a).

Regarding an unmarried person as married

The ability to determine that a couple are living in a relationship in the nature of marriage is contained in Section 63(b) of the Act. This is known as the conjugal status rule. This rule is based on the argument that the treatment for the purposes of benefit entitlement should be equal between married and unmarried people. This is so that the income of both partners can be taken into account for benefit purposes.

The main justification for the rule is that it would be wrong in principle to treat a person who is said to be living in a relationship which approximates to a legal marriage better than if that person was legally married.

As discussed earlier, the Chief Executive is empowered under Section 63 to fix a date at which it can be clearly determined that a couple are living in a relationship in the nature of marriage. It is necessary to relate the date "to some evidence directly connected to the couple behaving as a couple" based on admissible evidence.

There is no definition of what is a relationship in the nature of marriage and it has been described as an imprecise concept. The question as to whether such a relationship exists will be a question of fact in each case. You will need to look

MODULE 1: LEGISLATION & CASE LAW
Unit L7: CONJUGAL STATUS

at all the circumstances of the case. There are certain indicators that have been laid down in case law and these will be covered in some detail below.

The leading case on the issue of relationships in the nature of marriage under section 63(b) 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.

The majority in Ruka decided that section 63(b) had to be interpreted in the light of the purpose of the Act.

"It is more appropriate to begin an examination of whether a relationship in the nature of marriage exists in relation to a beneficiary by considering the purpose of the social welfare legislation."

Thomas J stated that:

"I believe that the objective of section 63(b) is clear. It is to ensure that unmarried couples who enter into a relationship akin to marriage are not treated more favourably for benefit purposes than those who are legally married. Such an objective presupposes that married persons assume a mutual commitment to the maintenance of their relationship. In the context of s 63(b) this responsibility must necessarily include, not only a commitment to the relationship, but some form of financial support or interdependence. The financial interdependence may be direct, being actual support, or indirect, reflecting a mutual understanding about the financial arrangements relating to the relationship. Consequently, the objective of the provision is served if the Director-General is given the discretion to regard as husband and wife any man and woman living in a relationship who have assumed a responsibility of this nature one to the other."

The test of what constitutes **a relationship in the nature of marriage** was stated by the Court of Appeal in Ruka, as having the following two key positive features:

1. Financial inter-dependence in the sense of at least a willingness to support the other partner ... if that partner has no income of his/her own or to the extent that it is or becomes inadequate, AND
2. A degree of companionship demonstrating a continuing emotional commitment.

For the purposes of the Social Security Act 1964 for a relationship to be a relationship in the nature of a marriage an assumption of financial inter-dependence can be present. The issues of what arrangements can be constitute financial inter-dependence has been considered in DW Ray -v- Department of Social Welfare and R -v- Alice Fay Batt.

MODULE 1: LEGISLATION & CASE LAW
Unit L7: CONJUGAL STATUS

In the later case the Court went on to say

A financial commitment does not have to be an actual current financial commitment. In this context it is sufficient if each party to the relationship accepts responsibility to support the other party financially if he or she is unable to do so. That of course involves drawing an inference as to the nature of the relationship from all the evidence as to the circumstances of the relationship.

You must therefore be satisfied that the nature of the relationship was such that, if either party was not able to support himself or herself, the other party would have assumed an obligation to do so. That therefore involves an assessment of the nature of the relationship, which in turn involves an assessment of the evidence, which has been put before you.

In that context, it is important to emphasise that the commitment which is required must be beyond the mere sharing of living expenses, as flatmates may do. There must be a willingness to support each other if the need either exists or arises.

There must also be a corresponding emotional commitment to the relationship. A sharing of a common household over a period of time and a sexual relationship are significant indicators in that context, although of course neither is essential. For example, as (the Crown) mentioned in (its) final address, an elderly couple may not engage in sexual activity, but they may nevertheless be committed to each other.

Prior to Ruka the Ministry used indicators outlined in the Excell and Thompson decisions to determine whether a relationship in the nature of a marriage existed. The Court found in Ruka that these indicators are useful but cautioned against using these as a checklist. The usefulness of the factors lies in their use as a tool to identify the presence, or otherwise of physical factors that can lead to finding that the parties has so merged their lives that they can be regarded as having assumed responsibility, including financial responsibility.

In proving emotional commitment it is necessary to identify positive features found in marriages.

Indicators to be taken into account in S63(b)

Another important case impacting on section 63(b) of the Social Security Act 1964 is *Excell v DSW* (1991) NZFLR 241. In that case Fisher J held that:

- a) "cohabitation for legal purposes normally requires some form of mental commitment to live together as husband and wife and a manifestation of that commitment by conduct. No minimum period is involved. In cases of doubt an inference as to intention will usually need to be drawn from conduct.

MODULE 1: LEGISLATION & CASE LAW
Unit L7: CONJUGAL STATUS

- b) the conduct in question is concerned not with any single factor but with an aggregation of many. No single factor is enough nor will its absence be fatal. It is the cumulative quality, quantity, continuity and duration of these factors that matters."

The Judge then set out a list of factors which are indicators of a marriage. These are factors and a commentary on each are:

- a) Financial support

It is necessary to look at whether the parties share expenses and support each other financially. This factor may not be present in every case as the parties concerned may have made a decision not to share financial resources and maintain financial independence. Each case must be viewed on its own facts.

- b) Sharing of a dwelling

Membership of the same household is no longer necessary in order to meet the statutory test. However, the list of factors taken into account usually begin with the idea that the parties are sharing a dwelling.

However actual cohabitation (living together) is not necessary and it can be determined that the couple are living in a relationship in the nature of marriage where they maintain separate households but the other factors listed below point to such a relationship (SSAA decision 137/92 unreported).

- c) Share household activities

In some cases the Authority has treated the division of household roles as being relevant but the total absence of any sharing of responsibilities is not fatal to a finding that a relationship in the nature of marriage exists.

- d) Emotional support

What is needed to be ascertained is whether an emotional interdependence between the parties is of the kind married partners expect to have (SSAA decision 82/92 unreported).

Factors such as emotional support during illness, the existence of a monogamous sexual relationship and involvement with each other's wider family are relevant. As stated earlier there is also the mental ingredient which involves commitment at least for the foreseeable future (*Thompson v DSW* [1994] 2 NZLR 369).

- e) Present to outsiders as a couple

This refers to how the parties hold themselves out to others socially. However, the absence of this factor will not necessarily debar a finding that a relationship in the nature of a marriage exists (SSAA decision 11/90

MODULE 1: LEGISLATION & CASE LAW
Unit L7: CONJUGAL STATUS

unreported). It will be necessary to look at how other members of the community perceive their relationship.

f) Share parenting obligations

The existence of children from the relationship may strengthen the perception that a relationship in the nature of marriage exists. Much will depend on the circumstances of the case. If the children are from an earlier relationship it is relevant to look at the role that the other party carries out in respect of parenting.

g) Exclude emotional and sexual relationships with third parties

The existence or absence of a sexual relationship is not conclusive evidence of a relationship in the nature of a marriage. However a relationship is relevant as it distinguishes between sharing accommodation as a flatmate or boarder from other relationships. It is also one of the factors of a legal marriage.

h) Share companionship, leisure and social activities

i) Provide domestic services for each other

j) Duration of the relationship

Domestic Violence

As previously mentioned Ruka is the leading case on the issue of a relationship in the nature of a marriage. This case raised the issue of what effect domestic violence would have on a relationship in the nature of a marriage for Section 63(b) purposes.

In this case Battered Women's Syndrome was offered as a defense in that the defendant's state of mind was affected by the battered woman syndrome to such an extent that she lacked the necessary intent to commit the offences.

The Court of Appeal rejected the contention that Battered Women's Syndrome was a specific defense open to Ms Ruka.

However the Court of Appeal stated that a woman suffering from Battered Women's Syndrome is less likely to be seen to be living in a relationship in the nature of a marriage – the abuse whether physical, mental or emotional toward a female partner in a battering relationship will most likely negate any key positive features of a marriage that may have been identified.

The Court of Appeal went on to say that in relation to Ms Ruka;

"she was bound to the relationship by fear resulting in a psychological paralysis which effectively adhered her to the relationship for as long as Mr T wanted. She could not be said, therefore, to possess the requisite mental and emotional commitment to the relationship for it properly to be described as being in the nature of marriage. She simply remained in the

MODULE 1: LEGISLATION & CASE LAW
Unit L7: CONJUGAL STATUS

relationship because she had been battered into a state of terror and was powerless to do otherwise".

(BWS) provides an explanation for the continued sharing of the same accommodation and the other linkages, real or only apparent, between them. Unlike someone not suffering battered woman's syndrome the appellant had an inability to choose to live elsewhere. The circumstances of living under the same roof, indeed sharing the same bed, is misleading and must carry little weight

Thus, less weight, if any, would need to be given to the fact that the parties live together when the woman is staying under the same roof as the batterer out of fear and helplessness. Similarly, the fact that the parties may be said to have sexual intercourse loses its significance as an indicia of marriage if the woman's consent to sexual intercourse is coerced and she is regularly raped. Nor can it properly be concluded that the woman is offering the man emotional support and companionship when any such apparent support is induced by the man's violence and can more accurately be described as "traumatic bonding". The fact that the parties may socialise together and attend activities and go on holidays as a couple would also need to be given less weight when the wife's participation is governed by the man's will and dictated by the unending rule of terror, violence and abuse."

Where domestic violence is raised in any investigation that is determining whether a relationship is a marriage type relationship the level of violence would need to be investigated. This would be required given that the purpose of an investigation is to ascertain the truth.

When faced with a claim of domestic violence, it would be appropriate to see if there is any verification of the violence, for example:

1. GP or hospital records,
2. Police complaints/callouts,
3. Domestic Violence Act applications/orders,
4. Statements from neighbors, friends, relatives,
5. Whether alleged partner has convictions for domestic violence.

When interviewing the victim of this violence, we would want to ascertain:

1. the level and frequency of the violence,
2. the degree of control over the beneficiary by the violent "partner",
3. the beneficiary's freedom/control over her life (going out, having friends, dress style),
4. the degree of fear held by beneficiary,

MODULE 1: LEGISLATION & CASE LAW
Unit L7: CONJUGAL STATUS

5. the existence of support networks (family, friends she could turn to),
6. whether the beneficiary wanted to/wants to leave the relationship, to escape the violence.

Defacto relationships and civil unions

New Zealand changed legislation to provide for the recognition of same sex relationships. In 2004 the Civil Union Act was introduced which allowed for people in a relationship with a person of the same gender to have their relationship legally recognized.

Most New Zealand statues (of which there are many) with reference to relationships had generally been written in the form of identify the relationship between a man and a woman. In section 63B of the Social Security Act 1964 the legislation still refers to a relationship being between a man and a woman.

To reduce the need to change all New Zealand statues that referred to relationships a section (section 29A) of the Interpretation Act 1999 was introduced.

Meaning of de facto relationship

- (1) In an enactment, *de facto relationship* means a relationship between 2 people (whether a man and a woman, a man and a man, or a woman and a woman) who—
 - (a) live together as a couple in a relationship in the nature of marriage or civil union; and
 - (b) are not married to, or in a civil union with, each other; and
 - (c) are both aged 16 years or older.
- (2) Despite subsection (1), a relationship involving a person aged 16 or 17 years is not a de facto relationship unless that person has obtained consent for the relationship in accordance with section 46A of the Care of Children Act 2004.
- (3) In determining whether two people live together as a couple in a relationship in the nature of marriage or civil union, the court or person required to determine the question must have regard to—
 - (a) the context, or the purpose of the law, in which the question is to be determined; and
 - (b) all the circumstances of the relationship.
- (4) A de facto relationship ends if—

MODULE 1: LEGISLATION & CASE LAW
Unit L7: CONJUGAL STATUS

- (a) the de facto partners cease to live together as a couple in a relationship in the nature of marriage or civil union; or
- (b) one of the de facto partners dies

The general provisions for determining whether people are in a defacto relationship are set out in Section 29A of the Interpretation Act 1999. Section 29A of the Interpretation Act 1999 allows us to determine whether a man and a woman, a man and a man, or a woman and a woman:

- live together as a couple in a relationship in the nature of marriage or civil union; and
- are not married to, or in a civil union with, each other; and
- are both aged 16 years or older; and
- if either is aged 16 or 17, that person has obtained the express written consent of each of his or her guardians or the consent of the Family Court as "to living together as a couple with the other party to the relationship"

If we are satisfied that a couple satisfies the criteria in Section 29A then they are said to be in a 'defacto relationship'.

In determining whether two people live together as a couple in a relationship of marriage or civil union section 29A provides that regard should be had to:

- the context, or purpose of the law, in which the question is to determine
- the circumstances of the relationship.

This does not provide a lot of guidance. However, though the statutory test for defacto relationships has moved from section 63(b) to section 29A of the Interpretation Act, the context of the Social Security Act means that what are known as the Ruka factors and other relevant case law will continue to guide us in determining whether a relationship is one in the nature of marriage or civil union.

In assessing a person's overall relationship status for the purposes of determining benefit entitlement you should have regard to whether a person has a spouse or partner. A 'spouse' is a person's husband or wife and a 'partner' is someone's civil union or de facto partner (section 3(1) Social Security Act 1964).

From 1 April 2007 we will treat each of these partnerships equally for the purposes of benefit entitlement.

Relationship status and the Education Act

For Student Allowance purposes, a partner is someone who the student is in a recognised relationship with. From 1 January 2009 the age test for a recognised relationship changed from 25 years to 24 years.

Recognised relationships

A recognised relationship is where the student and their partner are both 24 and over, or one or both of them are under 24 and there is a dependant child.

The following relationship types are relevant to Student Allowances:

- **marriage** - a legally recognised union between a man and a woman for the purpose of: the formation of a family unit; social stability; education and development of offspring; economic stability; security; companionship or various combinations of these purposes
- **civil union** - a legally recognised union equivalent to marriage that provides couples with rights, benefits and responsibilities equal to those enjoyed by married couples. Civil unions are available to same and opposite sex couples.
- **de facto relationships** - a de facto relationship exists where two people live together as if they were married but they have not been legally married or entered a civil union. It can apply to both same and opposite sex relationships.

Like the Social Security Act the partner does not have to live with the student or meet the residency requirements in New Zealand for them to be considered a couple. This means that even if the partner lives overseas they are still considered to be the student's partner. The partner is required to advise StudyLink of any income they receive.

NEXT UNIT - UNIT L8: Official Information and Privacy Acts