



**Deceased Estate Maintenance and
Accrual Calculations**

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AGENDA

- Maintenance calculations
- Actuarial valuation of Living Annuities
- Accrual calculations
- Redistribution and the Family law amendment bill

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MAINTENANCE: WHEN ACTUARIAL ARE CALCULATIONS REQUIRED

💕 **Surviving Spouse's Claim**

Spouse dependent on deceased → claim for ongoing support

👨👩 **Children's Claim**

Children (minor, student, disabled) → claim for maintenance

📄 **Contractual Agreements**

Divorce/settlement agreements → capitalised value needed

👉 **Informal Support**

Informally supported dependents → potential recognised claim



THE MAINTENANCE OF SURVIVING SPOUSES ACT 27 OF 1990

(1) If a marriage is dissolved by death after the commencement of this Act the survivor shall have a claim against the estate of the deceased spouse for the **provision of his/her reasonable maintenance needs** until his death or remarriage in so far as he is not able to provide therefor from his own means and earnings.

In the determination of the **reasonable maintenance needs** of the survivor, the following factors shall be taken into account in addition to any other factor which should be taken into account:

- (a) The **amount in the estate** of the deceased spouse **available for distribution** to heirs and legatees;
- (b) the **existing and expected means, earning capacity, financial needs and obligations** of the survivor and the **subsistence** of the marriage; and
- (c) the **standard of living** of the survivor during the subsistence of the marriage and **his/her age** at the death of the deceased spouse.

Children's Act (number 38 of 2005) and Maintenance Act (number 99 of 1998)






“The parental responsibilities and rights that a person may have in respect of a child, include the responsibility and the right:

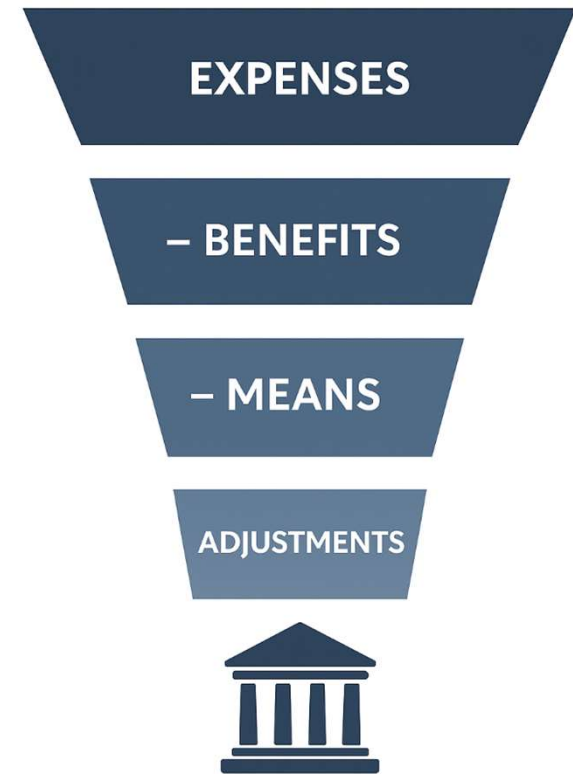
- d) to care for the child;
- e) to maintain contact with the child;
- f) to act as a guardian of the child; and
- g) **to contribute to the maintenance of the child.”**

(1) Without derogating from the law relating to the liability of persons to support children who are unable to support themselves, a maintenance order for the maintenance of a child is directed at the enforcement of the common law duty of the child's parents to support that child, as the duty in question exists at the time of the issue of the maintenance order and is expected to continue.

(2) The duty extends to such **support as a child reasonably requires for his or her proper living and upbringing**, and includes the provision of **food, clothing, accommodation, medical care and education**.



COMPONENTS OF THE SPOUSAL MAINTENANCE CALCULATION

-  Capitalised value of reasonable past and future living expenses
-  Less Benefits due to the claimant due to the death of the deceased
-  Less Value of the claimant's means from which to cover living expenses
-  Less Other adjustments
-  The amount in the estate places a boundary on the claim







CAPITALISED VALUE OF REASONABLE PAST AND FUTURE LIVING EXPENSES

Reasonability


-  Take deceased spouse's income into account
-  Schedule of living expenses → check for reasonability


Calculation


-  The capitalised value of future expenses/costs payable is determined using the **actuarial present value method**
-  Each item is projected forward using the **inflation rate applicable** (e.g., price, earnings, medical, medical aid inflation)
-  The projected value is adjusted for **probability of claimant surviving** to that date (SA Life Tables; ignored for children)
-  Then **discounted back with investment return**


CAPITALISED VALUE OF REASONABLE PAST AND FUTURE LIVING EXPENSES (CONTINUED)

Calculation (Continued)

 The **investment return** represents the return that the claimant would need to invest the capitalised value at, in order for all future expenses/costs to be provided for.

 The resultant capitalised value is referred to as the **expected net present value** of the future expenses/costs.

 **Past expenses/costs** from a source/report before the calculation date are **inflated to today's money terms**.

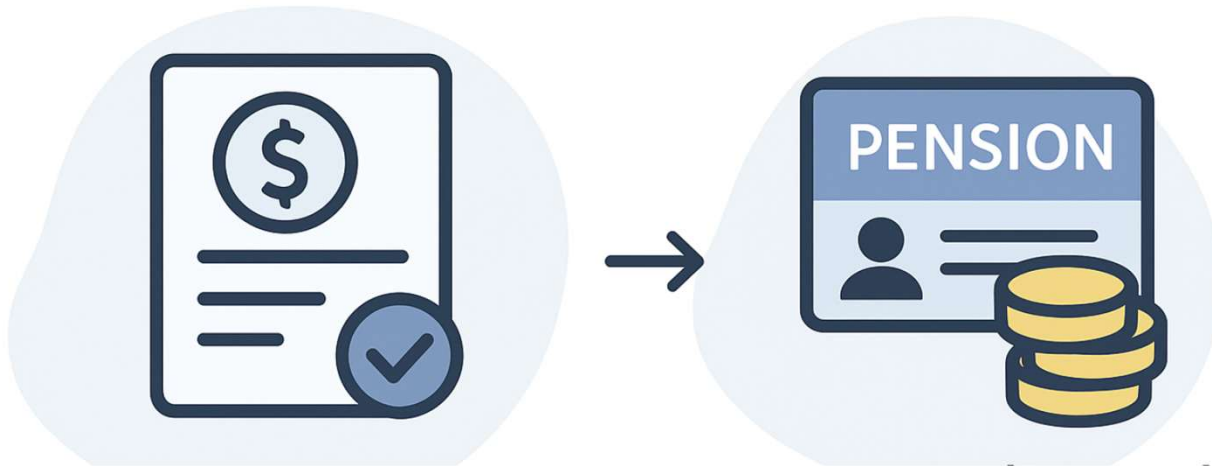
 The **investment return is not applied** to expenses/costs that occurred between the report date and the calculation date.

LESS BENEFITS DUE TO THE DEATH OF THE DECEASED

 Insurance payouts not yet received






 Pension payouts not yet received

➔ If monthly pension, take **mortality** and **taxation** into account






LESS VALUE OF THE CLAIMANT'S MEANS FROM WHICH TO COVER LIVING EXPENSES

Assets, including investments

-  Market values
-  Rights, trusts
-  Retirement Funds and **Living annuity (to be discussed)**
-  Some assets excluded if they meet a need (e.g., home)
-  Accrual claim

Earnings capacity

-  Capitalised value of future earnings
-  Taking into account current earnings, inflation, promotions, mortality, investment return
-  Industrial psychologist report

AMOUNT IN THE ESTATE

 Places a boundary on the claim

 L&D account

 Proportionate adjustment might be required



LIVING ANNUITIES IN SOUTH AFRICAN CASE LAW

Early Recognition

De Kock v Jacobson (1999) – Accepted actuarial capitalisation of future maintenance → foundation for income-based valuation.

Key Legal Shifts – Income Right Included in Estate for Purposes of Calculating Accrual

ST v CT (2018) – Valuation depends on **life expectancy & drawdown**, not insurer capital.

Montanari (2020) – Capital excluded, but **income right = patrimonial asset**, must be valued.

Maintenance Enforcement

Volker v Volker (2021) / I L v S L (2023) – Courts authorised **attachment of annuity income** to enforce maintenance.

Regulatory Gaps & Discretion

Groenewald v Momentum RA Fund (2022) – Trustees may override nominations.

C.N.N v N.N (2023) – Exit strategies to avoid pension interest flagged as abusive.

Emerging Principle

Courts prioritise **economic function over legal form** → income rights treated as enforceable patrimonial assets even if capital is inaccessible.

LIVING ANNUITIES IN DIVORCE, MAINTENANCE & ESTATE VALUATION

Core Issue

Living Annuities are widely used for post-retirement income in South Africa, but their valuation in **divorce, maintenance, and death** remains unsettled.

Legal Complexity

Not considered “*pension interest*” post-retirement.

Contractual

Capital legally belongs to the **insurer**, not the annuitant.

Flexible

Annual drawdown between **2.5% – 17.5%**.

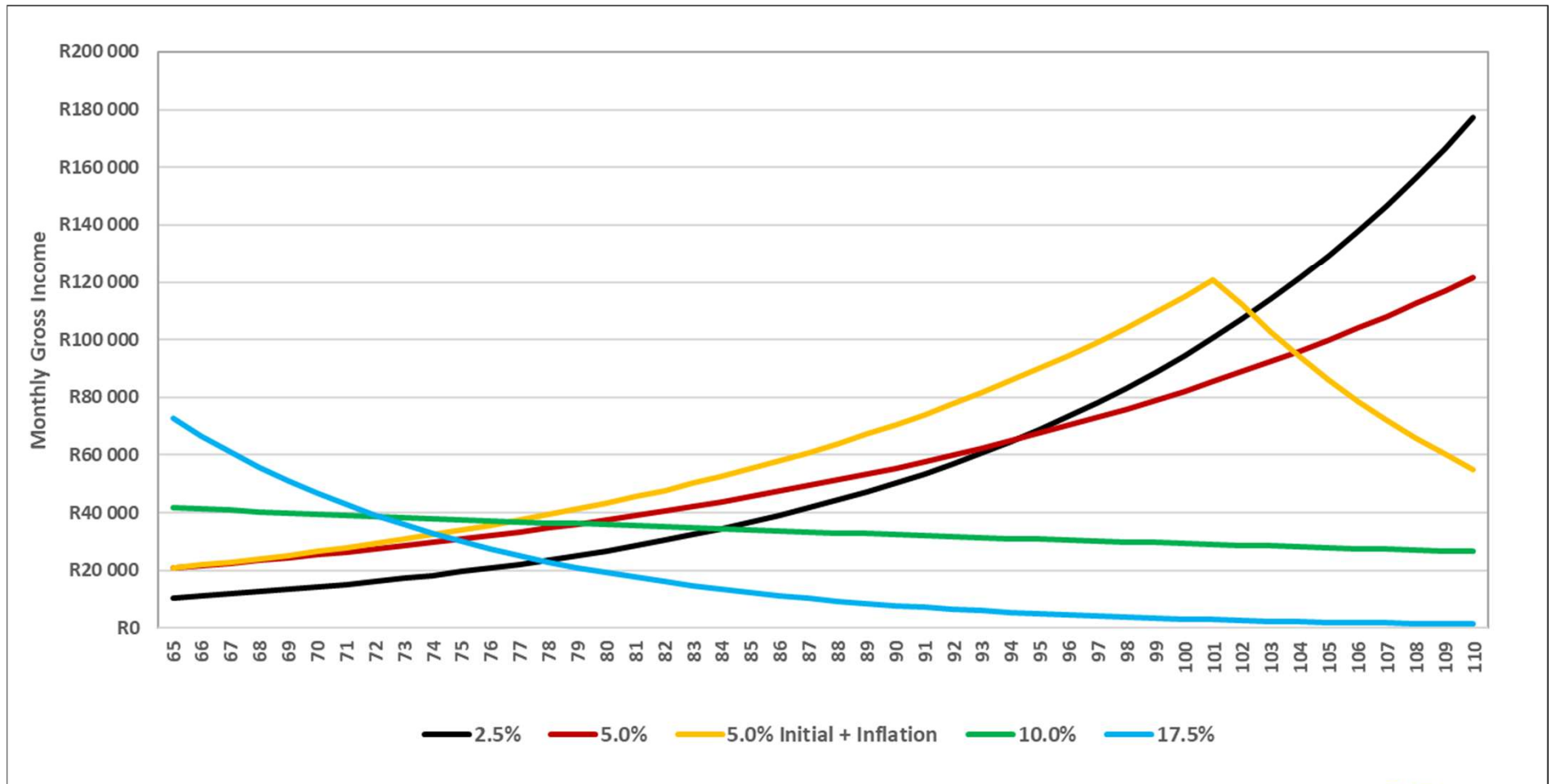
Dual Purpose

Provides **income for life** and leaves a **death benefit**.

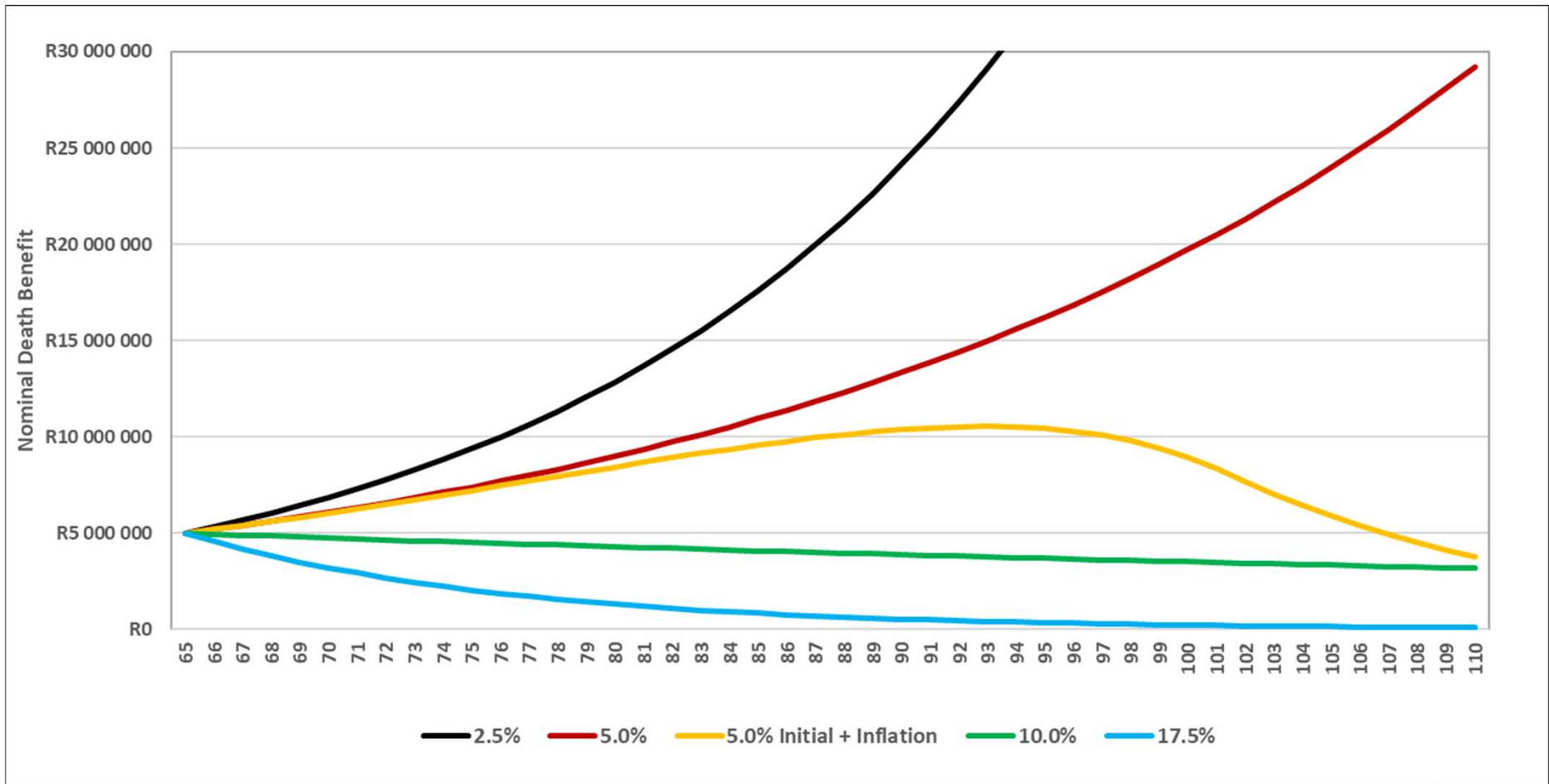
Valuation Challenge

No fixed capital value → depends on: drawdown behaviour, survival probabilities, investment & tax assumptions.

DIFFERENT DRAWDOWN RATES HAVE DIFFERENT INCOME PROFILES

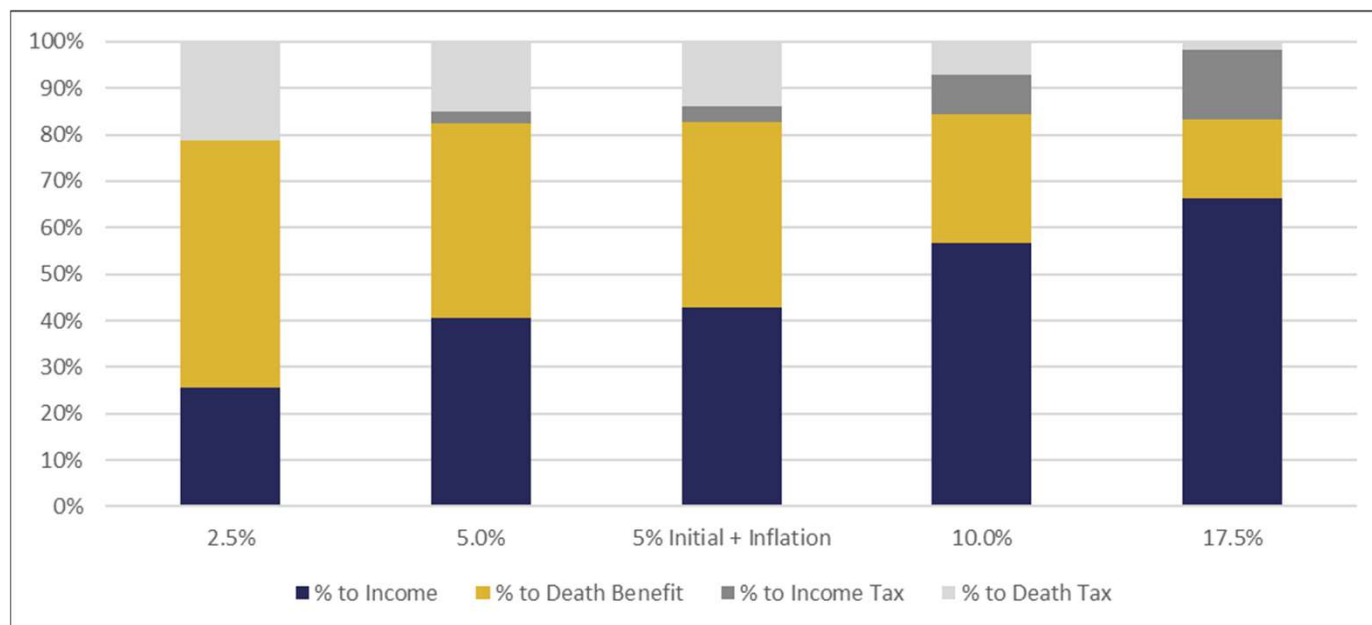


DIFFERENT DRAWDOWN RATES HAVE DIFFERENT DEATH BENEFIT PROFILES



DIFFERENT DRAWDOWN RATES LEAD TO DIFFERENT VALUATIONS

Drawdown %	Capital Amount	EPV of Gross Income	EPV of Net Income	EPV of Gross Death Benefit	EPV of Net Death Benefit	% to Income	% to Death Benefit	% to Income Tax	% to Death Tax
2.5%	R5 000 000	R1 274 200	R1 273 900	R3 725 800	R2 656 762	25%	53%	0%	21%
5.0%	R5 000 000	R2 164 100	R2 033 300	R2 835 900	R2 087 226	41%	42%	3%	15%
5% Initial + Inflation	R5 000 000	R2 306 000	R2 145 300	R2 694 000	R1 996 410	43%	40%	3%	14%
10.0%	R5 000 000	R3 257 800	R2 826 900	R1 742 200	R1 387 258	57%	28%	9%	7%
17.5%	R5 000 000	R4 055 300	R3 311 600	R944 700	R857 931	66%	17%	15%	2%



SO WHICH DRAWDOWN RATE SHOULD BE USED?

Align with Legal Purpose

Different contexts → different valuation answers.

Clarify the Objective

Income replacement? Estate equalisation? Fair division?

Understand the Entitlement

What is the claimant legally entitled to — income vs legacy.

Compare Across Drawdown Rates

Testing scenarios (2.5%–17.5%) shows how outcomes shift.

The coming research paper sets out a structured framework...

Accrual System (Matrimonial Property Act 88 of 1984)

When It Applies

All marriages out of community of property (post-1984) **with accrual included**, unless explicitly excluded in the antenuptial contract (s2).

How Accrual is Calculated

Accrual = Net value of estate at dissolution **minus** net value at commencement (s4).

Adjusted for inflation using CPI.

Damages (non-patrimonial), excluded assets, inheritances/legacies/donations do not count (s4–5).

Proof of Commencement Value

Must be declared in the ANC or within 6 months (notarially recorded); otherwise deemed **nil** (s6).

At Dissolution

Spouse with smaller/no accrual has a claim for **half the difference** between the two accruals (s3).

Accrual is determined before giving effect to inheritances or wills in a deceased estate (s4(2)).

Court Powers

May order immediate division if rights are prejudiced (s8).

Accrual rights can be forfeited on divorce if just (s9).

Court can defer satisfaction of an accrual claim with conditions (s10).

ACCRUAL CALCULATIONS

Matrimonial Property Act (number 88 of 1984)

Accrual Calculation		
	Husband	Wife
Current value of Assets	R11 759 948	R 6 574 653
Less Exclusions	R -	R -
Plus Policies	R -	R -
Less Liabilities	R -	R -
Current net value of respective estates	R11 759 948	R 6 574 653
Commencement value (CPI 41.74)	R 3 156 000	R 1 377 809
Adjusted commencement value (CPI 97.02)	R 7 335 905	R 3 202 622
Current net estate less adjusted commencement value	R 4 424 044	R 3 372 031
Divisible accrual (difference between spouses)		R 1 052 012
Accrual claim in favour of wife (1/2 of divisible)		R 526 006

EB and Another v ERK and Others; KG v Minister of Home Affairs and Others (Constitutional Court, 10 Oct 2023)

Background:

Section 7(3) of the Divorce Act (1979) allowed a redistribution order only where spouses were married out of community of property before 1 Nov 1984 (i.e. before accrual was introduced).

Couples who chose “out of community excluding accrual” after 1984 (and those whose marriages ended by death) could not apply for redistribution, no matter the contributions.

Facts: Two cases (EB and KG) were consolidated:

EB: wife sought redistribution at divorce after decades of contribution to a marriage without accrual.

KG: widow sought redistribution after her husband’s death.

Court’s Findings:

The exclusion was unconstitutional as it unfairly discriminated against spouses (often women) who contributed non-financially (childcare, home, support).

Remedy: extend s 7(3) to all marriages out of community excluding accrual, regardless of date.

Remedy also applies on death, via “reading-in” to the Matrimonial Property Act.

Order:

Declaration of invalidity suspended for 24 months (to 10 Oct 2025) to let Parliament legislate.

Interim relief available: courts may grant redistribution orders immediately.

Key Principle:

Redistribution must reflect equity and contribution, not technical form of ANC.

General (Family) Laws Amendment Bill (B20-2025)

Purpose:

To give legislative effect to EB/KG and permanently align the Divorce Act and Matrimonial Property Act with the Constitution.

Key Amendments:

Amends s 7(3)(a) of the Divorce Act: extends redistribution remedy to all ANC's excluding accrual, regardless of marriage date.

Amends the Matrimonial Property Act: extends redistribution to marriages dissolved by death, not just divorce.

Clarifies standing: claim may be brought by the surviving spouse or the executor on behalf of the estate.

Scope:

Redistribution claims apply in both divorce proceedings and estate winding-up.

Estates finally wound up before 10 Oct 2023 remain unaffected.

Policy Rationale:

To ensure spouses who contributed financially or non-financially to building the estate are not left destitute because of the ANC chosen.

To close gender-bias gaps where women were historically excluded from sharing in wealth.

Status (Aug 2025):

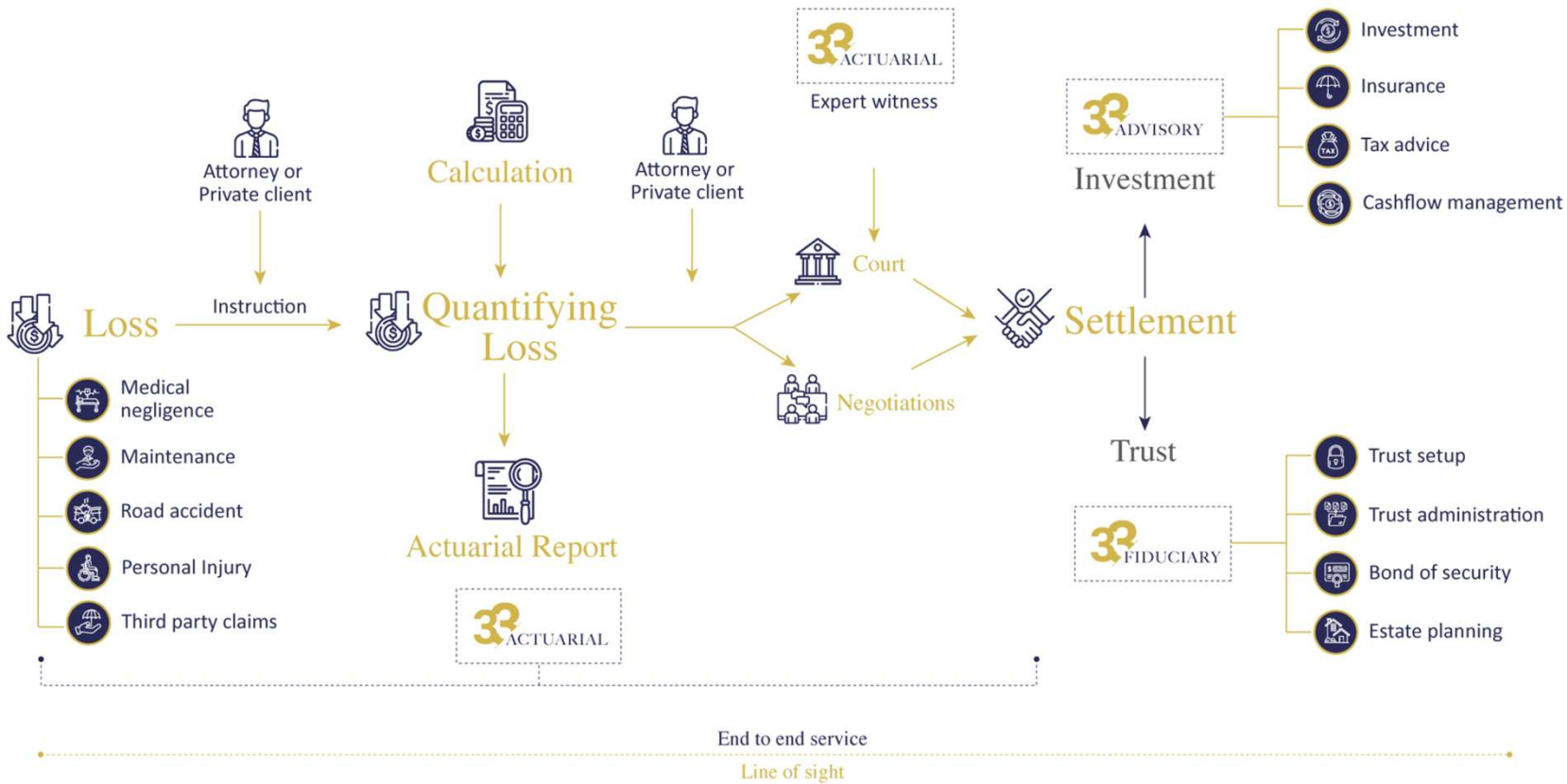
Bill has been tabled but not yet enacted.

Expected to pass before the suspension deadline (10 Oct 2025), making redistribution claims permanently available in divorce and death contexts.

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