

# KOCH Consulting Actuaries cc

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## NEWSLETTER

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### Vital statistics:

CAP determination 31 January 2021:	R299154
CPI year-on-year to April 2021:	4,4%
RSA long bond yield May 2021:	7,3%
Real rate of return (7,3 less 4,4):	2,9%
FNB Property Index April 2021 (y/y real):	0,1%

**Loss of support:** in *RAF v Mohohlo* 2018 (2) SA 65 (SCA) an aunt of the deceased was awarded damages for loss of support. The evidence showed that there had been a *de facto* adoption by the aunt to place her *in loci parentis* and that she had been sufficiently lacking in means to be described as “indigent”. This is but one more example of the extension of liability for damages for loss of support. Once upon a time not so long ago such claims were only allowed to dependants who could demonstrate that the deceased had had a common-law duty to provide support. Adoption had to be by way of formal adoption. Nowadays same-sex relationship dependency is recognised for compensation purposes (*Paixão v RAF* 2012 (6) SA 377 (SCA)); compensation has been awarded to a fiancé (*Kriek v RAF* (529/2019) [2020] ZAFSHC 42 (5 March 2020)); to stepchildren (*Thibela v Minister van Wet en Orde* 1995 3 SA 147 (T)); to a child adopted by Bantu customary law (*Kewana v Santam* 1993 4 SA 771 (TkAD)); and to a “common-law” unmarried wife (*Verheem v RAF* 2012 2 SA 409 (GNP)).

**The POPI Act:** We are now required to appoint an “information officer”. This must be registered by 1 July 2021 (notwithstanding that the Government website does not work). As an actuary I receive volumes of personal details by way of reports by medico-legal experts. Most of this information I do not need. I am comforted by the knowledge that my instructing attorney is the “responsible party” but that does not relieve me of the duty to act responsibly. It is arguable that an attorney should extract the actuarially relevant information from the expert reports and send only the extracted material to the actuary. That is the spirit of the POPIA. Should I destroy all documents once I have fulfilled my mandate? Answer is no. I need to keep them on hand for the calculation updates that frequently ensue and as reference should I be called to testify in Court. RAF claims can take 10 and even 15 years to finalise. Then there can be a claim for professional negligence that extends further the need for the documentation. My customers who have signed a fees agreement are subject to a 6-year period of prescription so for unpaid fees I need to keep details of work done for at least 6 years and beyond. In all my 40+ years of doing damages assessments the only complaints as regards release of information have been occasional errors with the

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release of confidential trial reports. My files server has been corrupted on one occasion, but there was then no evidence of a data breach and it was not a ransomware event. Good luck to any hacker who does achieve a data breach. A large volume of my data involves poorly legible photocopies with zero market value on the dark web. We do keep hackproof backup files off site.

**The victim in utero:** It has long been the law as regards an unborn child that if the breadwinner is killed the right of the child to claim loss of support is kept alive until the child is born, the *nasciturus* fiction from Roman law. This sensible approach notwithstanding the RAF has seen fit to waste good money on legal fees to argue that if a foetus has been injured *in utero* then the child does not have a right to claim damages for personal injury. In *RAF v Mtati* 2005 (6) SA 215 (SCA) it was ruled that the child does have a right of action. There may of course be issues with causation, that is another matter. Then there is the other twist: may a child claim damages from the mother or father for harm caused while *in utero* by smoking, drinking, irresponsible sexual conduct, or domestic violence?

**Deaths attributed to COVID:** The SA Medical Research Council reports weekly deaths in South Africa as reported to the Department of Home Affairs (<https://www.samrc.ac.za/reports/report-weekly-deaths-south-africa?bc=254>).

The table below reflects deaths FROM ALL CAUSES, not just COVID. There is good reason to believe that the peaks reflect the impact of COVID, mostly on those persons with co-morbidities but also on non-Covid medical conditions (such as TB and bleeding ulcers) that did not get proper care due to the panic in favour of COVID patients. Many youngsters who get infected with COVID do not even know they have got it. It is the overweight, and those with diabetes who are most vulnerable. Analysis of sewage indicates that some 60% of the SA population has already been infected. The lockdown strategies of Government have been at massive cost to the economy. COVID deaths have been reported *ad nauseum* (56363 to 31 May 2021) with never a word being said about the lethal consequences of tuberculosis and HIV which cause as many if not more deaths year after year. Do these deaths matter less than COVID deaths?

Report on Weekly Deaths in South Africa

