

Contingencies Agenda

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- 1. Background
- 2. Factors to consider
- 3. Direct vs indirect loss
- 4. Summary & Actions
- 5. Q & A



“We strive to provide our clients with precise, relevant and actionable solutions of the same quality and in the same manner as we demand to receive from others when we are the client.”

Quotes from case law and Koch thesis

- “uncertain circumstances of a positive or negative nature which, independent of the claimant’s conduct would probably influence their health, earning capacity”
- “cannot, of course, be assessed on any logical basis: the assessment must be largely arbitrary”
- “deduction for contingencies will increase with the lengthening of the period of risk”
- “suggest a formula of ½% per year of working life, for a person with only moderate job stability”
- “court remains of the opinion that statistics should not be regarded as the only determining factor”

01

Background

Some basic principles

1. enables the court to give expression to its overall feelings about the basic actuarial calculation (which relies mostly on fact, instruction or an industrial psychologist)
2. if the basic inputs have been properly selected to evenly balance the chances of excess or understatement it is tempting to suggest that no deduction should be made
3. primary purpose of the adjustment is to allow for additional risk and uncertainty
4. applied to the total present value of earnings
5. exercise care that impact of accident is not brought into account twice – 1st by way of explicit allowance for reduced earnings, and again by contingencies

01

Background

Contingencies can:

1. apply to uninjured and injured earnings
2. apply to past and future periods
3. be positive or negative (certain factors)
4. increase or decrease the claim

	Uninjured Earnings	Injured Earnings	Loss of Earnings
Past	R500 000	R100 000	
<i>Less contingencies</i>	5%	0%	
	R475 000	R100 000	R375 000
Future	R5 000 000	R1 000 000	
<i>Less contingencies</i>	15%	25%	
	R4 250 000	R750 000	R3 500 000
	TOTAL LOSS OF EARNINGS		R3 875 000

02

Factors to consider

1. Employment History, Unemployed at Accident, Minor
2. Basic Salary, Fringe Benefits & Part-time Earnings
3. Severity of the Accident
4. Government Workers
5. Age / Length of Future Work Life
6. Saved (or extra) travelling expenses
7. Level of Education
8. Location
9. Early (or later) Retirement
10. Non-standard Life Expectancy
11. Promotions Lost / Delayed

Employment History, Unemployed, Minor

- Common to experience periods of unemployment, many factors
- Just lost a job in which they worked 20 years (stable), or in-between jobs at date of accident (erratic)
- Child or young adult who has never worked
- Consider potential vs likelihood
- Loss of support cases – many additional risks

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Factors to consider

02

Factors to consider

Basic Salary, Fringe Benefits & Part-time

- Unemployment insurance or sick pay often covers basic
- Overtime and commission subject to much greater risk
- Part-time / self-employed earnings too
- Employees protected by insurance is subject to less risk
- Generous fringe benefits lowers risk, often unaffected by the accident
- Medical aid, pension

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Factors to consider

Severity of the Accident

- Often measured by WPI (whole person impairment)
- Subjective and differs by specialist (often related to their field)
- Can guide amount of general damages
- Influence suitable contingency differential when no direct loss is predicted, but depends largely on career
- Impact on earnings should rather be allowed for explicitly

Government Workers

- Basic salary and most fringe benefits typically not affected directly after accident (exception overtime and shift allowances)
- Notches typically not affected, but promotions to different grades / roles might be
- Should explicitly specify the probable effect of injuries on earnings
- To simply apply higher contingencies is dangerous:
 1. unlikely that the government will retrench a disabled person given that they are not profit- & performance driven to the extent of private sector
 2. generous ill-health benefits available on medical boarding
 3. benefits like medical aid & home-owners allowances unlikely to be affected

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Factors to consider

Age / Length of Future Work Life

- Very relevant consideration
- Younger victim = longer period over which uncertainties of life will operate
- Greater uncertainty in assessing a claimant's likely career path
- Depends largely on the factor being considered
- Impact of losing current job very sensitive to age & period until it happens
- Table below shows impact of 50% chance of becoming unemployed 5 or 10 years from now:

	5 years	10 years
age 20	41%	33%
age 30	39%	30%
age 40	36%	25%
age 50	30%	13%

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Factors to consider

Saved (or extra) travelling expenses

- Not saved by a victim who continues to work
- Can be offset by the costs of travelling to obtain medical attention
- Not recommended that this be addressed via contingencies – consider % of earnings spent on travel between:
 1. informal labourers who often commute long distances by train and taxi
 2. higher income workers who live close to work

Level of Education - unemployment

- Large correlation with unemployment (and age)

THE UNEMPLOYMENT RATE AMONG THE YOUTH IS HIGHER IRRESPECTIVE OF EDUCATION LEVEL

Unemployment rate by education level and age group, Q1:2019

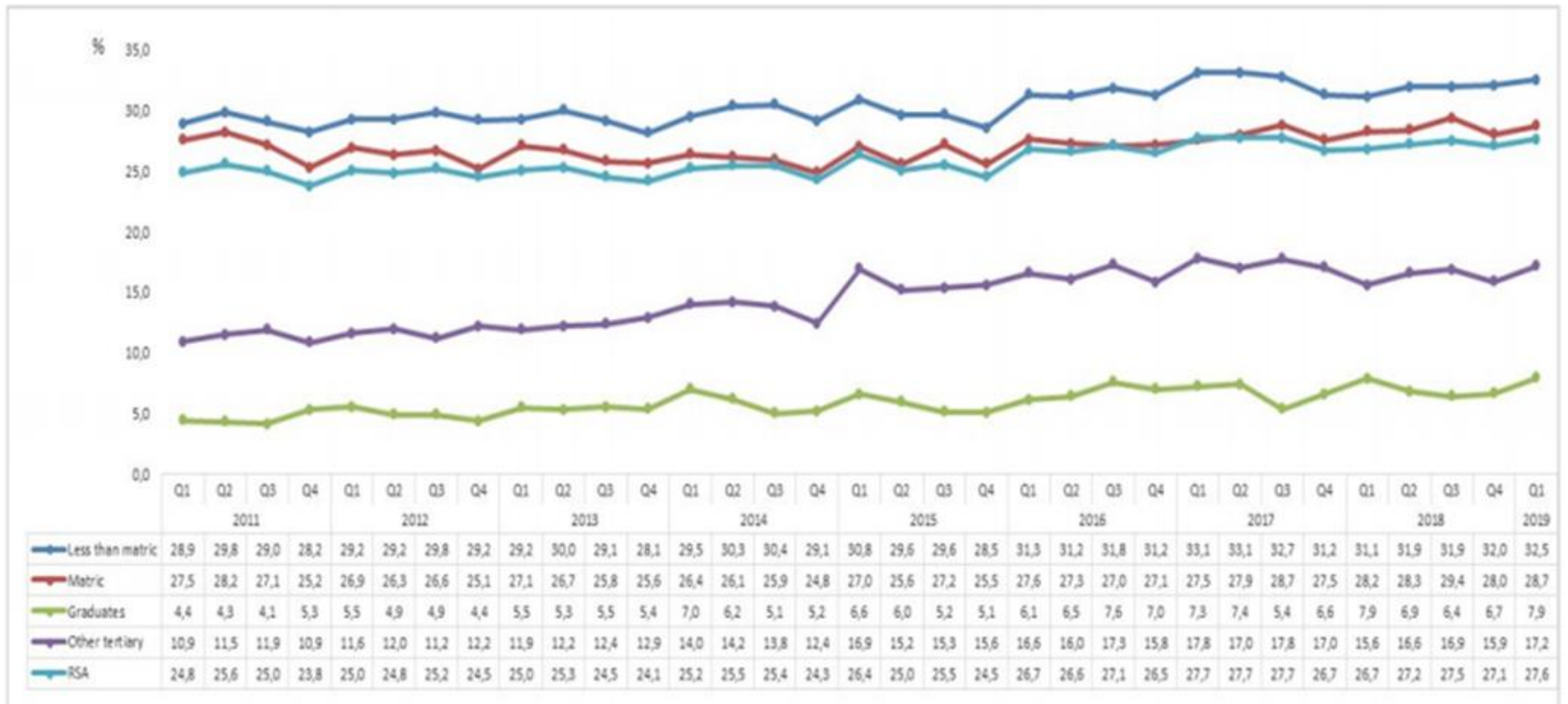
● Change: Percentage points Q4:2018 to Q1:2019



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Factors to consider

Figure 14: Unemployment rate by education status, Q1: 2011 to Q1: 2019



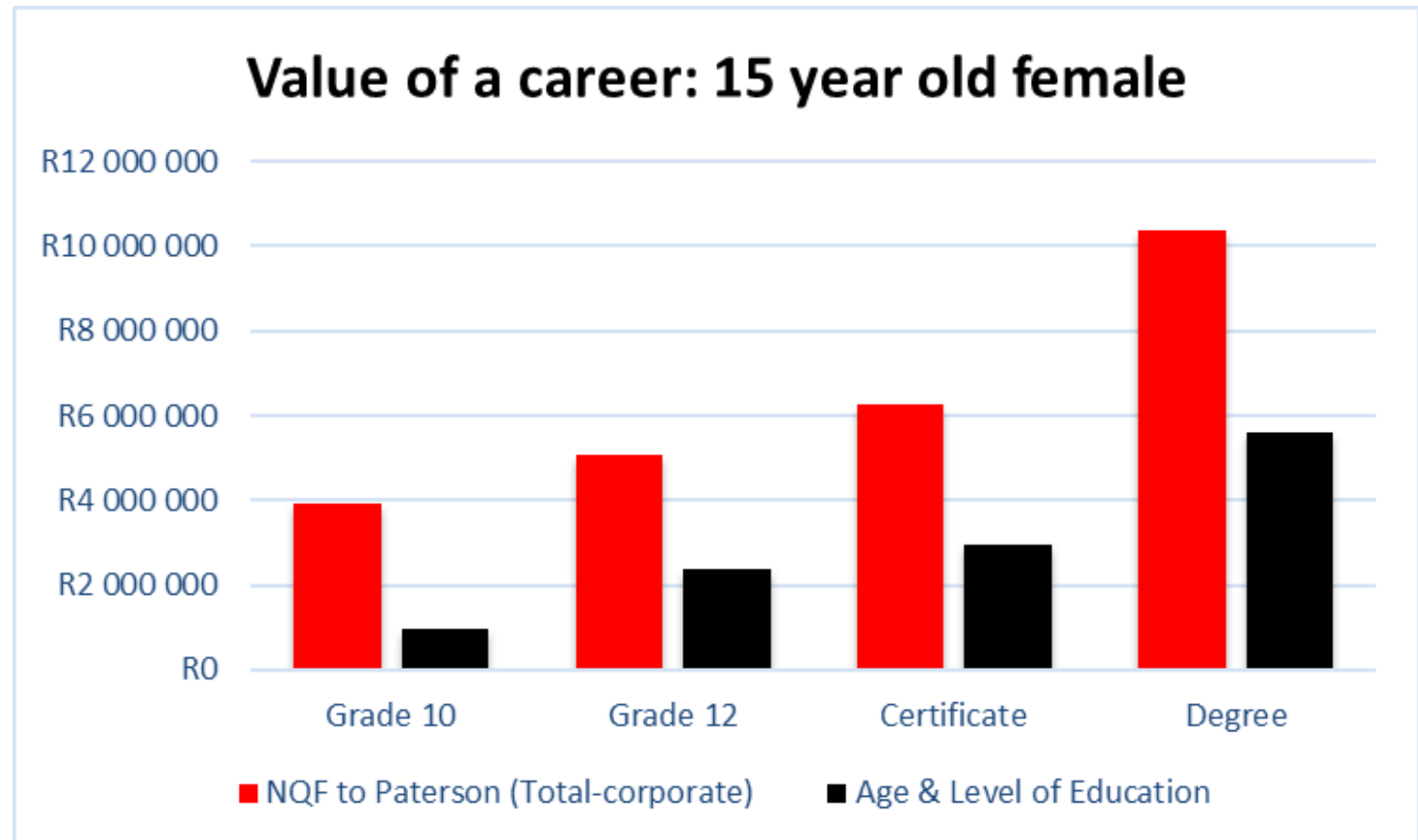
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Factors to consider



Level of Education – career of a minor

- Significant impact on earnings, regardless of earnings model used
- Contingencies cannot be used on single career suggested for a minor
- Most likely level, suggest alternative career





Level of Education – other factors

- Table below shows impact of some other factors for a 15 year old claimant
- Much smaller impact than level of education itself, implies such additional uncertainties may be addressed via contingencies

	5 year early retirement	5 year delay ceiling	1 year delay entry
Grade 10	6.6%	2.2%	3.9%
Grade 12	6.6%	2.4%	3.9%
Certificate	8.0%	2.9%	4.2%
Degree	8.5%	4.3%	4.3%

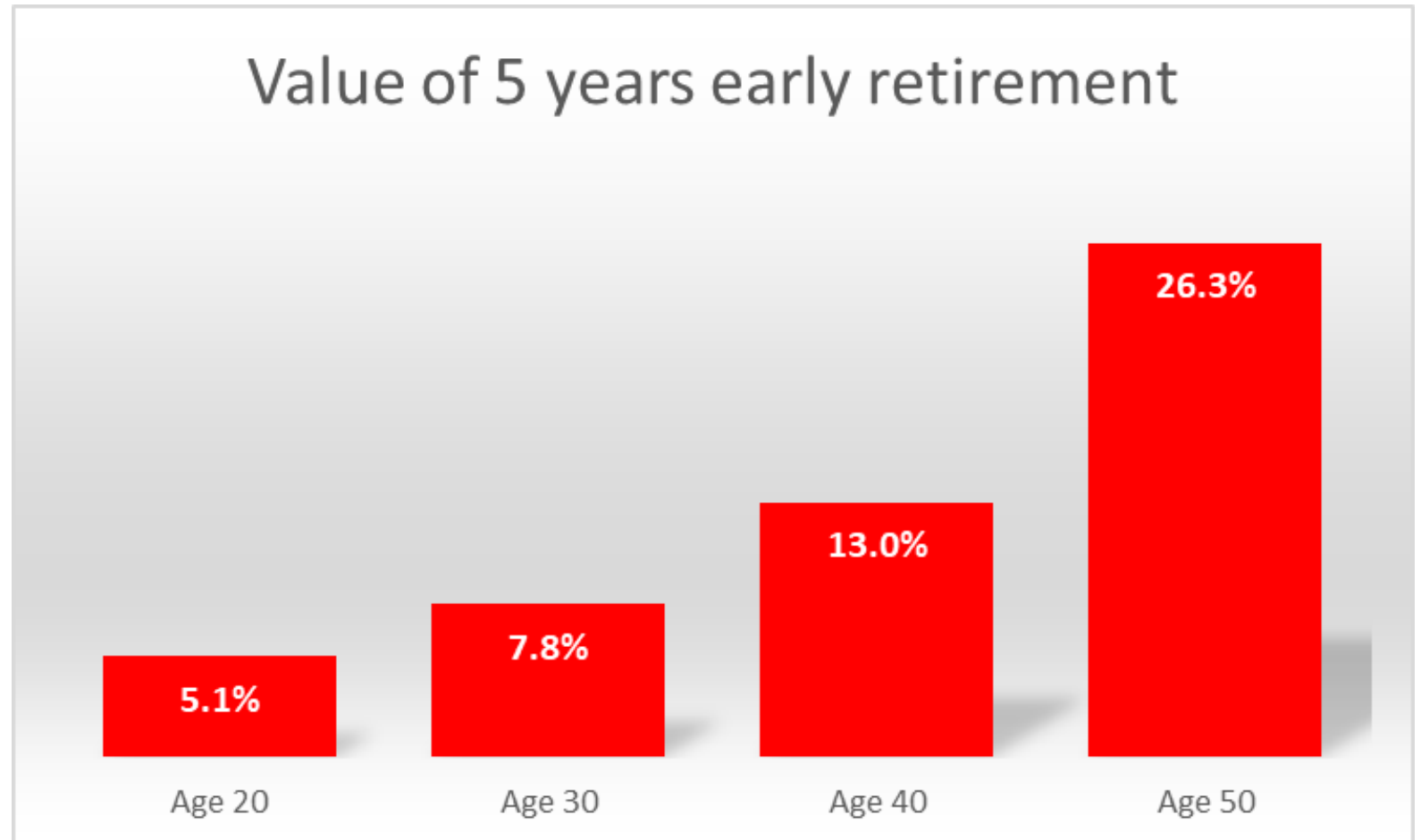
Location

- Significant impact, but people can move – hard to allow for
- Also consider urban vs rural, or cities in any province

Province	Unemployment rate
Western Cape	19.5%
Eastern Cape	37.4%
Northern Cape	26%
Kwazulu-Natal	25.1%
Free State	34.9%
North West	26.4%
Gauteng	28.9%
Mpumalanga	34.2%
Limpopo	18.5%

Early (or late) Retirement

- Heavily correlated with age, contingencies cannot be used



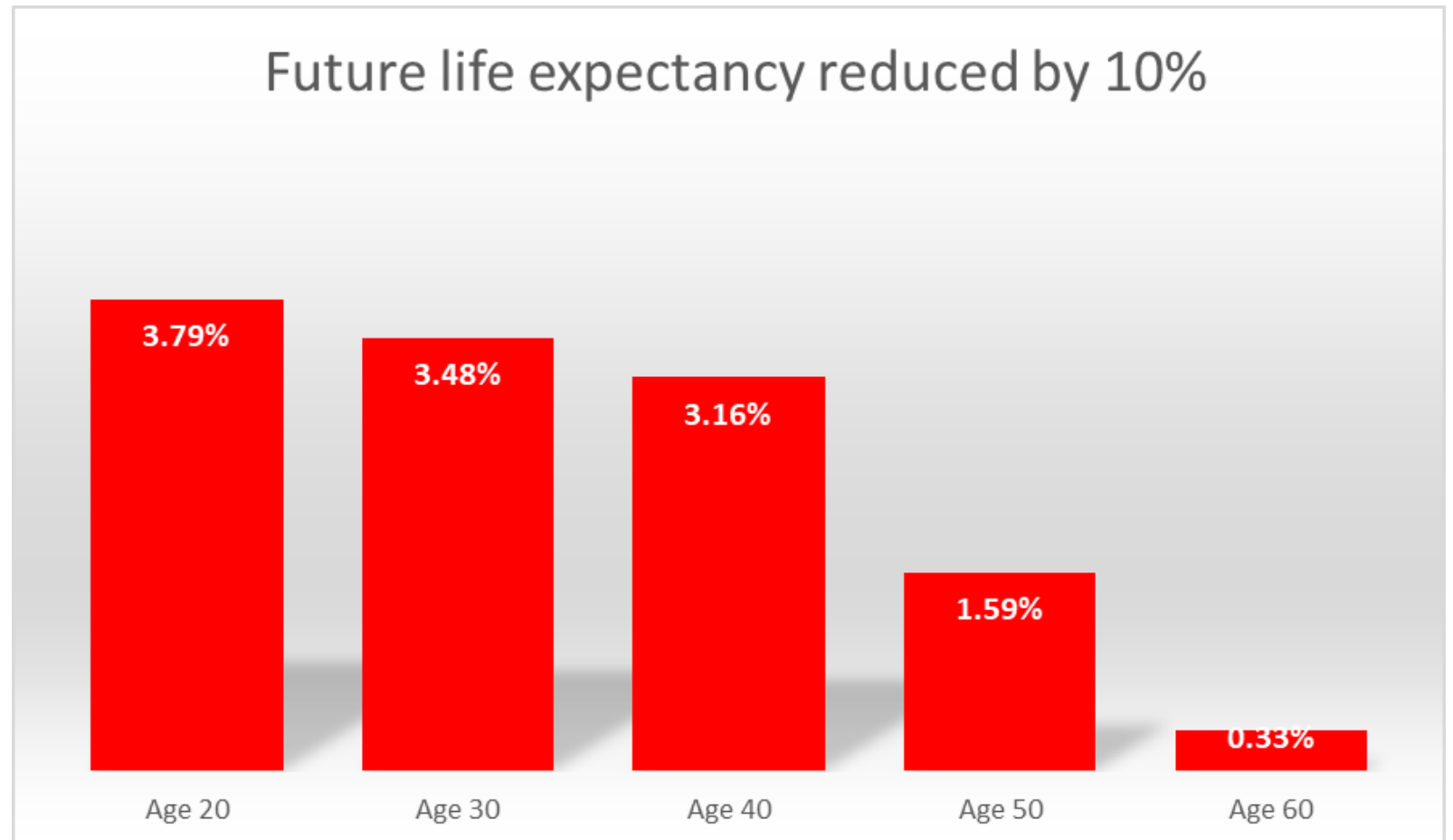
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Factors to consider



Non-standard Life Expectancy

- Best allowed for explicitly, impact depends on age, condition & many factors



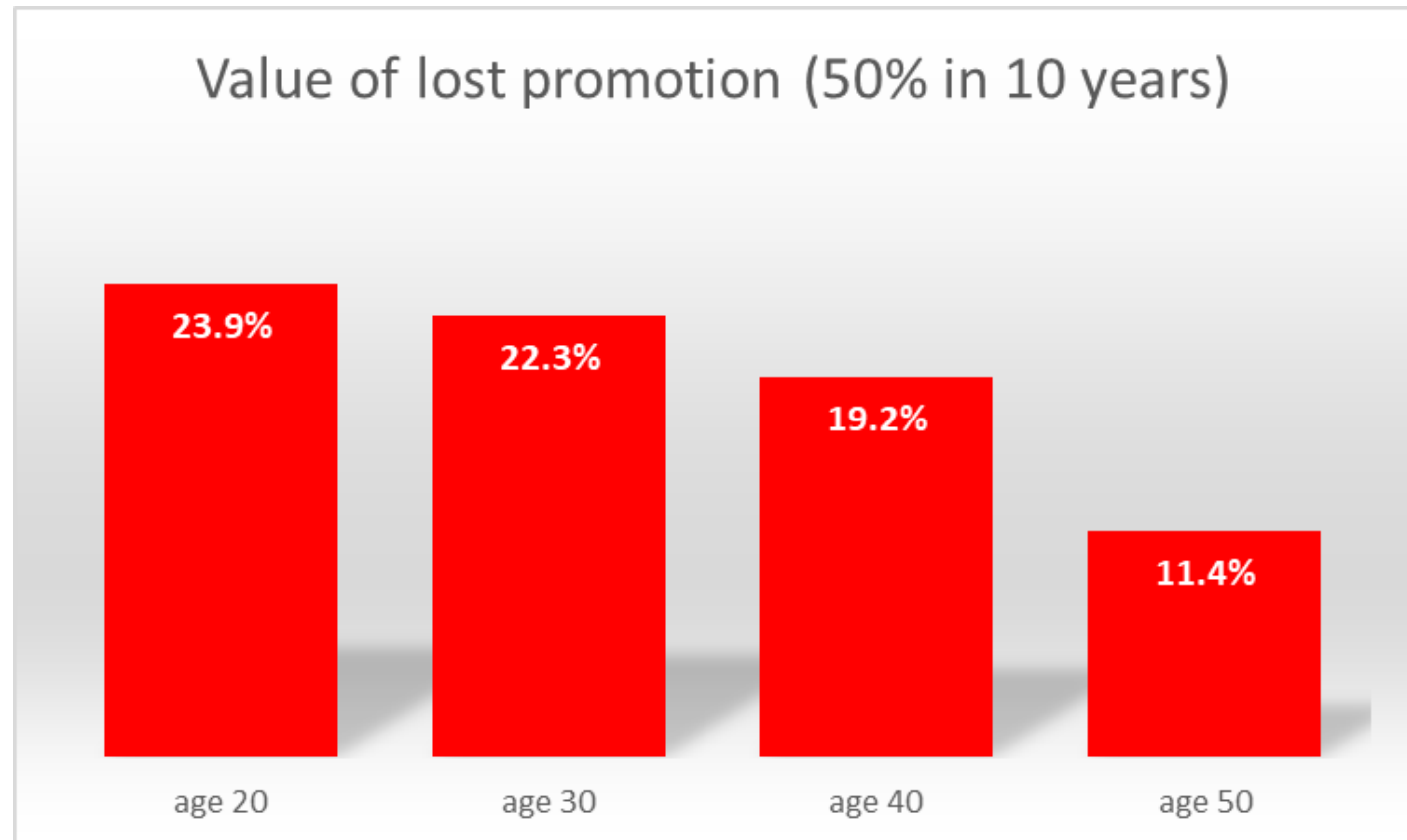
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Factors to consider



Promotions Lost / Delayed

- Strong correlation with age, value of promotion – contingencies not ideal
- Delay has small impact – 2.5 year delay has about 2% impact



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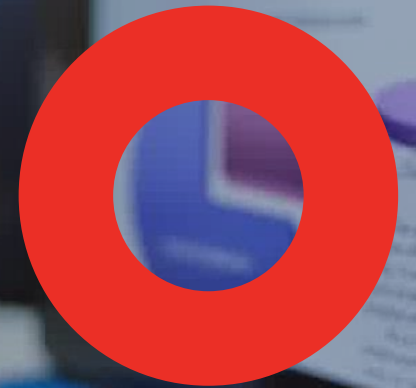
Factors to consider



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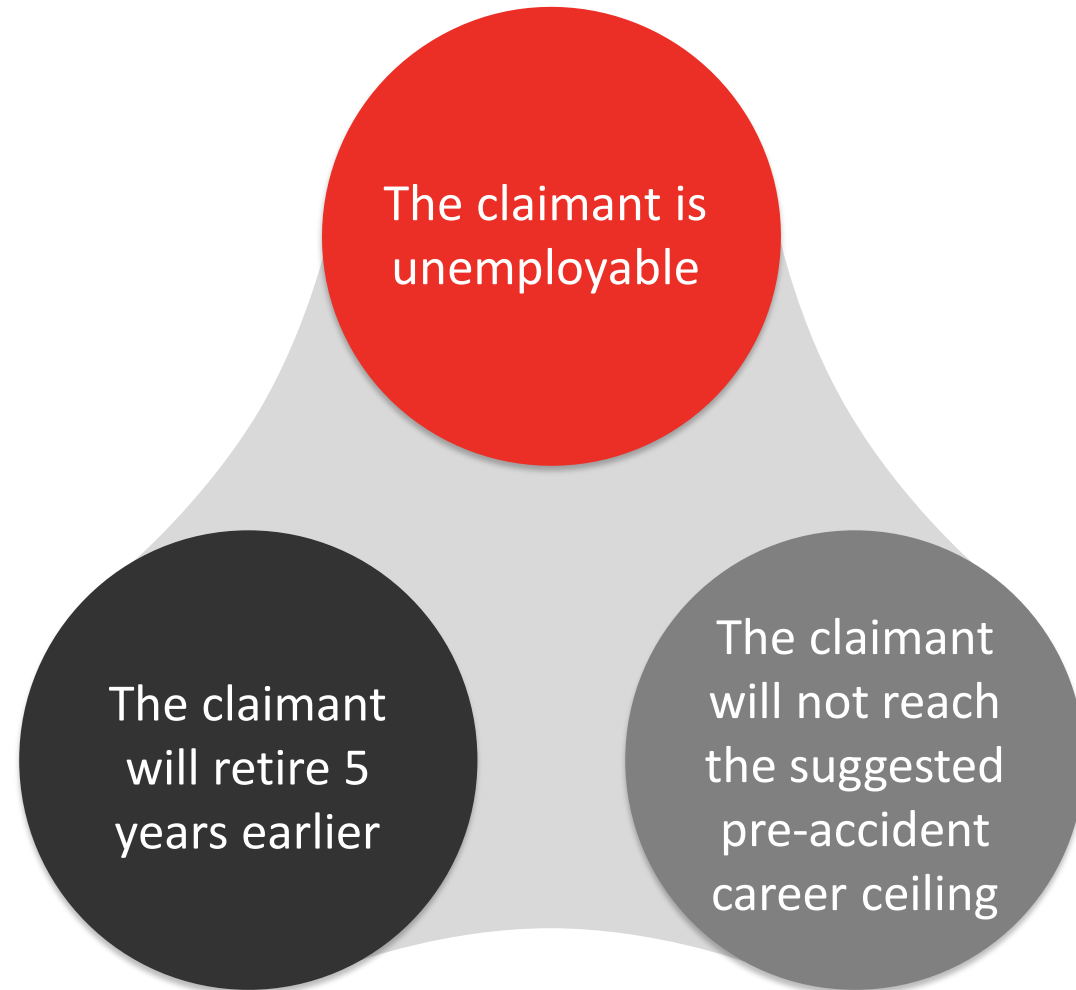
Direct vs indirect loss

And how contingencies are used



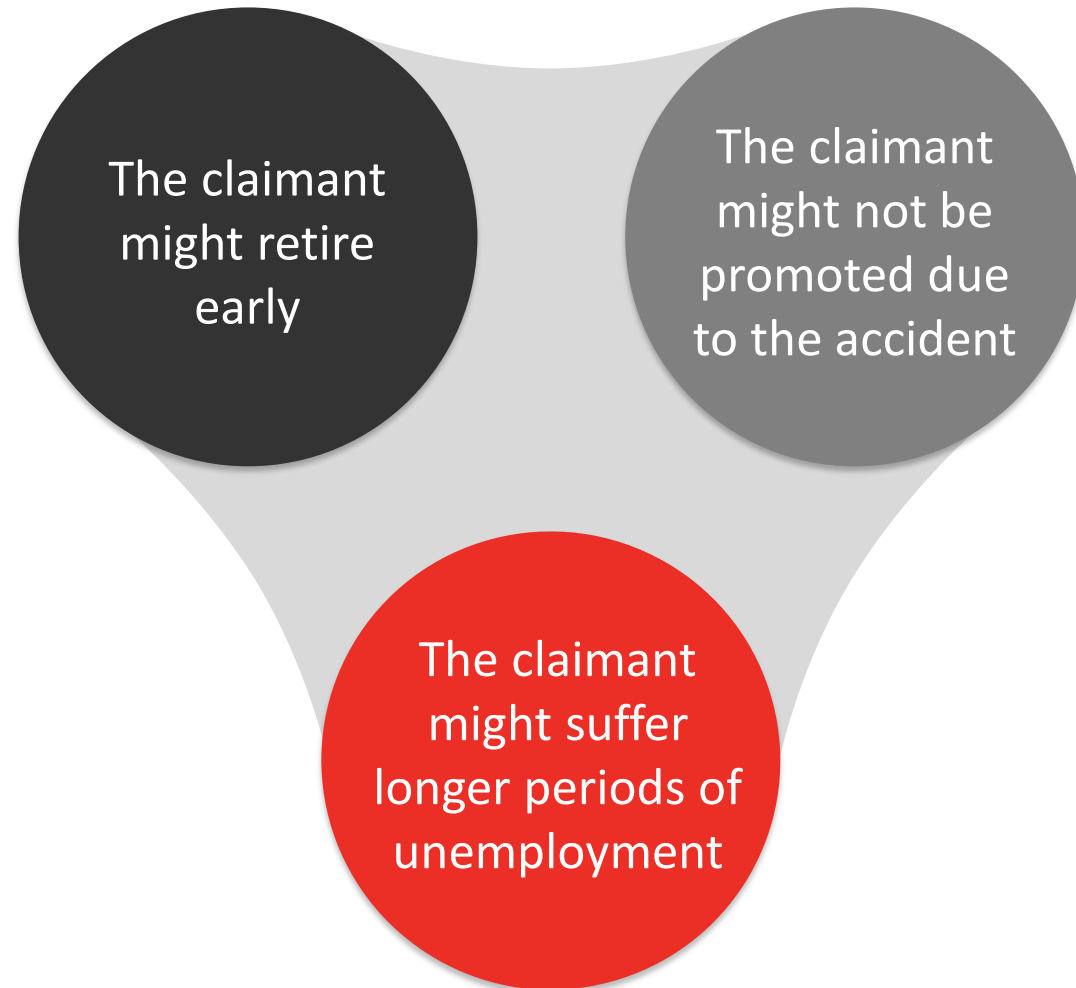
Direct & Indirect loss examples

Direct loss of earnings

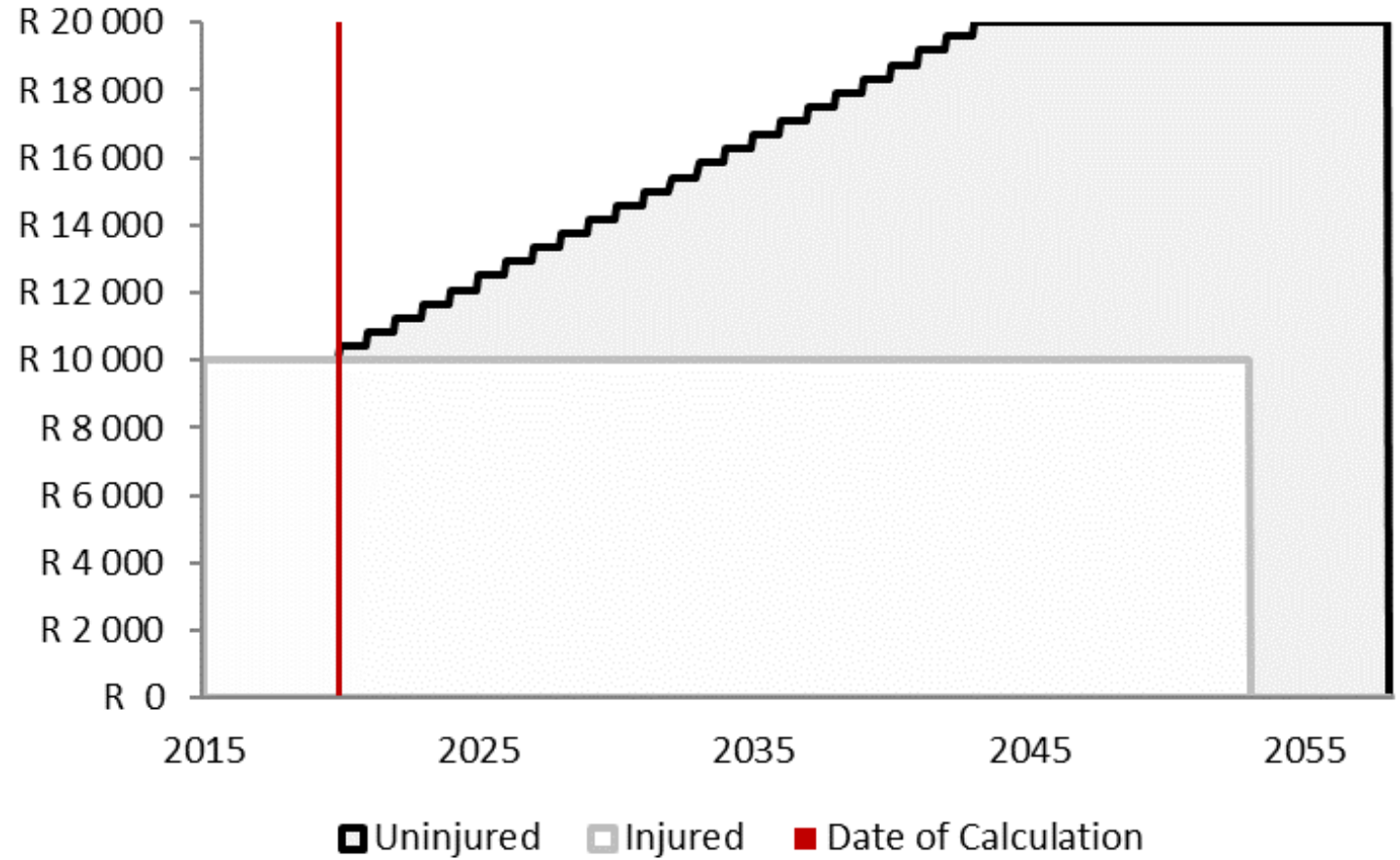


Direct & Indirect loss examples

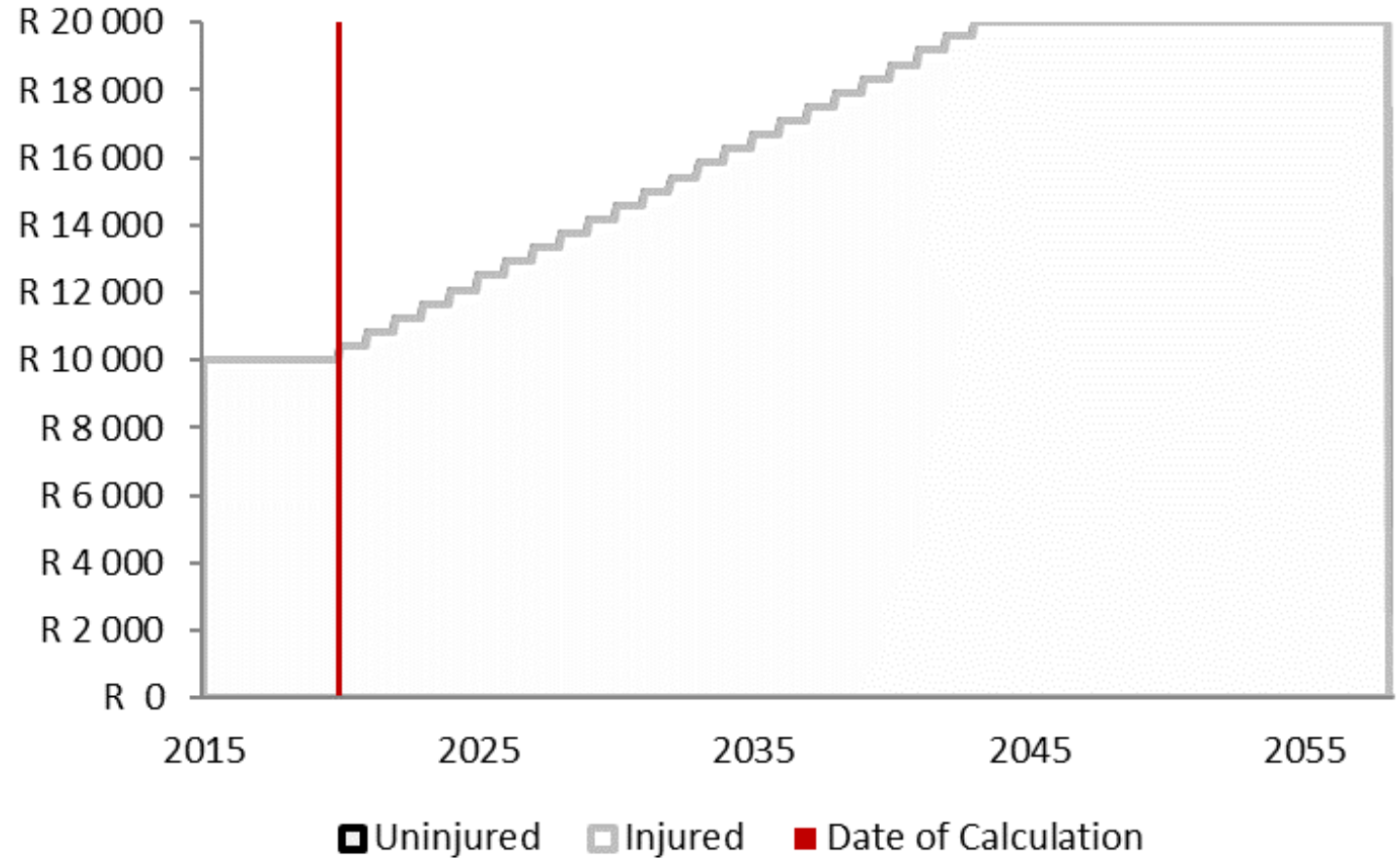
Indirect loss of earnings



Direct loss



Indirect loss



	Uninjured Earnings	Injured Earnings	Loss of Earnings
Future	R3 970 700	R2 459 300	R1 511 400
	TOTAL LOSS OF EARNINGS		R1 511 400

Direct Loss of earnings

	Uninjured Earnings	Injured Earnings	Loss of Earnings
Future	R3 970 700	R3 970 700	
<i>Less contingencies</i>		<i>10%</i>	
	R3 970 700	R3 573 630	R397 070
	TOTAL LOSS OF EARNINGS		R397 070

Indirect Loss of earnings

Some Practical Considerations

1. Very blunt tool to address most risks – large correlation with many factors (and interaction between)
2. “Standard RAF” contingencies mostly quite a poor starting point, n/a for many cases (especially Government)
3. Same for ½% per year to retirement (especially minors)
4. Tricky to suggest fair level, but experts can assist by commenting on certain factors in their field
5. Avoid “one size fits all” comments – rather allow for risks directly (chance of lower ceiling, early retirement, etc)
6. Beware of double counting (explicit impact & higher contingencies)

04

Summary & Actions

05

Q & A

