

More than 3.2 million South Africans may become spouses in 2023

By [Kenrick Newport](#), issued by [Capital Legacy](#)

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More than 3.2 million people in South Africa involved in life partnerships will breathe a collective sigh of relief at the news that Parliament has released the Judicial Matters Amendment Bill ("the Bill").



It is believed that the Bill will be tabled in Parliament this year and passed following a vote without debate.

When Parliament approves the Bill and the President signs it into law, life partners in a relationship intended to be permanent, will be included in the legal definition of "spouse".

The Western Cape High Court in October 2020 ruled that section 1 of the Intestate Succession Act, 81 of 1987 (ISA) is unconstitutional in so far as it excludes life partners in a relationship intended to be permanent from the definition of "spouse".

In December 2021 in *Bwanya v Master of the High Court, Cape Town and Others* [2021] ZACC 51, the Constitutional Court confirmed the ruling of the High Court.

Once the Bill is passed, persons in permanent life partnerships will be able to claim against the estate of their deceased partner for maintenance as well as inheritance.

With the definition expanded, life partners will be able to claim in terms of the Maintenance of Surviving Spouses Act, 27 of 1990, as well as the Intestate Succession Act, 81 of 1987, where there is no will of a deceased life partner.

Prior to this judgement, cohabiting couples did not enjoy the same rights as married couples.

The Bill in more detail

The Bill includes amendments to both the Intestate Succession Act, 81 of 1987, and the Maintenance of Surviving Spouses Act, 27 of 1990. The Intestate Succession Act has been amended by the addition of subsection (1A), which reads *“The word ‘spouse’, wherever it appears in this section, includes a partner in a permanent life partnership in which the partners have undertaken reciprocal duties of support.”*

The Maintenance of Surviving Spouses Act has been amended by the insertion of the definition of ‘marriage’ and ‘spouse’ for the purposes of the Act to include *“a permanent life partnership in which the partners undertook reciprocal duties of support.”*

A substitution in subsection (1) has also been included for the definition of ‘survivor’ which now means *“the surviving spouse in a marriage dissolved by death, and includes – the surviving partner of a permanent life partnership terminated by the death of one partner in which the partners undertook reciprocal duties of support and in circumstances where the surviving partner has not received an equitable share in the deceased partner’s estate.”*

The reciprocal duties are premised on the questions of need, ability and means to provide such support. This was the view of the Court and confirmed in *Oberholzer vs Oberholzer* 1947 (3) SA 294 (O).

In *Booyesen vs Minister of Home Affairs* 2001 (4) SA 485 (CC) the Constitutional Court upheld that legislation which prevents spouses from fulfilling their duties of support violates the dignity of both spouses.

The extent of such support largely depends on the means, need and standard of living of the spouses concerned.

Questions still unanswered

Deenisha Nadesan, Capital Legacy’s director of Fiduciary Services, points out that the challenge that might remain will be the onus of proof on showing that you are a “permanent life partner”. In the normal course of events, you would produce a marriage certificate.

Typically, when Capital Legacy declares a life partner for estate duty – SARS requests two affidavits from non-family members and other proof to allow this.

Deenisha notes that the courts will need to set precedent to show to what extent “reciprocal duties of support” will be accepted? For example, does a housewife who brought up the kids whilst the husband worked meet that definition?

Conclusion:

When passed into law, this Bill will have major implications on estates and maintenance. Life partners, accepted as spouses will have the right to claim against estates.



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One must remember though, that the decision to allow or dispute a claim against an estate lies with the executor, and those duties are not taken lightly. Many more disputes will likely arise, and some partners will have to take executors to court to prove their claims. Claims like this are usually in the millions and not be taken lightly.

To provide for your partner, the best solution remains a will!

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ABOUT THE AUTHOR

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