



Q(h)ubeka Trust Annual Report for the Year Ended 28 February 2018

Background

The Q(h)ubeka Trust was established in March 2016 in a legal settlement between attorneys representing ex AngloGold Ashanti mineworkers, Richard Meeran of Leigh Day & Company and Zanele Mbuyisa of Mbuyisa Neale Attorneys, and Anglo American South Africa Limited (AASA) and AngloGold Ashanti Limited (AGA). Registered by the Master of the High Court on 22 April 2016 it was the first trust of its kind established in South Africa to compensate mineworkers who have contracted silicosis as a result of gold mining activities.

As per clause 4 of the Trust Deed, the primary object of the Trust is to:

Provide compensation to Qualifying Claimants and Dependant Claimants in respect of Silica Related Diseases (SRD) on the basis set out in this Deed and in any event thoroughly, efficiently and reliably using personnel of expertise, skill and integrity.

In order to qualify for compensation a claimant must have worked at a Qualifying Operation (defined as those shafts/operations set out in Annexure A to the Trust Deed), for at least two years in aggregate (referred to as Qualifying Service), and have an SRD as defined in the Trust Deed.

As per Clause 15 of the Trust Deed the Trust:

Shall endure for a period of 3 years following the expiry of the Qualifying Claims Period unless otherwise terminated by the Trustees earlier, or extended by the Trustees by written agreement with the Settlers.

The "Qualifying Claims Period" is the period within which Qualifying Claimants must have personally attended the medical testing facility for medical assessment and evaluation, and Qualifying Dependents must have lodged a claim with the Trust. The period is 3 years from the date of the Trust's registration with the Master of the High Court.

It is therefore a short term duration trust established to assess the claims of 4365 claimants, which include deceased claimants.

Establishing the Claims Process

In order to give effect to the primary object the Trustees set up a network of medical service providers around South Africa and neighbouring states, where claimants were resident, to conduct the requisite medical tests to assess whether they had an SRD.

The primary objective of using local service providers was to be as close to the claimants as possible, as well as contributing to the development of skills in the diagnosis of occupational lung diseases in these areas.

There was an urgency to setting up this network and commencing with medical examinations due to the relatively short Qualifying Claims Period.

Independent panels of occupational health specialists and radiologists, known as the Consultative Occupational Medical Panel (COMP), were set up in Cape Town, Johannesburg and Durban to assess the medical records and arrive at a medical outcome in accordance with the criteria set out in the Trust Deed. The experience, expertise and skill of the COMP members, has greatly contributed to the claims assessment process.

With the objective of ensuring a fair and accountable process, the Trustees set up a procedure for claimants who were found by COMP not to have silicosis, to apply for these findings to be reviewed. An independent Review Committee was established which Committee consists of two occupational health specialists and one radiologist. Review Committee members are not COMP members.

Parallel to setting up the network of medical service providers and specialist panels, the Trustees set up a network of offices to assist claimants to lodge their applications with the Trust, thereby ensuring the accessibility of the claims process.

An actuary was appointed to draw up an award schedule within the parameters set out in the Trust Deed. The actuary reviews the claims projections and experience annually, or as otherwise required.

Challenges

Setting up the necessary systems to process claims in compliance with the Trust Deed was not without its challenges, some of which the Trustees continue to grapple with.

The medical process was more complex and more difficult than initially envisaged. Our medical specialists continue to grapple with the issue of TB and its impact on the diagnosis of silicosis. TB scarring often hides the presence of silicosis making diagnosis difficult, time-consuming and costly (where CT scans are requested).

The contact and, or, address details of a significant number of claimants are no longer valid and the Trustees have had to embark upon extensive and costly tracing and tracking programmes to find claimants. Tracing claimants has been particularly difficult were Basotho claimants previously working and residing in South Africa have returned home to Lesotho without providing forwarding addresses. Information contained in their employment files, where available, has been of little value and assistance.

In addition to the tracking and tracing programmes the Trustees have explored finding claimants through the South African Social Security Agency, Department of Home of Affairs, Electoral Commission and ex-mineworkers unions.

The confirmation of qualifying service remains a challenge. The Trustees decided to move ahead with the medical assessments irrespective of whether a claimant had qualifying service as confirmation was being sought. Waiting to receive confirmation would have resulted in further delays which would have impacted on the ability of Trustees to process claims within the Qualifying Claims Period of 3 years. The Trustees continue to explore all possible avenues to confirm qualifying service.

Processing the claims of deceased claimants continues to be a challenge primarily due to the lack of medical records. The Trustees are currently working with specialists in pioneering work aimed at developing an instrument that can determine whether, in the absence of medical records, a claimant who died may have had silicosis.

Parallel to this work, the Trustees continue to pursue other avenues including working with the Settlers to access medical records of claimants generated during their time at the various gold mines. Field staff also continue to work with the families of deceased claimants to obtain relevant medical records.

The Trustees have also actively engaged the medical service providers to consult with and educate claimants and their families about mineworkers' rights to undergo a post-mortem on death, which is often the last chance to receive compensation. We were pleased by how our doctors took on this role.

A further complexity of dealing with deceased claims is the failure to register deaths – where claimants die and their deaths are not registered by the family. This is particularly prevalent in Lesotho. The lack of death certificates or other formal document confirming the death of a claimant makes it difficult to process their claims, resulting in unforeseen and unavoidable delays. Trustees cannot process a deceased claim without a death certificate as it may open up the Trust to potential fraud.

Medical Assessment of Claimants

The compensable medical categories are set out in Clause 17.1 of the Trust Deed and defined as follows:

C1 : Silicotic, no impairment, with no pulmonary TB or massive fibrosis.

C2 : Silicotic, mild impairment - able to meet physical demands of most jobs, or no impairment with pulmonary TB or no impairment with massive fibrosis.

C3 : Silicotic, moderate impairment - diminished ability to meet physical demands of many jobs.

C4 : Silicotic, severe impairment – unable to meet physical demands of most jobs.

Clause 17.2, which deals with the award amounts, sets out two categories for the compensation of dependant claimants, named C1(d) and C1(s) by the Trustees for ease of reference:

C1(d) : for Dependant Claimants where there is acceptable documentary evidence that the deceased contracted silicosis.

C1(s) : For Dependant Claimants where there is no acceptable documentary evidence that the deceased contracted silicosis but there is other evidence that in the opinion of the Trustees constitutes acceptable evidence of silicosis.

The Trustees have assigned the category C0 to claimants who have no Silica Related Disease as defined in the Trust Deed.

As of 28 February 2018, 2747 claimants had been referred for the requisite medical examinations; in addition, 118 dependant claims with medical records had been referred for medical assessment. Of these 2865 claimants with medical records, 2296 were diagnosed by COMP as follows:

| Category | C0 | C1 | C2 | C3 | C4 | C1(d) | C1(s) | TOTAL |
|----------|------|-----|-----|-----|-----|-------|-------|-------|
| Number | 1124 | 214 | 568 | 205 | 106 | 74 | 5 | 2296 |

The remainder of claimants were at various stages in the medical assessment pipeline.

The medical assessment pipeline includes claimants that have been referred to a doctor but have yet to attend the appointment; claimants that have attended the appointment and the medical records are *en route* to the Trust; medical records that have been received by the Trust and are undergoing quality control assessments and, or, being referred to COMP for medical assessment; medical examinations that must be repeated due to quality-related issues and claimants who have been referred for further medical investigations and whose medical assessment cannot therefore be finalised.

Claims Paid and Pending Payment

As of 28 February 2018, a total of 1004 beneficiaries had been paid R104,7million¹ since the establishment of the Trust of which, 901 beneficiaries had been paid a total of R94,6million within the financial year under review - 1 March 2017 to 28 February 2018.

A further 45 beneficiaries were pending payment, awaiting confirmation of bank account details and biometric verification, totalling R5million.

A breakdown of Beneficiaries Paid by Financial Year since the establishment of the Trust appears below.

| Beneficiaries Paid by Financial Year as at 28 February 2018 | | |
|----------------------------------------------------------------|-------------|----------------------|
| Months | Number | Sum of Award |
| April 2016 - February 2017 | 103 | R 10,111,302 |
| March 2017 – February 2018 | 901 | R 94,556,636 |
| Grand Total | 1004 | R 104,667,938 |

¹ Figures quoted in this report have been rounded up unless otherwise indicated.

A breakdown of Beneficiaries Paid by Compensation Category since the establishment of the Trust appears below.

| Payments by Compensation Category as at 28 February 2018 | | |
|-------------------------------------------------------------|-------------|----------------------|
| Category | Claimants | Sum of Award |
| C1 | 188 | R 8,921,956 |
| C2 | 496 | R 53,382,893 |
| C3 | 183 | R 24,424,606 |
| C4 | 95 | R 15,967,844 |
| C1(d) | 40 | R 1,903,851 |
| C1(s) | 2 | R 66,788 |
| Grand Total | 1004 | R 104,667,938 |

Occupational Diseases in Mines and Works Act (ODMWA) Support

Clause 16.4 of the Trust Deed directs Trustees to assist Qualifying Claimants to apply for ODMWA compensation with the Medical Bureau for Occupational Diseases (MBOD) and, or, the Compensation Commissioner for Occupational Diseases (CCOD).

The Trust, with the assistance of the Director of the MBOD and Compensation Commissioner, commenced submitting claims on behalf of claimants in December 2017. As of 28 February 2018 a total of 114 claims had been submitted to the MBOD.

Status of Claims Post Year End

As at 1 August 2018, 3003 claimants had been referred for the requisite medical examinations; in addition 159 dependant claims with medical records had been referred for medical assessment. Of these 3162 claimants, 2875 had completed the medical assessment process and were diagnosed as follows:

| Category | C0 | C1 | C2 | C3 | C4 | C1(d) | C1(s) | TOTAL |
|----------|------|-----|-----|-----|-----|-------|-------|-------|
| Number | 1391 | 282 | 740 | 245 | 125 | 86 | 6 | 2875 |

The remainder of claimants were at various stages in the medical assessment pipeline.

As of 1 August 2018, 1209 beneficiaries had been paid a total of R125.2million. This sum represents approximately R208million of the funds committed to beneficiaries as per current actuarial calculations.

A breakdown of Beneficiaries Paid by Financial Year since the establishment of the Trust appears below.

| Beneficiaries Paid by Financial Year as at 1 August 2018 | | |
|-------------------------------------------------------------|-------------|----------------------|
| Months | Number | Sum of Award |
| April 2016 - February 2017 | 103 | R 10,111,302 |
| March 2017 – February 2018 | 901 | R 94,556,636 |
| March 2018 – July 2018 | 205 | R 20,568,600 |
| Grand Total | 1209 | R 125,236,538 |

A breakdown of Beneficiaries Paid by Compensation Category since the establishment of the Trust appears below.

| Beneficiaries Paid by Compensation Category as at 1 August 2018 | | |
|--------------------------------------------------------------------|-------------|---------------------|
| Category | Claimants | Sum of Award |
| C1 | 229 | R10,898,506 |
| C2 | 603 | R64,832,766 |
| C3 | 217 | R28,965,676 |
| C4 | 107 | R18,053,620 |
| C1(d) | 50 | R2,387,664 |
| C1(s) | 3 | R98,306 |
| Grand Total | 1209 | R125,236,538 |

A further 93 claims were pending payment, awaiting confirmation of bank account details and biometric verification, totalling R8.9million; qualifying service had yet to be established for 112 medically compensable claims; the remainder of the medically compensable claims were in the process of being checked.

Of the outstanding 1203 claims yet to be referred for medical screening / medical assessment, 671 were deceased claimants² for whom the Trust has not received medical records and 436

² As at 1 August 2018 a total of 746 claimants were deceased:

- 533 claimants had died before the establishment of the Trust
- 213 had died after the establishment of the Trust
 - 59 died after attending a medical examination
 - 154 died before they could attend a medical examination
- 203 of the 746 had or were in the process of being medically assessed

A further 128 claimants were reported (by family members, neighbours and, or, tracing agents) as deceased but the death and date of death had yet to be confirmed.

were claimants that were uncontactable and, or, untraceable. The Trustees continue to pursue all avenues to find and assist claimants and, or, their dependants.

The submission of claims under the ODMWA received a boost with the appointment of an administrative clerk seconded to the MBOD/CCOD to provide support with the Trust's claims.

As of 1 August a total of 351 claims had been submitted to the MBOD and 68 claims to the CCOD, the latter submissions were largely historical ie. claims that pre-dated the establishment of the Trust. As resources free up, the Trustees will be increasing the number of monthly submissions to the MBOD.

Conclusion

The Trustees are grateful for the very important and valuable contribution made by the COMP members, medical consultants, partners in Lesotho, the Mineworkers Development Agency, service providers and our staff for their hard work, diligence and dedication. The patience and understanding of our claimants, as we have grappled with the implementation of the Trust Deed and rolled out the claims process, has been humbling. We continue to strive to improve the efficiency of the claims assessment process and the experience of our claimants.

The Trustees appreciate the good working relationship with Richard Meeran, Zanele Mbuyisa, Cindy Chater of AGA and Michael Murray of AASA, Dr Barry Kistnasamy of the CCOD and Dr Nhlanhla Mtshali of the MBOD, and wish to thank them for their continued assistance and support.

Dr SK Kisting-Cairncross

Chairperson

8 August 2018