



## **Q(h)ubeka Trust Annual Report for the Year Ended 28 February 2019**

### **Background**

The Q(h)ubeka Trust was established in March 2016 in a legal settlement between attorneys representing ex 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).

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 (SRDs) on the basis set out in the Trust Deed<sup>1</sup>.

In order to qualify for compensation a Qualifying Claimant must have:

1. Worked at a Qualifying Operation (defined as those shafts/operations set out in Annexure A to the Trust Deed);
2. For at least two years in aggregate (referred to as Qualifying Service); and,
3. Have an SRD as defined.

In addition, a Qualifying Claimant must have established that he had Qualifying Service within the Qualifying Claims Period.

The Trust Deed provided a limited period of 3 years from the date of registration of the Trust with the Master of the High Court (22 April 2016), 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 – referred to as the “Qualifying Claims Period”.

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<sup>1</sup> See Annexure A to this Report which contains important clauses and definitions as they appear in the Trust Deed.

The Trust was established to process the claims of a closed list of 4365 named claimants, primarily resident in the Eastern Cape, Free State and Lesotho.

### **Governance Structure**

The Board of Trustees comprise four trustees with specialist skills in occupational medicine, finance and trust administration, and is supported by a management team comprising the Trust Manager, Medical Consultant, Medical Coordinator and Occupational Health Nurse Field Manager.

The Board meets four times a year and, or, as otherwise required to deliberate on issues of policy, strategy, finance, compliance and other Trust and claims administration related matters.

### **Setting Up the Claims Process**

In order to give effect to the primary object a network of offices and service providers was established to assist claimants to lodge their claims with the Trust, and otherwise undertake the necessary steps to determine whether they were eligible for compensation as provided for in the Trust Deed.

The entire process was free to the claimant, including transport that the Trustees provided for them to attend the medical examinations as well as sustenance in the form of a small meal that was provided after the medicals.

Trustees commenced setting up the claims process shortly after the establishment of the Trust in March 2016 and saw the first medical assessments being conducted in Mthatha, Eastern Cape, on 10 July 2016.

Trustees established offices in Mthatha, Flagstaff, Welkom, Johannesburg, Cape Town and Maseru to service claimants who were located within a wide radius of these locations. Staff received ongoing training on the Trust Deed, protocols and standard operating procedures established by the Trustees.

The Johannesburg office, whilst servicing claimants resident in Gauteng, North West and Swaziland, also served as the Head Office where the trust administration functions were located. The Cape Town office functioned primarily as the Medical Office, which managed the medical programme but also serviced claimants resident in and around the Western Cape.

Through outreach programmes the Trust extended its reach beyond the immediate areas of these offices and were able to reach out to claimants resident in very rural and remote areas. This increased the Trust's visible presence and, ultimately, accountability to claimants.

The visible presence and communication with claimants was augmented by the establishment of a PLEASE CALL ME number serviced by Claims Administrators fluent in different languages claimants speak and based in the Head Office.

Trustees set up a network of accredited 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 as defined. These tests consisted of a clinical examination, lung function test and chest x-ray. Additional medical examinations such as sputum tests and CT scans were carried out where required by the medical specialists to determine the presence of an SRD as defined.

Using local service providers enabled medical assessments to be carried out as close to the claimants as possible, as well as contributed to the further development of skills in the diagnosis of occupational lung diseases in these areas.

The development of skills was strengthened by the deployment of a senior and experienced occupational health nurse, based in the Eastern Cape, to train and provide support to medical practitioners on lung function tests. The impact of this initiative also led to improved quality of tests which ultimately ensured a more efficient claims process.

In addition to being an advocate for claimants, she was a critically important liaison person between the claimants and the Trust.

Our network of medical service providers not only carried out the necessary tests as required by the Trust Deed but at the request of the Trustees, they were also instrumental in creating awareness amongst claimants and their families of the rights of miners to undergo a post mortem on death.

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. COMP panels comprised a radiologist and an occupational health specialist who together considered all the medical and other relevant records of the claimant and arrived at a diagnosis.

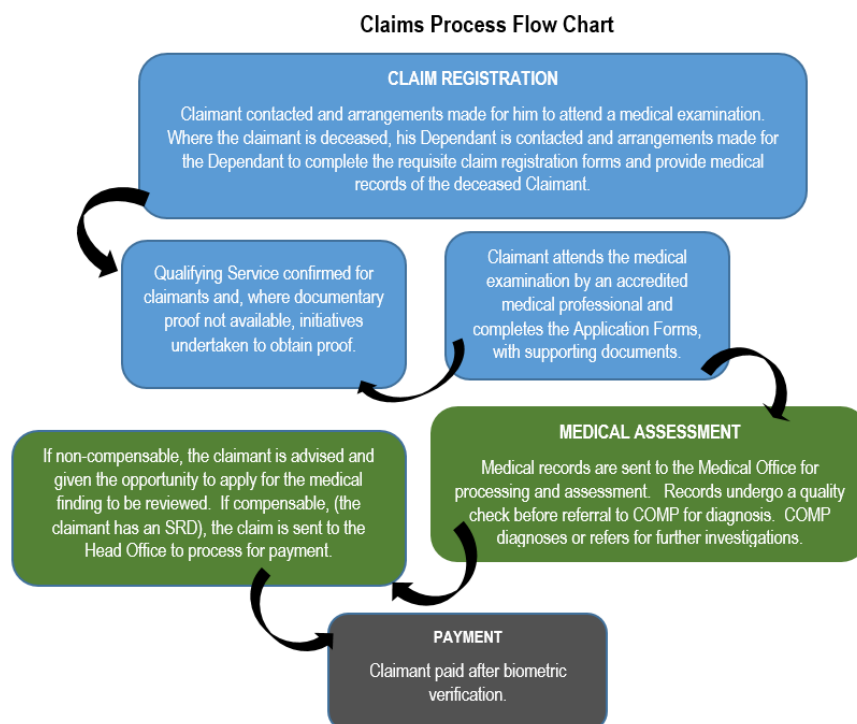
The experience, skill and expertise of the COMP members, has greatly contributed to the claims assessment process.

A Review Committee comprising two occupational health specialists and a radiologist was also set up by the Trustees to review the COMP diagnosis on application or as otherwise required by the protocols and standard operating procedures in place.

## Overview of the Claims Process

The key steps in registering claims entailed:

1. Establishing contact with the claimant and, or, his dependants where the claimant was deceased;
2. Registering the claim which included completing the requisite claim forms and obtaining supporting documents;
3. Establishing that the claimant, including deceased claimants, had Qualifying Service;
4. Arranging for the claimant to attend a medical examination at an accredited medical service provider. Where the claimant was deceased, obtaining medical and other relevant records, to determine whether the claimant had an SRD as defined at date of death.
5. Assessing the medical records to determine whether the claimant, including deceased claimant, had an SRD as defined and, if so, the category;
6. Compensating claimants, or where applicable their dependants, who had met all the criteria to receive compensation in the manner set out in the Trust Deed.



## Categories of Lung Disease

Clause 17.1 of the Trust Deed sets out four categories of compensable lung disease:

**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.

In addition, clause 17.2 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 assigned the category C0 to claimants who have no Silica Related Disease as defined in the Trust Deed, for ease of reference.

## Claimants Medically Assessed as at 28 February 2019

As of 28 February 2019, 3300 claimants had been referred for the requisite medical examinations and, or, medical assessment (in the case of deceased claimants with medical records<sup>2</sup>). Of these, 3167 were diagnosed by COMP as follows:

Category	C0	C1	C1(d)	C1(s)	C2	C3	C4	TOTAL
Number	1422	325	100	6	886	278	150	3167
Percentage	44.9%	10.3%	3.1%	0.2%	28%	8.8%	4.7%	100%

The claimants diagnosed with a compensable Silica Related Disease, as defined, represented 55% of all claims medical assessed as at the end of the financial year under review<sup>3</sup>.

The remainder of claimants were at various stages in the medical assessment pipeline. The medical assessment pipeline includes living claimants that have been referred to a doctor but

<sup>2</sup> Registered deceased claims without medical records are not included in this figure.

<sup>3</sup> All these claims have met the medical criteria for compensation but not necessarily all other criteria.

have yet to attend the appointment; claimants that have attended the appointment and their medical records are *en route* to the Trust; medical records that have been received by the Trust and are undergoing quality control and, or, are 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 (such as sputum tests), and whose medical assessment cannot therefore be finalised.

### Claims Paid and Pending Payment

As of 28 February 2019, a total of 1485 beneficiaries had been paid R153million<sup>4</sup> since the establishment of the Trust of which, 481 beneficiaries had been paid a total of R48.4million within the financial year under review – between 1 March 2018 to 28 February 2019.

A further 82 beneficiaries were pending payment, awaiting confirmation of bank account details and, or, biometric verification, totalling R8.2 million.

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 2019		
Months	Number	Sum of Awards
April 2016 - February 2017	103	R10,111,302
March 2017 – February 2018	901	R94,556,636
March 2018 - February 2019	481	R48,355,496
<b>Grand Total</b>	<b>1485</b>	<b>R153,023,434</b>

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

Payments by Compensation Category as at 28 February 2019		
Category	Claimants	Sum of Award
C1	278	R13,181,151
C2	749	R80,361,965
C3	252	R33,618,676
C4	133	R22,449,787
C1(d)	69	R3,278,199
C1(s)	4	R133,656
<b>Grand Total</b>	<b>1485</b>	<b>R153,023,434</b>

<sup>4</sup> Figures quoted in this report have been rounded up unless otherwise indicated.

Compensation will be paid in two tranches, the first is payable when the claimant has met all the criteria to receive compensation as set out in the Trust Deed, and the second and final tranche will be paid once all claimants have been assessed.

The sum paid as at 28 February 2019 represents approximately R255million of the funds committed to beneficiaries as per current actuarial calculations<sup>5</sup>.

### **Occupational Diseases in Mines and Works Act (ODMWA) Support**

Clause 16.4 of the Trust Deed directs Trustees to assist Qualifying Claimants to lodge applications for ODMWA compensation with the Medical Bureau for Occupational Diseases (MBOD) and, or, the Compensation Commissioner for Occupational Diseases (CCOD), where they qualified for such *ito* ODMWA.

The Trustees took a decision to render assistance to all Q(h)ubeka claimants, and, or their dependants, regardless of whether they were deemed to be Qualifying Claimants (as defined in the Trust Deed), in respect of ODMWA compensation where appropriate. This included assisting all claimants who had historical, unpaid, claims to access their compensation.

Towards this end the Trustees made available a dedicated resource who was placed at the MBOD/CCOD offices in Braamfontein to help process claims submitted by the Trust.

The Trust, with the assistance of the Director of the MBOD, the Compensation Commissioner and their staff, commenced submitting claims on behalf of claimants in December 2017. As of 28 February 2019 a total of 975 claims had been submitted to the MBOD for assessment by the Certification Committee.

### **Status of Claims Post Year End**

The Qualifying Claims Period terminated on 22 April 2019 which heralded the end of the registration and processing of new claims (where the claimant/dependant claimant had not previously registered a claim with the Trust), including confirmation of Qualifying Service, and

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<sup>5</sup> An actuary was appointed to draw up an award schedule within the parameters set out in Clause 17 of the Trust Deed. The actuary reviews the claims projections against experience annually, or as otherwise required. The award schedule will be revised once all claims have been assessed and beneficiaries diagnosed to determine the second and final tranche.

turned the focus of the Trustees to finalising the pipeline claims. Notwithstanding the Trustees' best endeavours, approximately 8% of the list of 4365 claimants, could not be found and assisted.

The majority of outstanding pipeline claims (claims registered but yet to be referred for medical assessment/medical assessment to be finalised), comprise deceased claimants for whom the Trust, in spite of all efforts, has not received medical records. The Trustees continue to pursue all available avenues to confirm the presence or absence of an SRD as defined, including obtaining medical records from their previous employers, clinics, hospitals and relatives. This has been an extremely time consuming exercise which, though, has yielded positive results.

As at 31 July 2019, 3504 claimants had been referred for the requisite medical examinations and, or, medical assessment (in the case of deceased claimants with medical records). Of these, 3397 were diagnosed by COMP as follows:

Category	C0	C1	C1(d)	C1(s)	C2	C3	C4	TOTAL
Number	1475	345	149	6	970	295	157	3397
Number	43.4%	10.1%	4.4%	0.2%	28.6%	8.7%	4.6%	100%

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

As of 31 July 2019, 1626 beneficiaries had been paid a total of R166,6million. This sum represents approximately R278million 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, to 31 July 2019, appears below.

Beneficiaries Paid by Financial Year as at 31 July 2019		
Months	Number	Sum of Awards
April 2016 - February 2017	103	R10,111,302
March 2017 – February 2018	901	R94,556,636
March 2018 - February 2019	481	R48,355,496
March 2019 – July 2019	141	R13,581,095
<b>Grand Total</b>	<b>1626</b>	<b>R166,604,529</b>

A breakdown of Beneficiaries Paid by Compensation Category since the establishment of the Trust, to 31 July 2019, appears below.



Payments by Compensation Category as at 31 July 2019		
Category	Claimants	Sum of Award
C1	293	R13,868,875
C2	832	R89,091,063
C3	262	R34,984,044
C4	143	R24,181,440
C1(d)	92	R4,345,451
C1(s)	4	R133,656
<b>Grand Total</b>	<b>1626</b>	<b>R166,604,529</b>

A further 109 claims were pending payment, awaiting confirmation of bank account details and, or, biometric verification, totalling R9.5 million; the remainder of the medically compensable claims were in the process of being checked.

The Trustees continue to submit claims to the MBOD/CCOD. As of 31 July a total of 1119 claims had been submitted to the MBOD and 166 claims to the CCOD, the latter submissions were largely historical ie. claims that pre-dated the establishment of the Trust. A further 300 claimants are currently being assisted with their CCOD claims.

The Trust Deed provides for those claimants who have been diagnosed as C1 to be medically re-screened to determine whether they may qualify for ODMWA compensation, following the termination of the Qualifying Claims Period, and, if so, to submit their claims to the MBOD. The Trustees are currently grappling with how best to action this requirement for the approximately 345 claimants who fall within this category.

### **Challenges Faced and Lessons Learnt**

Setting up the necessary systems to process claims in compliance with the Trust Deed was not without its challenges.

As previously reported, the medical process was more complex and more difficult than initially envisaged. Our Trustees and medical specialists grappled 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).

Annual workshops were held with COMP members and medical advisors to discuss pertinent medical issues and challenges facing the work of these panels with a view to developing a standardised approach for the assessment of claims. These workshops were important forums

which brought together all our medical experts and provided a platform for them to engage on these crucial issues.

The contact and, or, address details of a significant number of claimants were no longer valid - claimants were not found at the addresses on file and therefore the Trustees had to embark upon extensive and costly tracing and tracking programmes to find claimants. In addition to the tracking and tracing programmes the Trustees explored finding claimants through using local media, TEBA, the South African Social Security Agency, Department of Home of Affairs, Electoral Commission (in Lesotho), Rand Mutual Association and ex-mineworkers unions.

The confirmation of qualifying service was a significant 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 major further delays which would have impacted on the ability of Trustees to process claims within the Qualifying Claims Period of 3 years.

Records of Service were primarily sourced from previous employers including AngloGold Ashanti (AGA) and Harmony Gold Mines (which took over AGA's Free State Operations and consequently some claimants were subsequently employed by Harmony), and TEBA.

Qualifying Service was also confirmed using medical records obtained from previous employers where the employment record was not forthcoming and, or, incomplete.

Due to the manner in which TEBA records are archived (using fingerprints), TEBA agreed to pilot a biometric-based ROS search for claimants that were diagnosed with a compensable SRD as defined but who did not have employment records or had incomplete employment records. This exercise yielded positive results and saw numerous claimants, which could not obtain records of service from their previous employer, being able to establish Qualifying Service and ultimately being compensated.

Processing the claims of deceased claimants, which comprise approximately 20% of our claimants, continues to be a challenge primarily due to the lack of medical records and the Trustees efforts to find a solution for these cases is ongoing – Trustees continue to work 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 and the

claimants' other former employers to access medical records generated during their time at the various gold mines.

A further complexity of dealing with deceased claims is the lack of registration of the deaths of deceased claimants. The lack of death certificates or other formal document confirming the death of a claimant made it difficult to process their claims, resulting in unforeseen and unavoidable delays. Trustees could not process a deceased claim without a death certificate as it may have opened up the Trust to potential fraud.

The challenges of processing deceased claims has impacted on and is holding back the payment of the second and final tranche of compensation to claimants.

It was our experience that very few claimants invoked their right to a post mortem on death. The Trustees therefore embarked on a programme where accredited medical service providers were actively engaged 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.

The Trustees ensured that claimants and, or, dependants of claimants had access to a medical professional to discuss their medical assessment and the results of the COMP readings. The importance of giving claimants and, or, the dependants of deceased claimants the opportunity to consult with a medical professional about their diagnosis cannot be underestimated and greatly contributed to a better understanding of the SRD as defined and its impact on their lives.

A difficulty that was often experienced was explaining to a claimant and, or, the dependants of a deceased claimant how the compensation amount was arrived at in light of the impact of and suffering brought on by the SRD. No amount of money can ever compensate a claimant and, or, his family for his lung disease, but the work of the Trust went some way to provide redress.

Interviews with claimants and, or, their dependants, have indicated that compensation has been used in various ways including the building and improvement of homes, the purchase of motor vehicles to facilitate movement of sick claimants between their home and medical facilities, payment for education for children of claimants, medical treatment, funeral costs, the servicing of debt, and the establishment of small businesses for income generation.

Trustees explored the possibility of extending the Qualifying Claims Period to pursue further initiatives to find claimants that remained, at the termination of this period, and notwithstanding the extensive efforts to find them, uncontactable and untraceable. After consultation and deliberation, including with legal representatives, Trustees decided not to pursue amending the Trust Deed to enable this – the process of amending the Trust Deed appeared complex, lengthy and costly, without any guarantees of success and, whilst there was also no guarantee that any further claimants would be found should the Qualifying Claims Period have been extended, would have ultimately resulted in a long delay of the payment of the second and final tranche of compensation.

## **Conclusion**

The Trustees are grateful for the very important and valuable contribution made by the COMP members, medical consultants, TEBA, the Mineworkers Development Agency, and service providers 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.

Dr Zahan Eloff of AGA and Dr Weitz Botes of Harmony Gold Mining Company Limited provided invaluable assistance in the search for employment and medical records of our claimants, particularly the deceased claimants which directly contributed to the finalisation of a number of these claims, for which the Trustees are grateful.

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

The Trustees are deeply grateful for the commitment and dedication of staff who have worked tirelessly to ensure that every qualifying claimant was given the opportunity to lodge a claim with the Trust and become eligible for compensation.

**Dr SK Kisting-Cairncross**

**Chairperson**

**8 August 2019**

## **Important Clauses and Definitions in the Trust Deed**

### **The primary object of the Trust (Clause 4)**

The Primary Object of the Trust is to provide compensation to Qualifying Claimants and Dependant Claimants in respect of SRD on the basis set out in this Deed and in any event thoroughly, efficiently and reliably using personnel of expertise, skill and integrity.

### **Qualifying Claimant (Clause 1.1(xxiii))**

Means a Claimant, including a deceased Claimant, with Qualifying Service and who is established to be a Qualifying Claimant during the Qualifying Claims Period.

### **Qualifying Operations (Clause 1.1(xxv))**

Means those shaft/operations set out in Annexure A to this Trust Deed, where relevant during the periods reflected in the Annexure.

### **Qualifying Service (Clause 1.1(xxvi))**

Means at least two years of employment in aggregate at one or more Qualifying Operations.

### **Qualifying Claims Period (Clause 1.1(xxii))**

Means the period of three years from the date on which the Trust is registered by the Master of the High Court.