



## **Q(h)ubeka Trust Annual Report for the Year Ended 28 February 2021**

Q(h)ubeka means 'go forward' in isiXhosa.

Our name was chosen as a way of recognising, and honouring, the thousands of men – our claimants - who have struggled for decades with the debilitating effects of silicosis from their work on South Africa's gold mines.

The Trust is responsible for ensuring that all eligible claimants receive the compensation due to them in accordance with the Trust Deed.

### **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).

The lawsuit centred on the premise that the mining companies were aware of the dangers of silica related diseases to their mineworkers, but took no effective action to protect those workers from the disease.

The settlement set aside a total of R395 million in compensation for qualifying claimants.

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 a silica related diseases as defined in the Trust Deed.

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 Dependants must have lodged a claim with the Trust – referred to as the “Qualifying Claims Period”.

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. The trustees are responsible for ensuring that the work of the Trust fully complies with the objectives and obligations in the Trust Deed so that benefits to eligible claimants, are paid in the amounts and upon the terms set out.

The Trustees are supported by a management team comprising the Trust Manager, Medical Consultant and Medical Coordinator.

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.

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.

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

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, many of whom had previously worked with claimants during the legal case, 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 of South Africa and Lesotho. This increased the Trust's visible presence.

The visible presence and communication with claimants were augmented by the establishment of a PLEASE CALL ME number serviced by Claims Administrators fluent in the various languages spoken by claimants.

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 a silica related disease as defined in the Trust Deed. 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 a silica related disease 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 and other needs. 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.

The 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, was also instrumental in creating awareness amongst claimants and their families of the rights of miners under the Occupational Diseases in Mines and Works Act, to undergo a post mortem on death. Where a compensable occupational lung disease is not diagnosed in life this is often the very last opportunity for families to claim compensation.

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, greatly contributed to the claims assessment process.

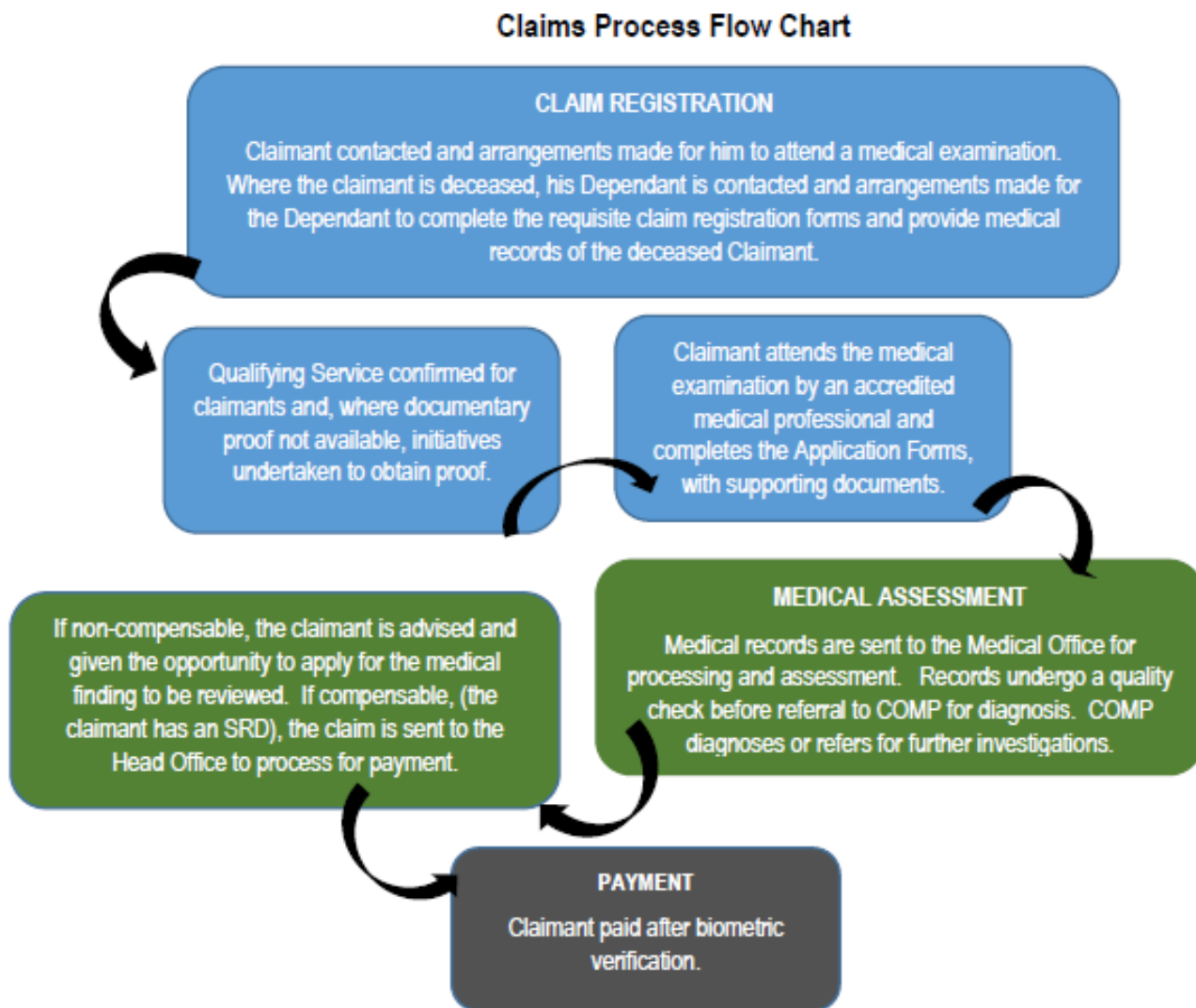
A Review Committee comprising two occupational health specialists and a radiologist was also set up by the Trustees to review the COMP diagnosis on application or as otherwise required by the protocols and standard operating procedures in place.

## **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.

### **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 Dependants must have lodged a claim with the Trust.

The Qualifying Claims Period terminated on 22 April 2019. Notwithstanding the Trustees' best endeavours, approximately 9% of the list of 4365 claimants, could not be located and, or, assisted to lodge a claim in the available time.

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 extensive consultation and deliberation, including with legal representatives, Trustees concluded that they could not realistically pursue amending the Trust Deed. The legal 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.

### **Deceased Claims**

Trustees worked with local and international specialists in pioneering work aimed at developing an instrument that could determine whether, in the absence of medical records, a claimant who died may have had silicosis. Enormous time and effort were directed at this to find a scientific, credible

and reliable instrument that would do justice to all claimants, and, in particular, the widows and children of deceased claimants who would otherwise not have been able to claim compensation to which they were entitled. It was a long and iterative process, various models were developed by different teams, each building on the other. The outcome of this extremely time-consuming exercise was a predictive model that enabled the assessment and finalisation of claims, and ultimate payment of compensation to widows of deceased mineworkers. This process took the better part of a year.

## Impact of Covid-19

Covid 19 and the national lockdown has had a significant impact on the operations of the Trust and has led to delays in settling claims. In compliance with national regulations and for safety reasons, offices were closed and staff operated remotely during the initial hard lock down and subsequent spikes or waves. Notwithstanding the fact that during this period staff were enabled to and worked remotely, there was limited interaction with claimants which hampered the work of the Trust.

## Claimants Medically Assessed as at 28 February 2021

As of 29 February 2021, 3853 claimants had been diagnosed as follows:

Category	C0	C1	C1(d)	C1(s)	C2	C3	C4	TOTAL
Number	1425	347	166	457	996	300	162	3853
Percentage	37%	9%	4,3%	11,8%	25,8%	7,8%	4,2%	100%

The claimants diagnosed with a compensable Silica Related Disease, as defined, represented 63% of all claims medically assessed as at the end of the financial year under review<sup>1</sup>.

## Claims Paid and Pending Payment

As of 28 February 2021, 2013 claim payments totalling R193.8million<sup>2</sup> had been made since the establishment of the Trust of which 275 payments totalling R20million were made within the financial year under review.

A further R230million was pending payment awaiting payment documentation. These mostly comprised claimants who were due their second tranche in accordance with clause 18.2 of the Trust Deed.

<sup>1</sup> All these claims have met the medical criteria for compensation but not necessarily all other criteria.

<sup>2</sup> Figures quoted in this report have been rounded up unless otherwise indicated.

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

<b>Claim Payments by Financial Year as at 28 February 2021</b>		
<b>Financial Year</b>	<b>Number</b>	<b>Sum of Awards</b>
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 - February 2020	222	R20 744 639
March 2021 – February 2021	275	R20 056 495
<b>Grand Total</b>	<b>1982</b>	<b>R193 824 568</b>

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

<b>Payments by Compensation Category as at 28 February 2021</b>		
<b>Category</b>	<b>Claimants</b>	<b>Sum of Award</b>
C1	318	R15 554 230
C2	941	R100 891 468
C3	294	R39 624 507
C4	159	R27 047 015
C1(d)	123	R5 791 195
C1(s)	147	R4 916 153
<b>Grand Total</b>	<b>1982</b>	<b>R193 824 568</b>

As per the Trust Deed, compensation is payable in two tranches, the first 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 the extent of the remaining funds are known.

### **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 in terms of 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 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 person who was placed at the MBOD/CCOD offices in Braamfontein to collaborate and help process claims submitted by the Trust. This process worked well.

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 2021, a total of 1371 claims had been submitted to the MBOD of which 1301 were finalised with their claim status as follows:

<b>Breakdown of Finalised Claims</b>	
First Degree	373
First Degree As Before	94
First Degree Silicosis	2
Second Degree	311
Second Degree Silicosis	7
TB Cannot Antedate	74
TB Current	4
TB as Before	62
Non Compensable	374
<b>Total</b>	<b>1301</b>

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

As of 28 August, R280million was paid to claimants. A breakdown of Claim Payments<sup>3</sup> by Financial Year since the establishment of the Trust, to 28 August 2021, appears below.

<sup>3</sup> This includes both first and second tranche payments

Claim Payments by Financial Year as at 28 August 2021		
Financial Year	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 - February 2020	222	R20 744 639
March 2020 – February 2021	275	R20 056 495
March 2021 – 28August 2021	837	R85 977 285
<b>Grand Total</b>	<b>2819</b>	<b>R279 801 854</b>

### Challenges Faced and Lessons Learnt

Setting up the necessary systems to process claims in compliance with the Trust Deed was not without its challenges. These challenges presented opportunities for the Trust to collaborate with many different people and organisations, and for their willingness to assist us, we are grateful. It is our hope that some of the lessons we learnt will smooth the path for other organisations.

As previously reported, the medical process was more complex and more difficult than initially envisaged. Trustees and medical specialists grappled with the issue of TB and its significant impact on the diagnosis of silicosis. More so since there was such a high prevalence of TB on Xray amongst the claimants. TB scarring often hides the presence of silicosis making diagnosis difficult, time-consuming and costly (where CT scans had to be 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 beyond and provided a platform for them to engage on these crucial issues. Ultimately the claimants benefitted from shared experiences, collective solutions and standardised approach to the medical challenges.

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 tracking and tracing programmes to find claimants. In addition to the tracking and tracing programmes the Trustees explored finding claimants through using local radio and other local media, TEBA, the South African Social Security Agency, Department of Home Affairs, Electoral Commission, Rand Mutual Association and Ex-Mineworkers Associations.

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 the confirmation was often time consuming. 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.

Processing the claims of deceased claimants was a huge challenge primarily due to the lack of medical records. 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.

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 advise 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 in the field took on this role and dealt with it in an enabling and sensitive manner. The education of families on conducting of post mortem of deceased mineworkers remains an important task of government, employers and unions.

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 Silica Related Disease 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 Silica related Disease. 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 a measure of redress.

## **Conclusion**

It is just over five years since the Trust became operational and as we begin the process of winding down the work of the Trust it is with pride and humility that we reflect on the determination and interconnectedness that made it possible for us do to the very important work that was set out for us. It has been a privilege to undertake this very important task of paying compensation to qualifying claimants and enormous effort has been made to deliver compensation within the parameters of a prescriptive Trust Deed, in a compassionate and caring manner.

The Trustees are 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. Their understanding and goodwill, and commitment to ensuring that every claimant has a fair opportunity to qualify for compensation, has been both overwhelming and inspiring.

The Trustees are grateful for the very important and valuable contribution made by the COMP members, medical consultants, medical practitioners in that have been operating in the field and the various service providers without whom this would not have been possible, for their hard work, diligence and dedication.

The Trustees highly appreciate the good working relationship with Richard Meeran, Zanele Mbuyisa, Cindy Chater and Ryan Webb 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 assistance and support.

It is our hope that the research stemming from the challenges and lessons we learnt will go in some way to changing the way compensation for occupational diseases are dealt with in the future.

The Trustees are deeply humbled by the graciousness and patience of claimants who dealt with the many challenges which impacted on the speed with which compensation could be paid. They have been disadvantaged through historic processes and through contracting silicosis while

earning a living. In addition, the majority do not have ready access to the much needed health services or to compensation. It has been an honour for us to have this opportunity to interact with claimants and to be able to provide some measure of redress. It remains our fervent hope that measures for the greater prevention of Silica Related Diseases will be implemented on an ongoing basis and any future settlements of this nature will make the process as inclusive as possible.

**Dr SK Kisting-Cairncross**

**Chairperson**

**28 August 2021**