



Q(h)ubeka Trust Annual Report for the Year Ended 28 February 2022

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 disease 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.

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. 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 disease as defined in the Trust Deed; and
4. 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 had to personally attend the medical testing facility for medical assessment and evaluation, and Qualifying Dependants had to lodge a claim with the Trust – referred to as the "Qualifying Claims Period".

Governance Structure

The Board of Trustees comprises four trustees with specialist skills in occupational medicine, finance, and trust administration. They 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 the Trust Manager. The Board meets four times a year, 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 to attend the medical examinations as well as sustenance in the form of a meal provided after the medicals.

The 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 was 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.

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

The development of skills and interaction with claimants were 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. In addition to being an advocate for claimants, she was a critically important liaison person between the claimants and the Trust. The impact of this initiative also led to improved quality of tests which ultimately ensured a more efficient claims process.

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 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 right of miners under the Occupational Diseases in Mines and Works Act (ODMWA), to a postmortem. 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 Panels (COMPs) 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.

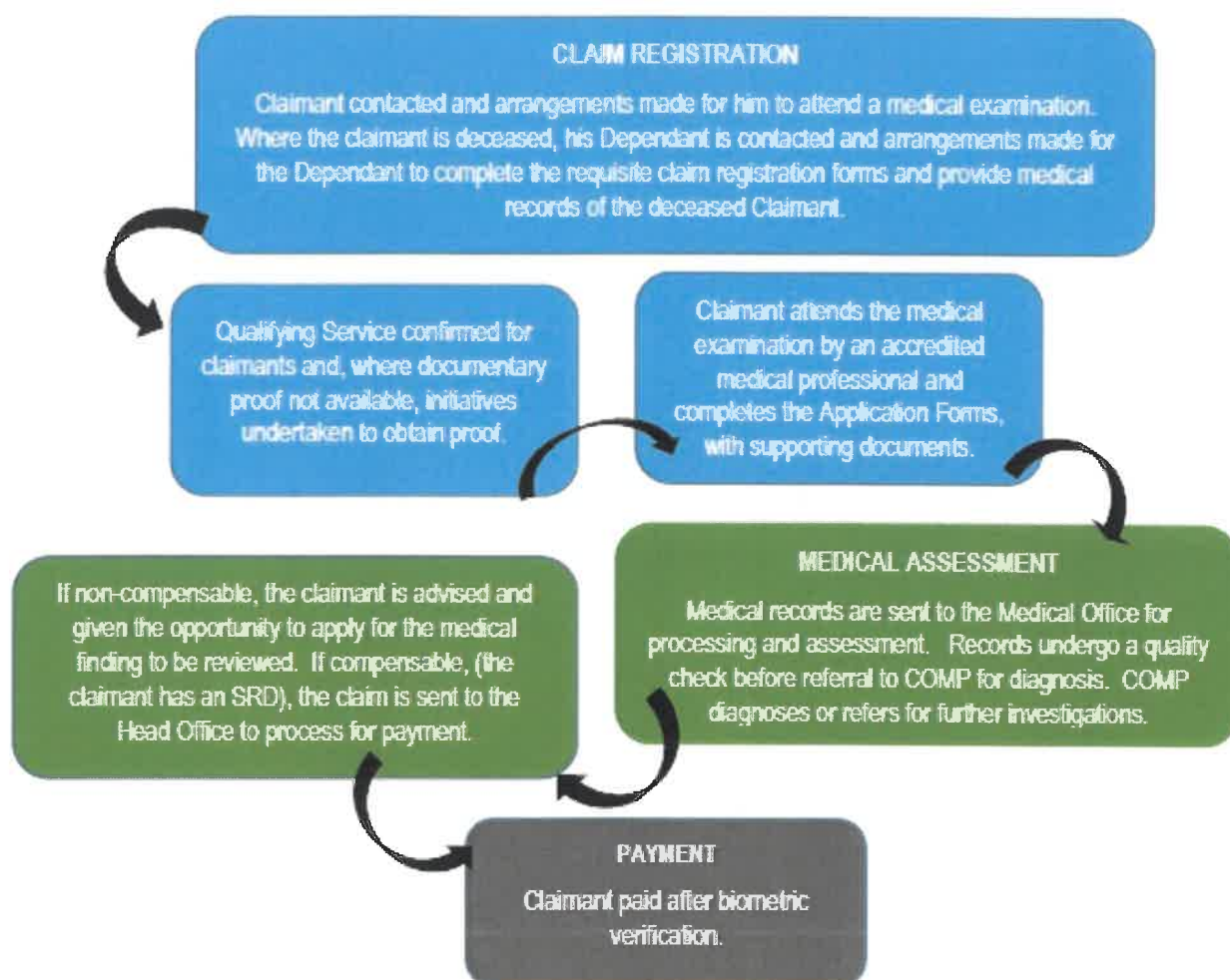
A Review Committee comprising two occupational health specialists and a radiologist was also set up by the Trustees to review the COMP diagnoses on application or as otherwise required by the protocols and standard operating procedures in place.

Overview of the Claims Process

The key steps in registering claims entailed:

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

Claims Process Flow Chart



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 had no Silica Related Disease at the time of examination.

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. The Qualifying Claims Period terminated on 22 April 2019. Notwithstanding the Trustees' best endeavours, approximately 11% of the list of 4365 claimants could not be located and/or assisted to lodge a claim in the available time.

The Trustees explored the possibility of extending the Qualifying Claims Period to pursue further initiatives to find claimants who remained at the termination of this period, and notwithstanding the extensive efforts to find them, uncontactable and untraceable in the available time. After extensive consultation and deliberation, especially with legal representatives, the Trustees concluded that they could not realistically pursue amendment of the Trust Deed. The legal advice indicated that the process of amending the Trust Deed for this particular purpose 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 in payment of the second and final tranche of compensation.

Deceased Claims

Trustees liaised with local and international specialists in conducting research on the Qhubeka Trust data, 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 to finding a scientific, credible and reliable instrument that would do justice to all claimants, in particular the widows and children of deceased claimants who would otherwise not have been able to claim the compensation to which they were entitled. It was a long and iterative process, with various models 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 lockdowns had a significant impact on the operations of the Trust and resulted in delays in settling claims. Outreach teams were unable to travel and reach claimants and claimants were unable to easily travel to banks or obtain Letters of Authority (LOA) etc. 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. Though staff continued working, the work of the Trust was hampered by limited interaction with claimants. Our offices in Johannesburg and Mthatha subsequently re-opened and are fully operational. As can be seen from the large number of claims paid this financial year, it is clear that administration staff and outreach teams have done a significant amount of work to overcome the backlogs brought about by this uncertain period of travel and face to face meetings with claimants.

Claimants Medically Assessed as at 28 February 2022

As of 28 February 2022, 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 in the Trust Deed, represented 63% of all claims medically assessed as at the end of the financial year under review¹.

Claims Paid and Pending Payment

As of 28 February 2022, 3814 claim payments totalling R370.8 million² had been made since the establishment of the Trust of which 1832 payments totalling R177 million were made within the financial year under review. A further amount of R54 million was pending payment, awaiting payment documentation. This was mostly for claimants who were due their second tranche in accordance with clause 18.2 of the Trust Deed. A breakdown of claims paid by financial year since Trust establishment appears below:

Claim Payments by Financial Year as at 28 February 2022		
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 – February 2022	1832	R177 050 193
Grand Total	3814	R370 874 761

A breakdown of beneficiaries paid by compensation category since the establishment of the Trust appears below:

Payments by Compensation Category as at 28 February 2022		
Category	Claimants	Sum of Award
C1	549	R28 618 014
C2	1 714	R189 889 687
C3	527	R73 820 422
C4	280	R49 109 345
C1(d)	238	R11 679 289
C1(s)	506	R17 758 004
Grand Total	3814	R370 874 761

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

² Figures quoted in this report have been rounded up unless otherwise indicated

The figures above make accommodation for the 2 tranches payable to each of the 2,300 eligible claimants in terms of the Trust Deed: the first tranche when the claimant has met all the criteria to receive compensation, and the second and final tranche once the extent of the remaining funds is known, along with the final number of compensable claimants who would share these funds.

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), if they qualified for compensation in terms of ODMWA

The Trustees took a decision to render assistance to all Q(h)ubeka claimants and/or their dependants who qualified in respect of ODMWA compensation, regardless of whether they were deemed to be (Qhubeka) Qualifying Claimants. This included assisting all claimants who had historical unpaid claims, to access their compensation. This process started with a meeting with MBOD/CCOD colleagues in 2017 once the medical examination processes were established in all localities and the medical certification panels of senior radiologists and occupational medicine specialists were decentralised and functional. It was of great importance to share and discuss details and in particular to share relevant clauses in the Trust Deed that apply to the all-important MBOD/CCOD collaboration.

The Trust, with the assistance of the Director of the MBOD and the Compensation Commissioner and their staff, commenced submitting claims on behalf of claimants in December 2017. The Trustees then made available a dedicated staff person who was placed at the MBOD/CCOD offices in Braamfontein from March 2018, to collaborate with MBOD staff and help process claims submitted by the Trust. This process worked well. In total, 1435 claimants were submitted for possible compensation under the ODMWA. Once diagnoses were made by the MBOD, documents were submitted to the CCOD for compensation. Staff of the CCOD and the Trust have been working very hard to finalise the status of the claims, including by implementing a process to submit claims electronically, where the Trust already has the necessary documentation. This greatly simplifies the process, eliminating the need to return to claimants/dependants for additional documents. In view of the different criteria for compensation under the ODMWA and the Trust Deed, we are working together towards synergies in the two systems that will be of benefit to the claimants.

Status of Claims Post Financial Year End

As of 18 August 2022, R410 million has been paid to claimants.

A breakdown of Claim Payments by Financial Year since the establishment of the Trust appears below.

Claim Payments by Financial Year as at 18 August 2022		
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 – February 2022	1 832	R177 050 193
March 2022 – 18 August 2022	563	R39 740 916
Grand Total	4 377	R410 615 677

Note: as above, these figures make accommodation for the 2 tranches to be paid to each of the 2,300 eligible claimants.

Challenges Faced and Lessons Learned

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 we are grateful for their willingness to assist us. It is our hope that some of the lessons we learned 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, especially 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 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, also using local radio and other local media, TEBA, the South African Social Security Agency, Department of Home Affairs, Electoral Commission, Rand Mutual Association, Trade Unions 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 or the incompleteness 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 documents 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 this might have opened up the Trust to potential fraud.

It was our experience that very few families of claimants invoked their right to a postmortem after the passing on of the claimant. 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 a post mortem, which is often the last chance to receive compensation. We were pleased by the way 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 mortems of deceased mineworkers remains an important task of government, employers and unions and compensation trusts.

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 frequent difficulty was explaining to a claimant 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 or his family for his lung disease, but the work of the Trust went some way to provide a measure of redress.

The outreach teams have made remarkable progress in reaching claimants and dependants and finalising their claims, despite obstacles of:

- Access: remote addresses, very bad roads, poor rural transport, lack of cash for transport to town, bad weather – including floods in the Eastern Cape and snow in Lesotho, changes of address, migration of beneficiaries out of the areas for work etc
- Communication: frequent changes of cellphone numbers, lack of airtime and data, poor and erratic network coverage
- The high proportion of deceased claimants: necessitating more extensive documentation
- Documentation: loss of key documents, damaged or poor quality documents, proof of marriage in absence of Department of Home Affairs certificate, changes of name and/or ID and difficulty of obtaining new documents from DHA, illiteracy and issues with fingerprints (which tend to become less readable with old age)
- Attitudes: suspicion resulting from previous bad experiences on the part of claimants, especially with scammers; intra-family conflict, mental incapacity
- Loadshedding – impacting on communications, and on court offices and banks
- Court issues: long queues, need to update Letters of Authority, obtaining Letters

of Executorship when there is a minor child

- Bank issues:
 - Access to towns: the Trust assists with this, either by providing transport money, or by fetching frail claimants/dependants.
 - Closure of accounts: some banks do this automatically when the balance drops below a certain level, reopening requires a new deposit and claimants frequently don't have the cash required. The Trust assists with this.
 - Change of status of account: some banks require the claimant to visit the bank to change the status of the account before they will accept the deposit from the Trust.
 - Invalid accounts: payments are returned to the Trust for accounts which are not FICA-compliant.
 - Problems with fingerprints: new accounts cannot be opened without fingerprints, which are then validated against the Department of Home Affairs central database. As noted above, this can cause problems with very elderly claimants/dependants.
 - Loss of documents.
 - Issues with 'Estate late' accounts: in deceased claims, unless there is a widow with a DHA marriage certificate, the dependant/s have first to obtain a Letter of Authority from the nearest Master's Office. The double process can seldom be completed in a single day, requiring an additional trip to town.
 - Loadshedding: resulting in wasted trips and consequent expense.

Conclusion

It is just over six 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 to do 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, Jaasi Munanka of AGA and Michael Murray of AASA (now Bowmans), Dr Barry Kistnasamy of the CCOD, Dr Nhlanhla Mtshali and Dr Mpho Rabada of the MBOD and their staff and wish to thank them for their assistance and support.

We hope that the research stemming from the challenges and lessons we learnt will go some way to changing the way compensation for occupational diseases is dealt with in future. The Trustees are deeply humbled by the graciousness and patience of claimants who dealt with 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 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 and associated TB will be implemented on an ongoing basis and any future settlements of this nature will make the process as inclusive and sustainable as possible.



Dr Sophia Kisting-Cairncross
Chairperson
18 August 2022