1. General Introduction

1.1. Asbestos in South Africa

Asbestos is a family of fibrous silicates, of which the most important commercially are crocidolite (blue asbestos), amosite (brown asbestos) and chrysotile (white asbestos). All three types were mined in South Africa. The mining areas are shown in the map, with the colours showing where the blue, brown and white asbestos mining took place.

About 95 percent of the asbestos mined in South Africa was exported. All of the South African mines are now closed, although chrysotile continues to be mined in Zimbabwe.

Asbestos was called the "magic mineral" because of its properties. These include resistance to heat, acid, chemical and mechanical forces, the ability to be woven and spun (hence, asbestos textiles) and its ability to reinforce cement and plastic.
1.2. Exposure to asbestos

Asbestos is a major health hazard. Asbestos is a very toxic mineral. It causes scarring of the lung and cancers in the human body. There are four main types of exposure and four main types of disease.

Four main types of asbestos exposure:

1. Mining – miners and millers, especially blue asbestos.
3. Maintenance workers - plumbers, carpenters, electricians who need to clear the asbestos away or drill or saw through asbestos containing materials in doing their work.
4. Environmental – the myriad situations in which asbestos fibres pollute and contaminate the environment, exposing people unknowingly and incidentally. This can occur indoors or outdoors.

Asbestos has had over 3000 uses, including insulation and fireproofing: for example, around boilers, steam pipes, steel supports in buildings, inside air conditioning ducts (see picture on the right), asbestos cement (roofing, tanks, gutters, slates, pipes, garden pots), other construction materials (shutter boards and insulation boards), friction products (brakes, clutch pads) and domestic heaters.

<table>
<thead>
<tr>
<th>Workers are exposed</th>
<th>Residents are exposed</th>
<th>Consumers are exposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asbestos mining and milling; Insulation installation, repair and removal; Asbestos cement product manufacture; Brakes and clutches; Textile manufacture and repair Power stations; Railway workshops; Ship construction and repair; Boilermakers; Steamfitters; Electricians; Roofers; Motor vehicle mechanics; Stevedores at harbours handling asbestos cargos; Welders; Maintenance workers who drill, saw or break asbestos.</td>
<td>Those who lived at or near asbestos mines and mills, and their families were exposed. Asbestos was used to construct roads, playgrounds, houses and schools. Many residents in former asbestos mining areas are still exposed.</td>
<td>Asbestos cement roofing, guttering, downpipes, water-tanks, garden products, pottery kilns and domestic heaters all contain asbestos.</td>
</tr>
</tbody>
</table>

It has been estimated that 200 000 workers may have been exposed to asbestos in mining and milling over a 50 year period in South Africa, and that 30 000 were employed in asbestos manufacture. The numbers of workers who were exposed in maintenance work is not known, nor is it known how many residents and consumers have been environmentally exposed.

In the early days of mining many local men, women and children were engaged in small-scale or informal "cobbing" of asbestos from the ore or picking on the waste dumps around the mines.

Four main types of asbestos lung disease:
In the human body, asbestos affects the lungs most of all. It can affect both the spongy parts as well as the outer lining of the lung. It usually causes disease in a person 10 to 40 years after they were first exposed to asbestos. The four main lung diseases caused by breathing asbestos dust are asbestosis and asbestos related pleural thickening – these are the scarring diseases, asbestos related lung cancer, and mesothelioma – these are the cancers.

**Asbestosis**
This is an irreversible and progressive lung condition which results from the inhalation of asbestos fibres over an extended period. It occurs because asbestos fibres are inhaled into the tiny air sacs deep in the lungs, and these cause millions of very small scars, or micro-scars.

- Asbestosis has no cure and no specific treatment. Because of the tiny scars in the lungs, it may eventually over years cause the sufferer to start a dry cough, and become short of breath. Sufferers are advised to avoid any further exposure to dusts or asbestos or irritants that make them cough. They should never smoke and all chest infections must be promptly treated.

**Asbestos related pleural thickening**
Sometimes scarring occurs on the thin membrane that is the outer lining of the lungs, called the pleura. When seen on chest x-ray, this scarring is called pleural plaque or pleural thickening.

- Asbestos related pleural thickening has no cure, and most often there are no symptoms and also no change over time. Sufferers are advised however, to take special care of their lungs. They should never smoke and all chest infections must be promptly treated.

**Asbestos related lung cancer**
Lung cancer caused by asbestos is identical to lung cancer caused by smoking, but they are more common in people who have worked with asbestos, especially if they also had asbestosis. Asbestos and cigarette smoke work together to cause lung cancer. We cannot however predict who is going to get lung cancer. Lung cancer is usually untreatable.

- Asbestos related lung cancer is usually incurable, and is generally fatal within 12 – 18 months. Sufferers are advised to get their affairs in order as soon as possible, as decline in health occurs very rapidly in the late stages. Hospice referral should be organised immediately in order to alleviate the symptoms of cough (often bloody cough later), shortness of breath and chest pain.

**Mesothelioma**
This is cancer of the thin membrane on the outer lining of the lungs – the pleura. It is caused exclusively by asbestos, and is a very aggressive and painful cancer. These tumors can take up to 40 years to develop.

- Mesothelioma is incurable, and is fatal within 12 months of diagnosis. Sufferers are advised to get their affairs in order as soon as possible, as decline in health occurs very rapidly in the late stages. Hospice referral should be organised immediately in order to alleviate the extreme pain, breathlessness and coughing which almost always occur.

2. **International banning of asbestos**
The asbestos industry still flourishes in Brazil, Canada, China, Khazakstan, Russia and Zimbabwe.

Vast medical evidence has proven that asbestos is highly toxic to humans, and many countries have banned it. The following table shows the dates on which countries have put laws in place to either ban asbestos altogether or to severely restrict its use. In some of these countries, there were asbestos restrictions in place before the laws were introduced.
Countries where asbestos restrictions / bans were imposed / have been introduced

<table>
<thead>
<tr>
<th>Year</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>1983</td>
<td>Iceland</td>
</tr>
<tr>
<td>1984</td>
<td>Norway</td>
</tr>
<tr>
<td>1986</td>
<td>Denmark, Sweden</td>
</tr>
<tr>
<td>1988</td>
<td>Hungary</td>
</tr>
<tr>
<td>1989</td>
<td>Switzerland</td>
</tr>
<tr>
<td>1990</td>
<td>Austria</td>
</tr>
<tr>
<td>1991</td>
<td>The Netherlands</td>
</tr>
<tr>
<td>1992</td>
<td>Finland, Italy</td>
</tr>
<tr>
<td>1993</td>
<td>Germany, Croatia</td>
</tr>
<tr>
<td>1995</td>
<td>Japan (blue and brown), Kuwait</td>
</tr>
<tr>
<td>1996</td>
<td>France, Slovenia</td>
</tr>
<tr>
<td>1997</td>
<td>Poland, Monaco</td>
</tr>
<tr>
<td>1998</td>
<td>Belgium, Saudi Arabia, Lithuania</td>
</tr>
<tr>
<td>1999</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>2000</td>
<td>Ireland</td>
</tr>
<tr>
<td>2001</td>
<td>Brazil (partial), Latvia, Chile, Argentina; <strong>South Africa</strong></td>
</tr>
<tr>
<td>2002</td>
<td>Spain, Luxembourg, Slovak Republic, New Zealand, Uruguay, Malaysia</td>
</tr>
<tr>
<td>2003</td>
<td>Australia</td>
</tr>
<tr>
<td>2004</td>
<td>Honduras, <strong>South Africa</strong>, Japan</td>
</tr>
<tr>
<td>2005</td>
<td>Bulgaria, Cyprus, Czech Republic, Estonia, Greece, Hungary, Lithuania, Malta, Portugal, Slovakia, Egypt, Jordan</td>
</tr>
<tr>
<td>2007</td>
<td>New Caledonia, United States of America</td>
</tr>
<tr>
<td>2008</td>
<td><strong>South Africa</strong></td>
</tr>
<tr>
<td>(2009)</td>
<td>(South Korea)</td>
</tr>
</tbody>
</table>

### 3. Asbestos bans in South Africa

South Africa has restricted the use of asbestos in phases. The **first** restrictions were put in place in the mines, when dust levels were regulated. They started in 1970, when a very dusty limit of 45 fibres per milliliter of air was set. This was gradually improved until 1981, when the limit was set 20 times lower, at 2 fibres/ml. Although the levels to which miners were exposed did come down over the years, these limits were often not adequately enforced by government nor adhered to by the companies. The current occupational standard is 0.2 fibres/ml.

The **second** phase of restrictions started in 1987 when the first Asbestos Regulations were put in place, which applied to all workplaces. This came 10 years after the peak production of the asbestos mines, and at a time when the asbestos industry was already in decline. This did however signal to all in South Africa that asbestos was dangerous. The occupational limit at that time was unchanged at 2 fibres/ml for the mines and 1 fibre/ml for all other workplaces.

The **third** phase of asbestos restriction occurred around the Asbestos Summit of 1998, where it was realised that asbestos was unacceptable. By this time all blue and brown asbestos mining had ceased, and mining operations for white asbestos were being curtailed. This process produced the 2001 Asbestos Regulations, where the workplace limit was set at 0.2 fibres/ml.

The **fourth** phase of banning was initiated in 2004 when the environmental aspects began to be addressed, and manufacturing and new use of asbestos was banned. Importation of asbestos was however still allowed. In line with international trends, the latest regulations that were promulgated in March 2008, have disallowed almost all activities related to new asbestos - the import, export, distribution, manufacture, processing, and repackaging of asbestos are all banned.
While this is excellent progress, the final phase in banning – where existing asbestos is addressed - will still need to be addressed. Here the public and workers need to be educated and trained about the dangers of asbestos, a register of all hazardous asbestos in our country needs to be created and maintained, and credible research needs to be done on human exposure to asbestos and the occurrence of asbestos related disease.

**Recognition of asbestos as a hazard**

Asbestos has been recognised as a medical hazard for a long time already. The following table lists the main diseases with their date of first recognition and some commentary:

<table>
<thead>
<tr>
<th>Diseases</th>
<th>Dates</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>&quot;Asbestos work&quot;</td>
<td>1897 - 1918</td>
<td>It was noted that asbestos workers and their families got lung diseases and wasted away, that early deaths among workers were common, and that asbestos work was considerably hazardous, and was recognised as such in Austria, England and the USA.</td>
</tr>
<tr>
<td>Asbestosis</td>
<td>1906 - 1928</td>
<td>Dr Murray recognised the first case in 1906, Dr Cooke named it in 1927 and Drs Merewether and Price produced the first report on a group of workers suffering from asbestosis in 1928. This all took place in England.</td>
</tr>
<tr>
<td>Asbestos related lung cancer</td>
<td>1934 - 1955</td>
<td>The first link between lung cancer and asbestos was published in a case report in England. Dr Doll published the first group evidence in 1955 when describing the death rate in Turner and Newall workers as 10 times the national average.</td>
</tr>
<tr>
<td>Mesothelioma</td>
<td>1955 - 1960</td>
<td>South Africans, Drs Wagner, Sleggs and Marchand published 33 cases of mesothelioma, and showed that they were all linked to asbestos exposure.</td>
</tr>
</tbody>
</table>

**Asbestos rehabilitation and removal**

Major initiatives are under way by the Department of Minerals and Energy to rehabilitate old asbestos mines and dumps. Unfortunately, there are literally hundreds of small mines and dumps that are unlikely to be rehabilitated in the foreseeable future. Communities are often resident in the close vicinity of these areas and every effort should be made to avoid exposure to asbestos or to ensure that they are properly rehabilitated.

Asbestos insulation (which is often loose and friable) is often found in industrial settings such as foundries or boiler rooms. Ideally, this material should be removed under strictly controlled conditions which are described in legislation developed by the Department of Labour.

Asbestos cement building materials are commonly found in homes and buildings throughout South Africa. They are not harmful in their dormant state but every precaution should be taken to avoid inhaling asbestos fibres when sawing, drilling, cutting, angle-grinding or sanding these products. Exposure to asbestos is controlled through the Asbestos Regulations 2001 published by the Department of Labour.

Where asbestos-containing materials must be removed from buildings because they are damaged or during demolition, an Approved Asbestos Contractor must undertake the work according to criteria laid down by the Department of Labour (more information can be found on the following link: [http://www.labour.gov.za/legislation/regulations/occupational-health-and-safety/regulation-ohs-asbestos-regulations-2001](http://www.labour.gov.za/legislation/regulations/occupational-health-and-safety/regulation-ohs-asbestos-regulations-2001)).

All asbestos containing materials must be disposed of in waste disposal sites that are specifically permitted for this purpose.
4. Action / litigation against asbestos mining companies affecting South Africa

**Cape PLC**
The Cape PLC case involved in the region of 7000 former mineworkers who had worked at various asbestos mines/mills owned by this British company in the Northern Cape, old North West and Limpopo provinces, and who had developed asbestos related illnesses, and, or, their families. The case was heard in Britain and settled out of court.

Only those claimants on whose behalf summons were issued received compensation. Any former mineworkers who were **not** part of the case but worked for Cape PLC and who develop an asbestos related illness are unfortunately excluded from this settlement.

Individuals who were exposed to asbestos from Cape PLC operations and have developed an asbestos related disease may qualify to receive compensation from foreign asbestos trusts – see below under "Foreign asbestos trusts".

**Gencor / Gefco and Msauli**
This case involved several claimants who were ill with or had died from asbestos related diseases and the Griqualand Exploration and Finance Company (Gefco) Gencor Limited, Msauli Asbes Limited – (Msauli), African Chrysotile Asbestos Limited (ACA) and Hanova Mining Holdings. The claimants were represented by Richard Spoor, a well known South African personal injury attorney.

The Settlement Agreement was signed in March 2003 and the Asbestos Relief Trust (the ART) was registered and created in the same month. (see below)

**Becon**
No litigation was initiated on behalf of former mineworkers who had worked at Kuruman Cape Blue Asbestos (KCBA) and Danielskuil Cape Blue Asbestos (DCBA) and developed an asbestos related disease as a result. However, a voluntary agreement was concluded between Richard Spoor and the Swiss company Becon in 2006 resulting in the formation of the Kgalagadi Relief Trust (the KRT).

The purpose of both the ART and the KRT is to compensate qualifying claimants who have asbestos related diseases as fully, fairly and effectively as the means allow (see below).

5. Other asbestos trusts
Several compensation schemes have been formed around the world to deal with individuals who have been diagnosed with asbestos related diseases and their families. These include:
1. Johns Manville Personal Injury Settlement Trust (US)
2. Celotex (US)
3. Wonderlick (Australian)
4. James Hardie (Australian)

More information on these trusts can be obtained directly from the ART on (011) 482 1000.

6. The Asbestos and Kgalagadi Relief Trusts (the Trusts)

6.1. Criteria for claiming
The main criteria for lodging a claim with both Trusts are, as set out in the respective Trust Deeds:
1. Occupational exposure at or environmental exposure from living within the vicinity of a **Qualifying Operation**.
2. The claimant must suffer a **compensable Asbestos Related Disease** which was caused by this exposure.
3. Dependents are also entitled to claim for compensation arising from the death of the breadwinner from either **asbestos related lung cancer** or **mesothelioma**. In order to qualify the dependant must establish proof of dependency as well as claim within three years of the date of death of the breadwinner.

It is important to always refer to the Trust Deeds for all the details relating to the criteria that must be met in order to qualify for compensation. Copies of the Trust Deeds are available from all ART/KRT offices or on www.asbestostrust.co.za.
What is a Qualifying Operation?
A qualifying operation refers to a mine, mill or other operation which was owned by or associated with one of the companies who were party to the settlement or voluntary agreement, as the case may be.

Qualifying operations for the ART include mines/mills owned by Gefco, Gencor and Msauli (the founders). The qualifying exposure periods vary across mines/mills and, or, operations and is dependent on when the founders owned or were associated with the operation.

The ART does not compensate former asbestos mineworkers who worked for Cape PLC and were compensated through the Cape PLC case (see above), even though the former mineworker also worked at a Gefco, Gencor or ACA mine/mill. The reason for this is that Gencor contributed a sum of money towards the Cape PLC settlement to cover the Cape PLC claimants who also had exposure to Gencor/Gefco/Msauli mines.

Qualifying operations for the KRT include all mines and mills operated by Kuruman Cape Blue Asbestos (KCBA) and Danielskuil Cape Blue Asbestos (DCBA). The qualifying exposure period is 1 January 1952 to 30 September 1981.

What is a compensable Asbestos Related Disease?
A compensable asbestos related disease refers to one of four compensation categories namely:
• ARD1 - Asbestos related pleural thickening and/or asbestosis, with mild to moderate lung function impairment.
• ARD2 - Asbestos related pleural thickening and/or asbestosis, with severe lung function impairment.
• ARD3 – Asbestos related lung cancer.
• ARD4 – Mesothelioma.

6.2. Type of claims

Living claim
If the claimant is alive when the claim is lodged or if the claimant lodged an application whilst alive but died before finalisation of the claim, this is regarded as a living claim. The latter case is most commonly referred to as an estate claim.

Deceased/Dependant claims
As the title implies this claim arises out of the death of a former mineworker or an environmentally exposed individual.

In these cases, a number of provisions apply:
1. Widows/widowers, minor children and other financially dependant persons may apply for compensation.
2. The deceased must have died from either mesothelioma or asbestos related lung cancer.
3. The claim must be lodged within three years of the date of death of the exposed individual.
4. No Dependant/s claim will be accepted where the deceased previously made a claim in relation to mesothelioma and/or asbestos-related lung cancer and the claim was accepted.
5. In making awards to Dependant Claimants a written warranty and undertaking will be taken from the Dependant Claimant stating that he/she is the true representative of the estate and/or dependants and that payment to him/her shall be in full and final settlement of all claims arising out of the death of the deceased and shall indemnify the Trusts against any further claims from any other Dependant claimants.
6. The Dependant Claimant will further undertake to distribute the award to any other person whom the Dependant Claimant purports to represent.
7. The Trusts will exclude any further claims from any other Dependant Claimant in respect of the estate.
6.3. How to claim

The claims procedure in brief
Lodging a claim with the Trusts is a fairly straightforward and simple procedure. Please refer to the attached abbreviated flow chart for a diagrammatic representation of the claims process.

Occupational claims
The process encompasses the following steps:

1. The potential claimant approaches one of the regional ART/KRT Offices or a registered Claims Handler.
2. The potential claimant provides proof of employment at a qualifying operation. If the potential claimant does not have proof of employment the Trusts will assist him/her in obtaining proof.
3. The potential claimant is issued with a medical letter and sent to a doctor on the Trusts’ accredited medical panel at the Trusts’ expense.
4. The medical file is checked by a Specialist Occupational Medical Panel (SOMP) consisting of radiologists, and occupational health specialists and a diagnosis is made.
5. The potential claimant returns to the accredited doctor to receive his/her medical results.
6. If the potential claimant has a compensable disease his or her claim is lodged with the Trusts.
7. The Trusts processes the claim form and make an Award Calculation.
8. A consultation about the award calculation takes place and the claimant signs the Release and Discharge form.
9. The Trusts pay the claimant.

Claimants may reapply if they did not at first qualify medically for an award but believe that their health has worsened due to asbestos exposure. The Trusts will though not pay for the medical expenses of this re-application.

New Method of Medically Screening Potential Claimants

In order to improve efficiency and decrease turn around times the Trusts introduced a two stage process of medical screening potential claimants. The stages comprise the following:

Stage 1
The potential claimant has a Chest X-Ray taken, which is sent to the Specialist Occupational Medical Panel (SOMP) for reading, as per the normal process. If the chest x-ray shows asbestos changes, the potential claimant is referred to the next stage of screening which typically involves a medical examination and a lung function test (spirogram).

Where there is no evidence of asbestos change the potential claimant is also referred to the second stage but does not usually have further tests.

Stage 2
All potential claimants are referred to the second stage screening. Those who have evidence of asbestos changes go for examination and spirometry testing. Those that have no evidence of asbestos changes are given feedback by the clinician regarding the x-ray findings.

Currently a mobile chest x-ray unit is used to screen potential claimants and the Trust’s Medical Office carries out all Stage 2 medical processes.

Environmental claims
The claims process for environmental claims differs slightly from occupational claims. The steps followed for an environmental claim include:

1. An individual approaches the Trust or its Claims Handler with their identification document, chest x-ray and evidence of environmental exposure.
2. The Trust or Claims Handler fills out the Environmental Enquirant Screening form and requests an environmental medical letter.
3. The official sends the file to the Medical Office in Cape Town.
4. The Specialist Occupational Medical Panel decides whether there is an asbestos related disease. If necessary, the enquirer is recalled for further tests.
5. If there is no asbestos related disease the service provider informs the enquirer, who may request a review of the decision at their own expense.
6. If an asbestos related disease is present the Environmental Reference Group independently decides if the enquirer is compensable. This information is relayed by the service provider (and a negative finding is appealable).
7. If compensable the usual steps are then followed to compensate the individual.

The Trusts do not pay the costs of the initial medical examinations or any further medical examination unless it is specifically requested and arranged by the Trusts.

**Claims Handlers**

Claims Handlers are organisations accredited by the Trustees to assist potential claimants in lodging a claim with either the ART or the KRT.

Claims Handlers, their staff, volunteers and agents are paid directly by the Trusts and they therefore may not request monies from potential claimants for assistance with their claims. If such a request is made this must be reported immediately to the Trusts.

**Proof of exposure and/or disease**

The Trusts are obliged to determine to their reasonable satisfaction, the full extent of any potential claimant’s exposure, including that of the deceased in the case of Dependants’ Claims, by reference to Qualifying and non-Qualifying Operations and whether that exposure was during the qualifying exposure period, pre or post the qualifying exposure period, or otherwise.

**Occupational Claimants** must, except in exceptional circumstances, furnish documentary proof of employment such as:

1. Reference in the records of the MBOD or CCOD, to employment at a Qualifying Operation.
2. Government Department record.
3. Medical record.
4. Wage slip or pay advice identifying the Qualifying Operation.
5. Any other certificate or document originating from a Qualifying Operation, including:
   ii. A list of employees which identifies the Qualifying Claimant as having been an employee of, or worker at, a Qualifying Operation during the qualifying exposure period.

The Trusts provide detailed Records of Service on request if available. A full work history is necessary when lodging a claim for compensation.

**Environmental Claimants** must furnish proof of residence in the vicinity of a Qualifying Operation as well as the period of residence together with suitable medical evidence (a recent good quality chest x-ray with doctor’s report) confirming that the environmental exposure to asbestos dust was likely to have materially contributed to the asbestos related disease.

The Trust will consider:

1. The distance resided from the relevant Qualifying Operation.
2. The likely sources of asbestos dust exposure or other asbestos mines or mills.
3. The length of time resided there.
4. The dates of residence.
5. The full occupational history.
6. Scientific and official data relating to environmental dust levels.

**Deceased/Dependant Claimants** may, in the case of claims made on behalf of persons who contracted and died from mesothelioma or asbestos related lung cancer as a result of occupational or environmental exposure, be required to satisfy the Trust that the deceased:

1. Suffered from an asbestos related cancer and was employed at a Qualifying Operation; or
2. Had sufficient environmental exposure to cause either mesothelioma or asbestos-related lung cancer in the vicinity of a Qualifying Operation.

In the case of any claim (living/deceased, occupational or environmental) based on the development of mesothelioma or asbestos related lung cancer, no account will be taken of any asbestos dust exposure in the 10 years prior to death.
Medical screening process

Chest x-ray
The goal of the chest radiographic examination is to help establish the presence or absence and the nature of disease involving the lungs. The better the quality, the more accurate the interpretation of the chest x-ray. All x-rays must be interpreted by a radiologist - a medical doctor who specializes in x-ray readings. This chest x-ray is thus an important medical document to determine the presence and extent or absence of asbestos related diseases.

Spirometry or lung function testing
Spirometry is a physiological test that measures how an individual inhales or exhales volume of air and this is used to determine respiratory health. The purpose of the lung function test is to establish the extent of respiratory disability and this will verify whether the awards will be an ARD1 or ARD2 (see above) in the presence of chest x-ray changes.

Spirometry results for the Trusts are interpreted by a medical occupational health specialist.

Spirometry testing is not required for awards ARD 3 and ARD4 (see above), which are asbestos cancers. For these awards, SOMP will, however, require other evidence which will be decided on a case by case basis.

Clinical examination
This examination is performed by a general practitioner appointed by the Trusts to determine any other ailments or complaints that might impact on the lungs.

For claimants with occupational exposure the cost of the first chest x-ray, spirogram and clinical examination is borne by the Trusts.

Specialist Occupational Medical Panel (SOMP)
This is a group of medical occupational health specialists and radiologists whose responsibility it is to assess the medical information and to reach an outcome to the best of their professional ability.

They are situated in Cape Town and work in teams of two: a radiologist and an occupational health specialist. The panel consists of seven medical specialist doctors, of which three are medical professors.

Review of decisions or outcomes
This process has two aspects:

1. Reviews occur automatically in cases of uncertainty or where additional information was received after SOMP has read the file. This happens all the time. Approximately a third of monthly readings are reviews.
2. A formal internal and external review process is in place if claimants are unhappy about the medical outcome of their claim.

This appeal can be lodged with the Claims Handler or with Trusts' head office. A minimum fee is required before an objection can be lodged.

Some people get sick from asbestos and others not
Anyone who has been exposed to asbestos, even non-miners, can get any of the asbestos related diseases. The more a person has been exposed, the more likely it is that they may get an asbestos disease. But most miners that the Trusts have tested do not have any asbestos related disease.

The reasons for this are not clear. There is medical evidence of claimants with long exposure histories and no signs of asbestos related disease on chest x-ray and others with very short exposures who unfortunately have contracted asbestos related disease. There are also families who are more genetically susceptible to getting asbestos related disease, but more research is needed to understand this better. Approximately 30% of former mineworkers seen by the Trusts have developed asbestos disease, and about 2% of these have an asbestos related cancer.
**Is there treatment?**
At present there is no curative treatment for asbestos related diseases or cancers.

For asbestosis and asbestos related pleural plaques, it is important to maintain good respiratory health with regular visits to the clinic and early treatment of any other chest diseases or infections. We also advise you to keep away from dusty or smoky areas, especially any asbestos dust, and to stop smoking.

For asbestos related lung cancers and mesotheliomas palliative care is available from clinics or hospices.

### 6.4. Compensation payment

#### Award calculation
Claimants are compensated for pain and suffering, medical expenses and loss of earnings. Awards are calculated according to:

1. The severity of the illness (ARD1 being the least severe, and ARD4 the most severe).
2. The age of the claimant.
3. The skill level.
4. Whether it is a living or deceased/dependant claim.
5. Whether the claimant had occupational exposure at other asbestos mines. **The Trust Deeds direct that the awards of claimants who have been diagnosed with an ARD 1 or ARD 2 should be apportioned according to how long they worked at qualifying and non-qualifying asbestos operations. ARD 3 and ARD 4 awards are not apportioned.**

#### Terms of any award
A Qualifying Claimant whose illness progresses from an ARD1 or ARD2 to an ARD3 or an ARD4 may qualify to receive further compensation. The amount of compensation that will be paid will be the difference between what was received for the previous claim and the value of the current claim. It should though be stressed that there is very rarely progression from one compensation category to another.

Except under specific circumstances all awards are once-off lump sum payments.

### 7. Investing the compensation
The report commissioned by the ART into the spending patterns of successful claimants indicated that financial literacy programmes and more comprehensive financial advice is needed to enable claimants to make more informed decisions about the use and investment of their compensation monies.

The above mentioned report is available on our website.

### 8. Environmental Rehabilitation
The Trusts are committed to ensuring effective environmental rehabilitation. Towards this end the ART commissioned a report into plans by the Department of Local Government and Housing, Limpopo Province, to establish Penge, the site of an old asbestos mine and mining village, as a formal township. The report is available on our website. These plans have been shelved.

### 9. Supporting NGO’s and Government Institutions

#### 9.1. Asbestos Coordinating Committee of Kgalagadi (ACCK)
The ACCK is an NGO that represents the interests of various stakeholders in the greater Kgalagadi region. The ART and KRT are committed to the activities of the ACCK and have provided reasonable financial support to this community based organisation.

#### 9.2. Asbestos Interest Group (AIG)
As its name implies, the AIG is an NGO that works with communities in the Kgalagadi region to ensure that they are informed about the work of the Trusts and facilitate access to the claims process. The AIG has expanded its work to include advocacy and activism around other lung diseases and HIV/Aids. The ART and KRT continue to provide financial support to this grass roots organization.
10. Government Compensation Regimes

Medical Bureau for Occupational Diseases (MBOD) / Compensation Commissioner for Occupational Diseases (CCOD)

The MBOD / CCOD deal with all occupational lung diseases arising from mining activities. The activities of the MBOD and CCOD are mainly governed by the Occupational Diseases in Mines and Works Act of 1973 (ODMWA). For more information please see [www.doh.gov.za/department/dir-mbod.html](http://www.doh.gov.za/department/dir-mbod.html).


In terms of current legislation/regulations all former mineworkers are entitled to attend a Benefit Medical Examination (BME) every two years at institutions appointed by the MBOD (until they have reached second degree (see below)).

In addition, ODMWA allows for the lungs and heart of miners and former miners who have been exposed to risk work while working on the mines or classified works to be examined after death, regardless of the clinical cause of death. According to this law, it is the duty of the last doctor who attends to the deceased person to arrange for the removal of the lungs and heart, provided that the next of kin agrees. The lungs and heart are examined, on behalf of the MBOD, by doctors at the Pathology Division, National Institute for Occupational Health (NIOH). The findings of the examination are sent to the MBOD, where the Certification Committee decides if the disease in the lungs is compensable according to ODMWA.

For submissions which are found to have a compensable occupational lung disease, the MBOD forwards the findings to the CCOD. The CCOD evaluates the application and processes the claim for payment.

It is important to remember that the MBOD/CCOD claims process is different from that of the ART/KRT.

11. Comparison of ART and KRT compensation with ODMWA compensation

On the following page is a summary of the differences between the compensation offered by the Trusts and that of the MBOD. The main differences are 1) The MBOD covers a lot more than just asbestos related diseases (ARDs); and, 2) The Trusts pay more in compensation for the asbestos related cancers.
## Comparison of ART and KRT compensation with ODMWA compensation

<table>
<thead>
<tr>
<th>Founding Document</th>
<th>ART &amp; KRT</th>
<th>ODMWA</th>
</tr>
</thead>
</table>

| Funded by | ART: R380M set aside for ARDs till 2028; KRT: Agreed to pay new ARDs until 2026 | Ongoing levies from all South African mines under ODMWA |

| Run by | Employees of the Trustees | Employees of Department of Health |

<table>
<thead>
<tr>
<th>Certification Committee</th>
<th>ART &amp; KRT</th>
<th>ODMWA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Specialist Occupational Medical Panel (SOMP) in Cape Town</td>
<td>Medical Bureau for Occupational Disease (MBOD) in Johannesburg</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Examination frequency</th>
<th>ART &amp; KRT</th>
<th>ODMWA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Once only, unless more examinations are requested by the Trusts</td>
<td>Every two years</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Examination centres</th>
<th>ART &amp; KRT</th>
<th>ODMWA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any health provider worldwide accepted by the Trusts</td>
<td>Provincial Hospitals, Private providers, Mines and the MBOD itself</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Payment arm</th>
<th>ART &amp; KRT</th>
<th>ODMWA</th>
</tr>
</thead>
<tbody>
<tr>
<td>ART Head Office in Johannesburg</td>
<td>Compensation Commissioner for Occupational Diseases in Johannesburg</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Beneficiaries and diseases compensated</th>
<th>ART &amp; KRT</th>
<th>ODMWA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Occupational ARDs plus environmental ARDs in those exposed to qualifying operations, for ARDs only</td>
<td>All occupationally exposed miners and former miners, for all dust and other mining related diseases</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Asbestosis</th>
<th>ART &amp; KRT</th>
<th>ODMWA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensated if profusion 1/0 or more with mild, moderate or severe lung function loss</td>
<td>Compensated if profusion 1/1 or more with moderate or severe lung function loss</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Asbestos related pleural thickening</th>
<th>ART &amp; KRT</th>
<th>ODMWA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensated if present with mild, moderate or severe lung function loss</td>
<td>Compensated if bilateral or if any plaque covers &gt;1/4 of lateral chest wall</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Asbestos related lung cancer</th>
<th>ART &amp; KRT</th>
<th>ODMWA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensated as ARD 3</td>
<td>Compensated as Second degree</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Mesothelioma</th>
<th>ART &amp; KRT</th>
<th>ODMWA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensated as ARD 4</td>
<td>Compensated as Second degree</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Compensation categories &amp; amounts</th>
<th>ART &amp; KRT</th>
<th>ODMWA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Four categories – ARDs 1, 2, 3 &amp; 4. If the disease progresses from an ARD1 or ARD1 to an ARD3 or ARD4 a second claim for further compensation may be lodged.</td>
<td>Two categories – First &amp; Second degree. Once a claimant is compensated for second degree no further compensation will be awarded</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARD 1</th>
<th>ART &amp; KRT</th>
<th>ODMWA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asbestos related pleural thickening and/or asbestosis, with mild or moderate lung function loss</td>
<td>First degree if moderate lung function loss or if no lung function test available but meets the MBOD criteria above for asbestosis or pleural thickening; may be non-compensable however</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARD 2</th>
<th>ART &amp; KRT</th>
<th>ODMWA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asbestos related pleural thickening and/or asbestosis, with severe lung function loss</td>
<td>Second degree</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARD 3</th>
<th>ART &amp; KRT</th>
<th>ODMWA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asbestos related lung cancer</td>
<td>Second degree</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARD 4</th>
<th>ART &amp; KRT</th>
<th>ODMWA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mesothelioma (pleural or peritoneal cancer)</td>
<td>Second degree</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>First Degree</th>
<th>ART &amp; KRT</th>
<th>ODMWA</th>
</tr>
</thead>
<tbody>
<tr>
<td>ARD1 if asbestos related disease with lung function loss</td>
<td>Cardio-respiratory disability of 10-40%</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Second degree</th>
<th>ART &amp; KRT</th>
<th>ODMWA</th>
</tr>
</thead>
<tbody>
<tr>
<td>If asbestos related disease: ARD2 (but possibly ARD1 if TB is present) or ARD3 or ARD4</td>
<td>Cardio-respiratory disability of &gt; 40%</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Effect of TB (tuberculosis)</th>
<th>ART &amp; KRT</th>
<th>ODMWA</th>
</tr>
</thead>
<tbody>
<tr>
<td>May reduce compensation if contributes to lung function loss</td>
<td>Increases the likelihood of Second degree certification if pneumoconiosis is present</td>
<td></td>
</tr>
</tbody>
</table>
## DEFINITIONS

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>ARD</td>
<td>Asbestos Related Disease. ARD means mesothelioma, asbestos-related lung cancer, asbestosis and/or asbestos-related pleural thickening but does not include asymptomatic pleural plaques.</td>
</tr>
<tr>
<td>ARD 1</td>
<td>Asbestos related pleural thickening and/or asbestosis, with mild to moderate lung function impairment.</td>
</tr>
<tr>
<td>ARD 2</td>
<td>Asbestos related pleural thickening and/or asbestosis, with severe lung function impairment.</td>
</tr>
<tr>
<td>ARD 3</td>
<td>Asbestos related lung cancer.</td>
</tr>
<tr>
<td>ARD 4</td>
<td>Mesothelioma.</td>
</tr>
<tr>
<td>No ARD</td>
<td>No evidence of a compensable asbestos related illness as per the criteria in the Trust Deeds.</td>
</tr>
<tr>
<td>Claimant</td>
<td>Refers to an individual who has lodged an application for compensation with the Trusts and who has met all the criteria for compensation.</td>
</tr>
<tr>
<td>Claims Handlers</td>
<td>Claims Handlers are organisations accredited by the Trustees to assist potential claimants in lodging a claim with either the ART or the KRT.</td>
</tr>
<tr>
<td>Compensable</td>
<td>Refers to the number of claimants who have met the administrative criteria and have been diagnosed with an asbestos related disease as defined in the Trust Deed.</td>
</tr>
<tr>
<td>Medical Letter</td>
<td>A letter issued by the Trusts which enables a potential claimant to attend a free medical examination for the purposes of determining whether or not he/she suffers from a compensable asbestos related disease.</td>
</tr>
<tr>
<td>Non compensable</td>
<td>Refers to the number of claimants who have met the administrative criteria but have not been diagnosed with an asbestos related disease as defined within the Trust Deeds and which therefore do not qualify to be compensated.</td>
</tr>
<tr>
<td>Potential Claimant</td>
<td>Refers to an individual who has lodged an application for compensation with the Trusts but who has not yet established that his/her claim meets all the criteria for compensation.</td>
</tr>
<tr>
<td>Stage 1</td>
<td>Refers to the chest x-ray screening stage, when potential claimants are screened by way of a chest x-ray to determine whether there is evidence of asbestos infection on the lungs.</td>
</tr>
<tr>
<td>Stage 2</td>
<td>Refers to the stage where further investigations are conducted to determine whether the potential claimant, whose chest x-ray showed evidence of asbestos infection, meets the medical criteria to lodge a claim with the Trust. Typical further investigations include spirometry. Feedback is also provided to potential claimants who do not show evidence of asbestos infection.</td>
</tr>
</tbody>
</table>
Potential claimant approaches CH/RO for initial interview and registration

CH/RO requests medical letter for administratively qualifying claimant

Medical letter issued by HO

Medical letters e-mailed to CH/RO who then arranges appointment with accredited doctor

Medical results sent to Medical Office to be read by SOMP

File for further investigation – doctor & CH/RO advised of repeat requested by SOMP

Finalised diagnosis result forwarded to doctor for post examination consultation

Finalised diagnosis result forwarded to HO

Recommendations forwarded to CH/RO

CH/RO forwards claim forms to HO

HO captures claim, processes file, ensures that all admin criteria are met, resolves outstanding queries

Data & Admin verification

Generate award calculation sheet

Approval of award calculation sheet

Forward approved award calculation sheet to CH/RO for consultation with claimant

Receive R&D & bank details from CH/RO

Load Beneficiary on Corporate Saver & forward for authorisation

Load payment on Corporate Saver & forward for authorisation & payment

CH – Claims Handlers
RO – ART Regional Offices
HO – ART Head Office
MO – Medical Office
SOMP – Specialist Occupational Medical Panel

Potential claimant approaches CH/RO for initial interview and registration

CH/RO requests medical letter for administratively qualifying claimant

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CH – Claims Handlers
RO – ART Regional Offices
HO – ART Head Office
MO – Medical Office
SOMP – Specialist Occupational Medical Panel
MEDICAL SCREENING PROCESS

Potential claimant (PC) approaches CH/RO for initial interview and registration

CH/RO requests medical letter for administratively qualifying PCs

Medical letter issued by HO

Medical letters e-mailed to CH/RO who then arrange for PCs attendance at a stage 1 screening session

Stage 1
PC is screened by way of chest x-ray

SOMP Reads chest x-rays

Stage 2
Feedback to PCs with No ARD

Stage 2 – Spirogram / Other
Further tests are undertaken

SOMP Certifies degree of ARD

CH forwards claim forms to HO

Data & Admin verification

Generate award calculation sheet

Approval of award calculation sheet

Forward approved award calculation sheet to CH for consultation with claimant

Receive R&D & bank details from CH

Load beneficiary on corporate saver & forward for authorisation

Load payment on corporate saver & forward for authorisation & payment

CH-Claims Handler
RO-ART Regional Offices
HO-ART Head Office
MO-Medical Office
SOMP-Special Occupational Medical Panel

www.asbestostrust.co.za

25 May 2009
An individual approaches the Trust/Claims Handler with ID, CXR, available medical information and evidence of environmental exposure.

The Trust or Claims Handler fills out the Environmental Enquiry Screening form and requests an Environmental Medical Letter.

The official sends all the medical information, forms and letters to the Medical Office in Cape Town.

The Special Occupational Medical Panel (SOMP) reads the medical information and makes a certification of Disease, Still Investigating or No ARD.

If Still Investigating
The enquirer is recalled for further medical tests.

The clinical Service Provider does the required test and sends them to the Medical Office.

The Specialist Occupational Medical Panel reads the file again and makes a certification of Disease present or Not compensable.

If Disease present
The matter is referred to the Environmental Panel which does a full assessment and makes a recommendation to the Environmental Reference Group.

The Environmental Reference Group assesses the environmental evidence as Compensable or Not compensable.

If Compensable disease
The certification is communicated to a service provider who informs the enquirer that they have a compensable disease.

The usual steps are then followed in the compensation process.

If No ARD
The certification is communicated to a Clinical Service Provider who informs the enquirer that they have no asbestos disease. The enquirer may appeal at own expense.

If Not Compensable
The certification is communicated to a Clinical Service Provider who informs the enquirer that they have no asbestos disease. The enquirer may appeal at own expense.

Notes
1. Complex cases may require additional testing which the Trust may fund at its own discretion.
2. If a person dies before a certification is reached, their heart and lungs should be sent to the NIOH.
Contact Details

Asbestos Coordinating Committee of Kgalagadi
PO Box 2723
Kuruman
8460
(053) 712 3428 (tel)
(053) 712 3375 (fax)
E-mail: johnswart@mailbox.co.za / johnnys@kgalagadi.gov.za

Asbestos Disease Awareness Organization
1525 Aviation Boulevard
Suit 318
Redondo Beach
California
90278
info@AsbestosDiseaseAwareness.org
www.AsbestosDiseaseAwareness.org

Asbestos Interest Group
PO Box 898
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8460
(053) 712 2947 (tel)
(053) 712 2947 (fax)
asbestosinterestgroup@telkomsa.net

Asbestos Relief Trust / Kgalagadi Relief Trust
Cape Town Office:
C/o UCT Lung Institute
PO Box 34560
Groote Schuur
7937
(021) 406 6929
(021) 406 6851 (fax)

Johannesburg Office:
PO Box 86
Parklands
2121
(011) 482 1000   (011) 376 0880 (fax)

Kuruman Office:
PO Box 2723
Kuruman
8460
(053) 712 3428
(053) 712 3375 (fax)

E-mail: artinfo@asbestostrust.co.za / enquiries@kgalagadirelieftrust.co.za
Website: www.asbestostrust.co.za

Compensation Commissioner for Occupational Diseases
PO Box 4566
Johannesburg
2000
(011) 713 6900 (tel)
(011) 403 8976 (fax)
Department of Labour
Private Bag X117
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0001
webmaster@labour.gov.za

The International Ban Asbestos Secretariat
Coordinator, Laurie Kazan-Allen
http://www.ibasecretariat.org

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(011) 406 1346 (fax)

National Institute for Occupational Health
PO Box 4788
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(011) 712 6532/45 (fax)
Info@nioh.nhls.ac.za