

**Kgalagadi Relief Trust  
Chairman's Report  
Financial Year Ending February 2008**

**Introduction**

Since becoming operational in July 2006, the Kgalagadi Relief Trust has achieved an acceptable measure of efficiency in meeting its primary objective, which is to make payment of grants to beneficiaries as fully, fairly and effectively as its means allow, subject to the qualifications and limitations of the Trust Deed and the Schedule of Grant.

As at end-February 2008, 2069 claims had been lodged against the trust. After thorough medical examinations, almost 60% of claimants were found to be clear of any compensable asbestos related disease. Benefits of R24,6 million had been made or approved for 536 successful claimants.

The KRT, and its sister organisation, the Asbestos Relief Trust (ART), continue to wrestle with the challenges associated with the complex legacy of asbestos mining, including a weak policy environment, inadequate state health and compensation services and widespread pollution that will almost certainly guarantee new waves of disease and despair.

To this end, the Trusts are co-convening a National Asbestos Conference in October 2008 where the bold commitments made at the National Asbestos Summit, convened by the Parliamentary Portfolio Committee in 1998, will be put to the test.

**Background to the KRT**

The KRT was formed when Becon, the company dealing with asbestos related issues on behalf of the former Swiss Eternit Group, agreed to establish a fund to provide financial relief to individuals who contracted an asbestos-related disease (ARD) while employed between 1952 and 1981 at the Kuruman Cape Blue (KCBA) and Danielskuil Cape Blue (DCBA) asbestos mines. These mines were operated by Eternit and Becon was persuaded to enter into a voluntary compensation agreement by Mr. Richard Spoor, a well-known lawyer who has acted on many occasions for victims of exposure to hazardous materials.

The KRT will provide financial relief for 20 years in strict accordance with the court-approved Deed of Trust which regulates the claiming procedure and formula for working out the payments. The amount of money that will be paid to the KRT by Becon is confidential. The trustees have been assured by the founders that the KRT will be able to meet its obligations.

The KRT is administered by the ART in terms of a Service Level Agreement. The ART was established in 2003 to provide financial relief to the former employees of asbestos mines operated by Gencor Limited, Msauli Asbes Beperk and Gefco. This avoids unnecessary duplication of costs and improves operational efficiency as some people claim against both trusts. The procedures and benefits of the KRT closely resemble that of the ART. All ART offices process claims on behalf of the KRT.

Qualifying claimants are:

- Those employed at the mines operated by KCBA and/or DCBA between 1 January 1952 and 30 September 1981 that have been diagnosed with an asbestos-related disease with lung function impairment of more than 10%.
- Dependants and children of any former employee who died from mesothelioma or asbestos-related lung cancer, less than three years before the claim is lodged.
- People who have contracted an asbestos-related disease from having lived in the immediate vicinity of the above-mentioned mines.

Qualifying claimants undergo a free medical examination. The results are reviewed by an independent specialist occupational medical panel that determines the degree of disability. Should the claimant have an asbestos-related disease (ARD), the administrators determine the benefit based on age and work history of the claimant, the nature and severity of the disease and the treatment needed. Compensation already paid from other sources such as the Medical Bureau for Occupational Disease (MBOD) or the ART, is deducted from the benefit paid by the KRT. This is to prevent “double compensation”.

The KRT makes every effort to settle claims within three months of the claim being lodged. Environmental claims take longer as extra information is required.

### Claims lodged

The status of claims on the trust in the year under review was as follows:

	2007/08	2006/07
<b>Claims lodged:</b>	<b>2069</b>	<b>970</b>
• <b>Non Compensable</b>	1023	383
• <b>Awaiting Primary Processing (including medical examination, document processing and/or final diagnosis)</b>	<b>266</b>	<b>227</b>
• <b>Compensable:</b>	<b>780</b>	<b>360</b>
○ <i>ARD1 (Asbestos related pleural thickening and/or asbestosis, with mild to moderate lung function impairment)</i>	648	278
○ <i>ARD2 (Asbestos related pleural thickening and/or asbestosis, with severe lung function impairment)</i>	88	62
○ <i>ARD3 (Asbestos related lung cancer)</i>	13	6
○ <i>ARD4 (Mesothelioma)</i>	31	14
<b>Awaiting Approval (including outstanding claims documentation and/or administrative processing)</b>	<b>227</b>	<b>141</b>
<b>Approved for payment and awaiting claimant sign-off</b>	<b>114</b>	<b>XX Lyn to provide)</b>
<b>Paid</b>	<b>553</b>	<b>219</b>

### Payments of Grants

As of 29 February 2008, the KRT had paid a total of R20 million<sup>1</sup> to 439 claimants, i.e. since it started paying claims in July 2006. The breakdown of payments per disease category is as follows:

<b>Asbestos Related Disease</b>	<b>Number Paid</b>	<b>Amount Paid</b>
ARD1	355	R10,965,998
ARD2	68	R4,649,063
ARD3	3	R283,436
ARD4	13	R4,099,050
<b>Total</b>	<b>439</b>	<b>R19,997,547</b>

This includes an amount of R13,6million<sup>2</sup> paid out in the 12 months to 29 February 2008. This represents an increase of more than 50% in the **number** of claims paid and more than 100% increase in the **amount** of claims paid between the first and second financial year reflected as follows:

<b>Asbestos Related Disease</b>	<b>Number Paid</b>		<b>Amount Paid</b>	
	<b>2006/7</b>	<b>2007/8</b>	<b>2006/7</b>	<b>2007/8</b>
ARD1	140	215	R3,704,889	R7,261,109
ARD2	29	39	R1,796,152	R2,852,911
ARD3	1	2	R122,490	R160,946
ARD4	3	10	R777,943	R3,321,106
<b>Total</b>	173	266	R6,401,474	R13 596 073
<b>Grand Total</b>	<b>439</b>		<b>R19,997,547</b>	

### **Claims approved for payment but not yet paid out**

As of 29 February 2008, 114 claims totaling R5,5 million had been approved for payment but had not yet been paid to claimants due to lack of banking details and/or non-completion of the

<sup>1</sup> Figures in this report, other than those reflected in tables or graphs, have been rounded up to the nearest R100,000.

<sup>2</sup> An amount of R6,264million was actually paid in the 2006/7 financial year, this figure has been reported as R6,4million due to an amount of R136,000 in cheques written out but not presented before the end of the financial year as per the audited financial statements.

Release and Discharge forms. The claims will be paid out when these documents are received. Claims handlers and administrative staff treat these follow-ups as a priority.

The breakdown of claims approved but not paid per disease category was as follows:

<b>Asbestos Related Disease</b>	<b>Number approved for payment</b>	<b>Amount to be paid</b>
ARD1	89	R2,700,595
ARD2	13	R541,213
ARD3	3	R529,137
ARD4	9	R1,703,520
<b>Total</b>	<b>114</b>	<b>R5,474,465</b>

In summary, a total of 553 approved claims worth R25,5 million had been paid or were awaiting payment at the financial year end.

### **Environmental Claims**

Last year I reported that the trustees had not yet come to terms with the requirement of the Trust Deed that benefits are payable to claimants who contracted ARDs as a result of exposure to asbestos at or near qualifying operations during the qualifying period.

Regarding qualifying medical conditions, the Trust Deed states that only ARD1 (symptomatic pleural thickening) and ARD4 (mesothelioma) can be accepted for living claimants; and ARD4 for deceased claimants, which claim must have been submitted by dependents within three years of the claimant's death.

However, the Trust Deed allows the trustees to interpret phrases that have a direct bearing on the acceptance or rejection on an environmental claim, for example: "*Significant exposure ... that was reasonably sufficient to have contributed to an ARD ... lived at or near a qualifying operation ...*

The trustees have therefore been at pains to arrive at a reasonable conclusion as to the interpretation of these phrases. They have consulted various legal, medical and environmental authorities before agreeing a set of criteria that will inform the assessment of environmental claims. While the Trustees have absolute discretion over the acceptance of claims and award of benefits, they are mindful of the fact that the environmental claims are complex and likely to resist attempts to apply formulaic approach. Claims will therefore be considered on a case by case basis.

While bound by the conditions set out in the Trust Deeds and restricted by the limited moneys available to the Trusts, the Trustees will seek to adjudicate where possible in favour of

claimants who have an ARD due to environmental exposure to asbestos. This includes a decision to accept environmental claims where they arise from family members being exposed to asbestos in the domestic environment as a result of a family member having worked in a qualifying operation during the qualifying period.

Only a small number of urgent environmental claims amounting to R480,603 were settled during the year under review (2007 – R835 800) but I am pleased to report that more than 60 outstanding environmental claims were processed in the first three months of the current financial year, including awards to five claimants, three of which will be co-funded with the ART due to dual exposure.

### **Operational Expenses and financial position**

As reflected in the financial statements, administration costs amounted to some R3,1 million, compared to R2,5 million in the previous financial year. The 25% increase in costs was satisfactory and reflected improved efficiencies when compared to a **112%** increase in benefits paid.

At the financial year end, R1,403,827 was available for distribution to beneficiaries while Claims Payable amounted to R5,474,465, a shortfall of R4,070,638 to be recovered in terms of the draw down arrangements with the founders. Likewise, accounts payable amounted to R1 529 592 against funds available for operations expenses of R299 634.

Subsequent to the year end, the founders “topped up” the funds available to the Trust with a total contribution of R22,4 million, which is anticipated to be sufficient for administrative expenses and benefit payments in the current financial year.

### **Medical Workshop**

Dr Markus Heitz, KRT trustee and specialist in lung diseases from Switzerland, gave two presentations at a medical colloquium organized by the KRT and ART in Kuruman on 20 February 2008. The aim of the colloquium was to exchange ideas on medical matters between the ART and KRT, and their providers in the Kuruman area.

### **Communication and Community Interaction**

#### *Asbestos Coordinating Committee of Kgalagadi (ACCK)*

Following extensive consultations, led by ART Chairperson, Phiroshaw Camay, the ACCK was established. It serves as a multi-stakeholder forum representing community interests opposite the trusts and the three tiers of government.

A successful Strategic Planning Session hosted by the Trusts took place in January 2008 where the vision, mission and objectives of the ACCK were developed.

The trusts will participate in the quarterly meetings of the ACCK.

#### *Asbestos Interest Group (AIG)*

The AIG is being supported by the trusts. It consists of various community representatives who are actively seeking to identify potential claimants and keeping the trusts informed about a wide range of practical and logistical challenges faced by prospective claimants.

#### *Asbestos Booklet*

The KRT is working jointly with the ART to develop an asbestos information booklet which will cover various aspects including:

- local and international compensation schemes for asbestos sufferers;
- asbestos related disease management; and
- local and international bans on asbestos.

#### *Attracting new claimants*

In addition to the marketing and communication efforts outlined in my previous report, the KRT and ART are now engaged with the Governments of Lesotho in an attempt to identify qualifying claimants now resident in that country. It is also anticipated that special efforts will be made in the current year to publicise the work of the ART in the deep rural areas of the Eastern Cape, from whence came many of the contract labourers who worked on the KCBA and DCBA mines.

### **Social Responsibility**

In terms of the trust deed, interest earned on funds made available by the founders may at the discretion of the trustees, be used for social project grants. At the financial year end, R384 609 had been invested in a number of projects outlined below. An amount of R1 618 973 remains available for social investment, of which R 1 539 861 has been budgeted.

A detailed list of all the projects which the KRT is currently funding or has funded can be found on [www.asbestostrust.co.za](http://www.asbestostrust.co.za)

#### *Neil White Bursary*

The KRT and ART collaborate on providing bursaries to medical personnel who wish to improve their diagnostic and treatment skills relating to asbestos related diseases. Two bursaries were awarded by the KRT for study towards the Diploma in Occupational Health (DOH) at the University of the Witwatersrand for the 2008/2009 academic year. The bursary winners were Dr L Jood, a service provider to the KRT who is based in Kuruman, and Dr J le Roux, who is based in Carolina in Mpumalanga province.

Subsequent to the financial year end, Dr Isaac Sekwayo the first recipient of the first Neil White Bursary (awarded by the ART in 2006) decided to withdraw from the programme.

#### *Kuruman Palliative Care Project*

The Palliative Care Nurse, whose costs are co-funded by the ART and KRT, continues to provide support to sufferers from cancer in the Kgalagadi District. She has also worked with

the National Institute for Occupational Health (NIOH) to establish post mortem facilities in the area.

### *Supedi Educational Project*

This project seeks to improve teaching and learning of mathematics at 10 primary schools in the Kgalagadi District. It entails the provision of maths equipment and training of educators along a standardised programme.

### *History of Asbestos and Asbestos Mines*

The KRT in conjunction with the ART has undertaken to support Mr Sol Bosch, a community activist, to complete a book he has been writing about the history of asbestos mining in South Africa. The final draft is expected during 2008.

### *Asbestos Prohibition Regulations*

In October 2007 the KRT strongly supported endeavors by the Department of Environmental Affairs and Tourism to prohibit the further use of asbestos or manufacture of asbestos containing materials in South Africa. We were delighted when the new regulations were promulgated on 28 March 2008 but have expressed concern that the safe use of asbestos containing materials *in situ* requires further attention. The KRT will fund a workshop in August as part of a programme to educate stakeholders on the new regulation.

### *National Asbestos Conference 2008*

In November 1998, the South African Parliamentary Portfolio Committee on Environment and Tourism convened a multi-stakeholder National Asbestos Summit in Johannesburg.

The Summit Declaration and Recommendations laid the groundwork for a renewed focus on a wide range of challenges related to the mining and use of asbestos in South Africa over the previous 100 years. These included occupational exposure, environmental exposure, health surveillance, legislative controls, compensation, rehabilitation and substitution.

While progress has been made in some areas (such as the publication of the revised Asbestos Regulations 2002 and the Asbestos Prohibition Regulations 2008; and the substitution of asbestos by the major manufacturers of fibre-cement building materials and friction products), the challenges associated with asbestos and health in South Africa remain enormous.

The KRT and ART trustees are concerned about a number of issues relating to the management of South Africa's asbestos legacy. These include weaknesses in the State compensation regime for former asbestos mine workers and the continued exposure of communities to environmental asbestos in former mining areas. These matters have an indirect but important bearing on the affairs of the trust. Trust officials routinely observe the deficiencies in South Africa's response to the challenge of asbestos. They sometimes bear the brunt of community frustrations. Stakeholder perceptions regarding the administration and rules of the trust are adversely impacted by circumstances beyond the control of the trust.

In terms of the KRT Trust Deed, the trustees have the power and duty to assist communities affected by the activities of the founder. The trustees believe that a vigorous public debate about the remaining challenges of asbestos will give fresh impetus to the efforts of civil society and all three tiers of Government to deal constructively and humanly with the legacy of asbestos in South Africa.

In this the 10<sup>th</sup> anniversary year of the 1998 National Asbestos Conference, the KRT trustees will therefore convene a National Asbestos Conference at the Eskom College in Midrand, near Johannesburg, on 14 and 15 October 2008.

The goals of the National Asbestos Conference 2008 are to:

- Review South Africa's compliance with the recommendations of the 1998 National Asbestos Summit.
- Conduct a fresh assessment of the current challenges associated with South Africa's asbestos legacy.
- Develop proposals for the revival and enhancement of South Africa's response to its asbestos legacy.

The conference themes include:

- Health: research, surveillance and care.
- Compensation: occupational and environmental, administrative processes and benefits payable, voluntary trusts and civil claims.
- Environmental: pollution and rehabilitation (mines, schools, houses etc).
- Legal and Regulatory: local and international developments.
- Asbestos containing materials: asbestos substitution, removal and disposal.

The estimated budget for the conference is R1 million. The KRT has agreed to underwrite the conference costs to an upper limit of R500 000 while the ART has agreed to underwrite R250 000. Funding appeals have been made to a number of Government Departments, Non-Governmental Organisations and Commercial entities.

Community-based organisations with an interest in asbestos related matters will, as far as possible, be sponsored delegates to the conference.

## **Recognition**

I would like to thank my fellow trustees, Phiroshaw Camay and Dr Markus Heitz, for their thoughtful contribution to the work of the trust over the past year. They are both passionate about the importance of the work we do and I could not wish for better support and guidance.

The staff of the ART/KRT have, as usual gone well beyond the call of duty in helping to identify and process claims in the most efficient and compassionate manner possible.

Richard Spoor, who is the founder's representative, the trustees of the ART and our claims handlers are also due special thanks for the support and advice they have provided to the KRT.



I would also like to pay special tribute to the memory of Ronnie Morris, a journalist who dedicated his life to exposing injustice and who was a champion of all those who suffered as a result of exposure to asbestos.

**Brian Gibson**  
**Chairman**

17 July 2008