

BRIEFING SESSION WITH THE SHAREHOLDER MINISTER TRANSNET PENSION FUNDS

AUGUST 2018



TRANSNET PENSIONERS' CLAIM



1. Overview of defined benefit pension funds
2. Status of Class Action
3. Conclusion

Overview of Transnet's Pension Funds



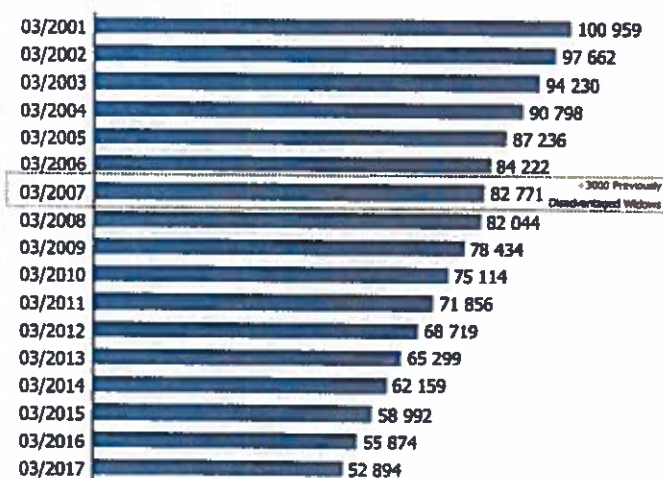
- On corporatisation of Transnet in 1990 the Transnet Pension Fund (TPF), a defined benefit fund, was established. The fund commenced on 1 April 1990 with an actuarial deficit of R17 184 million, meaning that at that point in time only 22% of its liabilities (net present value of future pensions) were covered by the fund's investments.
- This actuarial deficit position has, over the years, improved significantly.
- In November 2000 the TPF was split through an Act of Parliament into three funds:

Name of fund:	Transnet Retirement Fund	Transport Pension Fund	Transnet Second Defined Benefit Fund (TSDBF)
Type of fund:	Defined Contribution Fund	Closed Defined Benefit Fund	Closed Defined Benefit Fund
Members:	March 2001: 67 688 March 2017: 62 647	March 2001: 14 626 March 2017: 5 882	March 2001: 100 959 March 2017: 52 894
Actuarial surplus/(deficit)	No actuarial surplus or deficit as the fund is a defined contribution fund	March 2001: R153 million surplus March 2017: R4 909 million surplus	March 2001: R3 638 million deficit March 2017: R4 384 million surplus

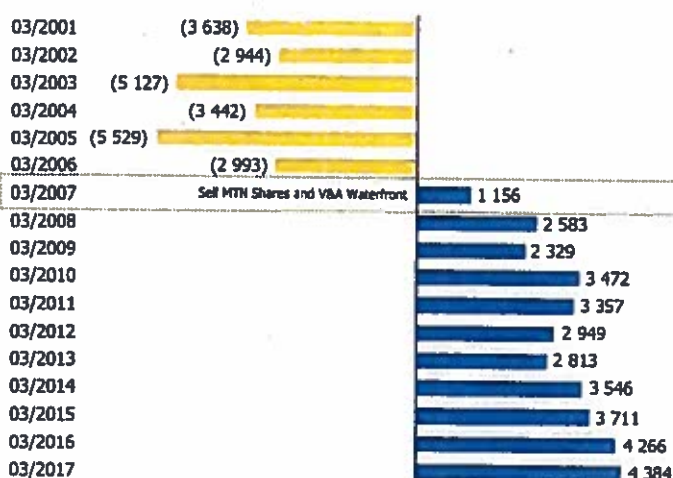
- The TPF contained a number of historical inequities along racial and gender lines which carried through to the TSDBF, the impact of which remain evident in the TSDBF today.

Historical overview of the TSDBF

Number of members



Surplus/(Deficit) (R million)



- From 2000 to 2005, the impact of market changes and falling interest rates on the TSDBF's asset value, being a high proportion of equity and property assets, is evident.
- The disposal of the MTN shares in 2006 (at the height of the equity markets) and the V&A Waterfront in 2007 (at the height of the property boom) is visible in the increase of the TSDBF's asset values in these years and the ultimate reversal of any deficits.
- The impact of the implementation of the cash flow matching strategy in 2007 is also evident in subsequent years, as the asset value, and actuarial surplus in the TSDBF, has remained relatively constant, despite the payment of increased bonuses by the TSDBF.

Voluntary benefits and payments



- The Previously Disadvantaged Widows refer to those spouses of black pensioners who retired from Transnet during the period 16 December 1974 to 1 April 1986 and who are not entitled to a spouse's pension from the Transnet funds based on legislation at the time.
- In 2007, Transnet procured that the Transnet Pension Fund Act was amended to provide for the transfer of these Previously Disadvantaged Widows into the TSDBF in order to provide them with an entitlement to this benefit.
- As a result, at 31 March 2007, over 3 000 Previously Disadvantaged Widows were registered as members of the TSDBF.
- Transnet contributed R77 million to the TSDBF, equating to a funding level of 112% of this liability at 31 March 2007, to provide the Previously Disadvantaged Widows with pensioner benefits, without compromising the value of the TSDBF for existing members.
- From this date, the Previously Disadvantaged Widows have received identical benefits to all other beneficiaries of the TSDBF, including statutory increases, ad hoc bonus payments and, to the extent applicable, *ex gratia* payments made by Transnet.
- Transnet has, in its sole discretion, made certain *ex gratia* payments to beneficiaries of the defined benefit funds.
- When determining the allocation of the *ex gratia* bonus, the previously disadvantaged pensioners were the prime focus, but pensioners with long service, pensioners over the age of 65 and, for obvious reasons, pensioners who have very low pensions, have also taken priority.

TSDBF Pensions



- Historically, there has been large pay discrepancies between racial groups, and in addition, there were also large discrepancies in the amount of contributions paid to pension funds between workers from different racial groups.
- An individual with a short period of pensionable service or a low pensionable salary will continue to have a low pension, all else being equal, irrespective of the increases granted.
- Since 1990, many reports have been prepared by Transnet:
 - setting out why these pensioner obligations should have remained with government; and
 - advising how an obligation of this nature has overshadowed and hampered the operational capacity of Transnet since its inception.
- Transnet worked closely with the Department of Public Enterprises (DPE) to try and obtain Government support for additional funding of the TSDBF, but these discussions were terminated.
- Subsequently, Transnet and the TSDBF have worked hard together to improve the financial position of the TSDBF, and ultimately, the pensioners.
- Until 2003, the pensioners received additional increases on top of the statutory percentage of 2% per annum contained in the rules.
- In 2003, based on advice from senior counsel that confirmed that the rules only provided for increases of 2% per annum, no more, and no less, and that the trustees have no discretion in this regard, the trustees limited the rate of pension increases to the fixed guaranteed rate of 2%.

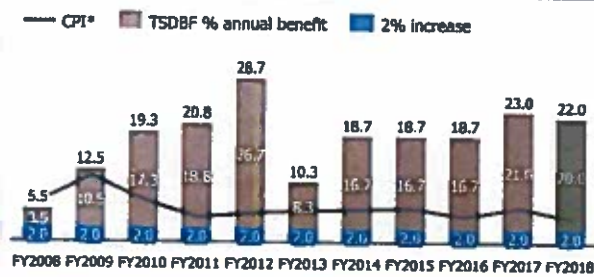
TSDBF Pensions



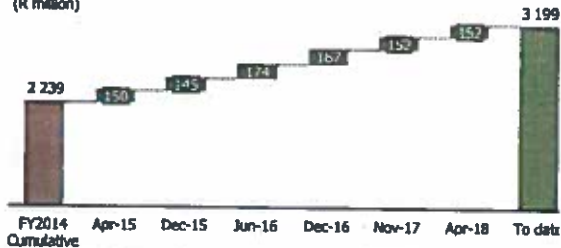
- Transnet and the TSDBF undertook to investigate the circumstances of the situation and the introduction of a rule amendment enabling the trustees to pay bonuses to pensioners was considered.
- In considering the above, Transnet and the TSDBF considered the requirements for older persons to receive a State grant. The financial eligibility for the grant is determined by a means test. The means test is based on the income and assets of the applicant and their spouse.
- In order not to negatively impact the financial soundness of the TSDBF, nor reduce the income of the pensioners from both the TSDBF and the State, Transnet and the TSDBF proposed the rule providing for ad hoc bonuses to be paid by the TSDBF, which was approved by the Minister of Public Enterprises with the concurrence of the Minister of Finance.
- The bonuses do not vest:
 - cannot result in the TSDBF moving into an actuarial deficit position; and
 - are not taken into account in the means test in calculating an older persons entitlement to a State grant.
- The necessary rule amendments were approved in June 2007 (TSDBF) and December 2011 (TTPF), enabling trustees to pay pensioner bonuses.

Enhanced benefits

TRANSNET

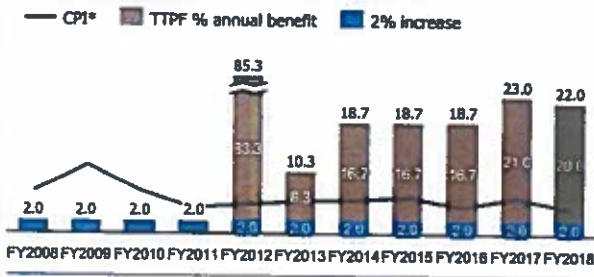


TSDBF increases – bonus portion (R million)

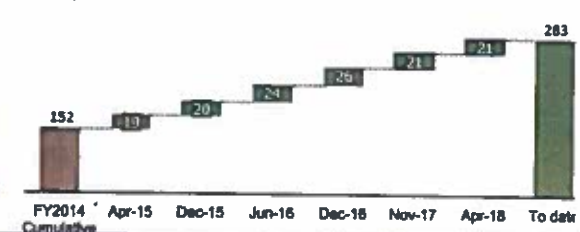


The bonus payments continue to supplement the current statutory increase of the beneficiaries of the Transport Pension Fund: Transnet Sub-fund: Transnet Second Defined Benefit Fund (TSDBF) to provide pensioners with effective increases above CPI.

This has resulted in the beneficiaries of the TSDBF and TTPF receiving pension cash flows greater than inflation since the payment of ad hoc bonuses was introduced.

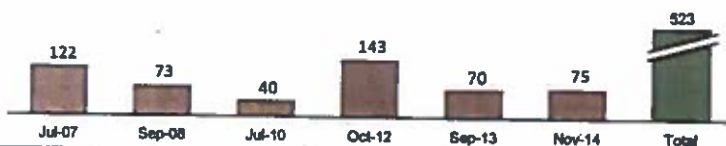


TTPF increases – bonus portion (R million)



* Annual CPI (Jan-Dec)

Ex-gratia payments to the poorest pensioners (R million)



- Transnet has, in its sole discretion, made certain *ex gratia* payments to beneficiaries of the defined benefit funds.
- The previously disadvantaged pensioners were the prime focus, but pensioners with long service, pensioners over the age of 65 and, for obvious reasons, pensioners who have very low pensions, have also taken priority.



Proposed rule amendments

- Given the soundness of the TSDBF, the Transnet Board of Directors supported and recommended proposed rule amendments to Department of Public Enterprises for the granting of additional future pension increases (over and above the statutory 2%) based on affordability, in February 2013.
- The proposed rule amendments, which apply equally to the TSDBF and the Transnet Sub Fund of the Transport Pension Fund were concurred to by National Treasury during October 2017 and forwarded to the DPE.
- Transnet awaits final approval from the DPE, whereafter the rule amendments can be gazetted.
- To support the rule amendments, the funds have also drafted a pension increase and bonus policy, to provide clarity for all trustees and pensioners.
- The draft policy provides:
 - The Trustees of the fund may consider the granting of a bonus payment in any year
 - The Trustees of the fund may from time to time consider the granting of an ad-hoc pension increase where such increase will be in addition to the statutory 2% per annum
 - The Trustees of the fund may be required, based on affordability, to prioritise the consideration of either a bonus payment or ad-hoc pension increase as it may not be possible or affordable to consider both
 - Any bonus or pension increase granted would be subject to affordability as certified by the Fund's actuary

CLASS ACTION



31 July 2014

- The plaintiffs obtained an order from the Pretoria High Court certifying a class action against, among others, Transnet, the Transport Pension Fund, including the Transnet Sub Fund of the Transport Pension Fund (TTPF), and the TSDBF.
- The plaintiffs are members of the TTPF and the TSDBF respectively, and they represent all members of their respective funds who have not opted out of the class action.
- The plaintiffs seek the following relief:
 - An annual increase of not less than 70% of the rate of inflation in the pensions of all members of the TPF and TSDBF, with effect from 2003, plus interest;
 - An order that Transnet pay to the TPF and TSDBF an amount of R17,18 billion to address the commencement date actuarial deficit plus interest calculated from 1 April 1990; and
 - An order that Transnet pay to the TPF an amount of R309 million plus interest, apportioned to Transnet from the surplus in 2001.

5 June 2015

- Summons was issued by the Registrar of the Pretoria High Court and served on Transnet on 11 June 2015.

4-5 April 2016

- Transnet and the funds filed legal arguments (exceptions) showing that the particulars of claim are defective and that the plaintiffs should remove or amend their particulars. The exceptions were heard on 4 and 5 April 2016.

18 May 2016

- Judgment on the exceptions was delivered, and the court upheld three of Transnet's exceptions and gave the plaintiffs 14 days within which to amend their particulars of claim.

CLASS ACTION



5 August 2016

- However, the plaintiffs instead lodged an application for leave to appeal in respect of the judgement, followed by a petition to the Supreme Court of Appeal (SCA) , then an application to the President of the SCA and finally an application in the Constitutional Court.

25 Apr 2018

- Judgment was delivered by the Constitutional Court on 25 April 2018, effectively dismissing all exceptions against the particulars of claim.
- This means that the Plaintiffs' particulars of claim do not have to be amended, and Transnet and the Funds have to file their respective Pleas by 25 May 2018, which Transnet has done.
- Transnet remains confident that it will be able to successfully defend the class action because it will demonstrate to the High Court that:
 - Historical pension increases have not been less than the relevant laws provide for;
 - The historical funding deficit of R17.18 billion was never a debt due by Transnet, and the funds are both currently in surplus; and
 - The class's allegation that the apportionment was an unlawful donation is factually and legally incorrect. The amount was determined by an independent actuary, in accordance with resolutions taken by the Fund's trustees and allocated to Transnet on the understanding that Transnet would utilise the surplus around the two defined benefit funds viz. the TSDBF and TPF, which has been done through the *ex gratia* payments of R523 million.
- In addition to the factual allegations of the class being incorrect, the legal basis for a number of the allegations are flawed.

CONCLUSION



- Transnet will continue to oppose the class action claim on its merits in line with its own fiduciary duties as a separate and distinct legal entity from the TSDBF.
- Notwithstanding this, Transnet remains committed to improving the financial position of the beneficiaries within affordability constraints.
- Accordingly, approval of the proposed rule amendment for the granting of additional future pension increases (over and above the statutory 2%) based on affordability will assist in the distribution of the available surplus to beneficiaries.