

Parliamentary Paper  
No. 355/1986


The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES  
STANDING COMMITTEE ON  
ABORIGINAL AFFAIRS

Report on certain documents  
tendered to the Committee  
during the Baryulgil  
Community Inquiry

November 1986

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**HOUSE OF REPRESENTATIVES**

  
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The Commonwealth Government Printer  
Canberra 1986

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ISBN 0 644 05661 4

**COMMITTEE'S TERMS OF REFERENCE:**

That a Standing Committee be appointed to inquire into and report on such matters relating to the present circumstances of Aboriginal and Torres Strait Island people and the effect of policies and programs on them as are referred to it by -

- (a) resolution of the House, and
- (b) the Minister for Aboriginal Affairs.

**Members of the Committee**

Chairman	..	Mr C.A. Blanchard M.P.
Deputy Chairman	..	Mr R.F. Shipton M.P.
Members	..	Mr I.M.D. Cameron M.P.
	..	Mr G. Campbell M.P.
	..	Mr D.M. Connolly M.P.
	..	Mr J. Gayler M.P.
	..	Mr G.L. Hand M.P.
	..	Mr M.J. Maher M.P.

**Members of the Sub-committee on Baryulgil Documents**

Chairman	..	Mr G.L. Hand M.P.
Members	..	Mr C.A. Blanchard M.P.
	..	Mr I.M.D. Cameron M.P.
Secretary:	..	Mr D.R. Elder

DECLARATION OF INTEREST

I, the undersigned, being a candidate for the office of \_\_\_\_\_, do hereby declare that I am not a member of any political party, and that I am not connected with any political party, and that I am not connected with any political party, and that I am not connected with any political party.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

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My Commission Expires \_\_\_\_\_

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Notary Public for the State of \_\_\_\_\_

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## The reference

1 On 5 June 1986 the House of Representatives referred the following matter to the Committee for consideration and advice to the House:

Whether documents tendered to the Committee by (a) Aboriginal Legal Service Ltd and (b) Mr G.F. Burke during the Committee's inquiry into the effects of asbestos mining on the Baryulgil community should be presented to the House by the Committee for the purpose of the House granting leave to a petitioner or his or her legal representatives to issue and serve a subpoena for the production of those documents to a court.

2 The Committee met on 5 June and appointed a sub-committee consisting of three members who were members of the Committee at the time of the Baryulgil Inquiry to undertake the reference and report back to the Committee. The members appointed to the sub-committee were Mr G.L. Hand (Chairman), Mr C.A. Blanchard and Mr I.M.D. Cameron. The sub-committee considered the matter and prepared a report which has been endorsed by the Committee.

## Reason for the reference

3 The Aboriginal Legal Service, acting on behalf of some Aboriginal people who had lived and worked in Baryulgil, has commenced actions for common law damages in the Supreme Court of New South Wales. Damages are being claimed for asbestos related injury and disease arising from their employment by and/or residence near an asbestos mine at Baryulgil on the north coast of New South Wales. The defendants in these cases are the James Hardie group of companies plus others.

4

In order to assist the Aboriginal Legal Service in these cases Mr Bernard Brassil, a solicitor with the Legal Service, has petitioned the House for leave to be granted:

- (a) To your Petitioner to take possession of the photographs, letters and plans tendered by Aboriginal Legal Service Ltd.
- (b) To your Petitioner to take possession of the documents tendered or presented by Mr G.F. Burke as aforesaid.
- (c) To all persons seeking compensation for their injuries and damages arising from their employment in and/or residence near the asbestos mine at Baryulgil to refer to the Report of the House of Representatives Standing Committee on Aboriginal Affairs titled 'The Effects of Asbestos Mining on the Baryulgil Community' in those Court proceedings.
- (d) To an appropriate Officer or Officers of the House to attend in Court as and when necessary to produce the official Report of the House of Representatives Standing Committee on Aboriginal Affairs titled 'The Effects of Asbestos Mining on the Baryulgil Community' and to give evidence in relation to the conduct of the inquiry which led to that report, providing that such Officer or Officers should not be required to attend at any time which would prevent the performance of his, her or their duties in the Parliament.

A copy of the full petition from Mr Brassil is at Appendix 1.

5 The requirement to petition the House for the granting of leave to obtain evidence of parliamentary proceedings, or documents presented during parliamentary proceedings, for use in the courts derives from Article 9 of the Bill of Rights which



provides that proceedings of the Parliament ought not to be impeached or questioned in any court or place out of Parliament. Evidence given by witnesses to, and documents received in evidence by, parliamentary committees are part of the proceedings of Parliament, and require leave of the House to be granted for their subsequent use in the courts. House of Representatives Practice notes that in the exercise of this privilege 'the House must weigh the need to protect this privilege of the House against the need to ensure that it does not hinder the administration of justice'.<sup>1</sup>

6 The House has referred to the Committee for advice the question of whether the documents tendered to the Committee by the Aboriginal Legal Service and Mr Burke during the Baryulgil Inquiry should be presented to the House with a view to leave being granted to a petitioner to serve a subpoena for the production of the documents to a court.

#### The Baryulgil Inquiry and the documents

7 The inquiry into the effects of asbestos mining was referred to the Committee on 19 September 1984 by the Minister for Aboriginal Affairs. A copy of the terms of reference for the inquiry is at Appendix 2.

8 During the Inquiry the Aboriginal Legal Service asserted that the operation of the mine had had a devastating effect on the health of Aboriginal workers and residents at Baryulgil. To support its assertions the Aboriginal Legal Service presented to the Committee a large amount of documentation about the operation of the mine, the conditions which existed in the mine and the effects on workers' and residents' health.

9 Included in this material were submissions and attachments that were published in the transcript of evidence. The first submission, which was authorised for publication by the

Committee on 14 December 1983, had as attachments a selection of photocopies of documents supplied to the Legal Service by the former manager of the mine, Mr Gerry Burke. These documents became known as the 'Burke papers'. A list of the documents is at Appendix 3. The second submission from the Aboriginal Legal Service concerning medical evidence to the Inquiry was presented jointly with the Doctors Reform Society. The final submission concerned proposals for compensation for former miners and residents at Baryulgil.

10 During the course of the Inquiry the Legal Service also presented other documents, photographs and plans. Some of these were incorporated in the transcript of evidence (see Appendix 4 for a list of the documents), others were accepted as exhibits (see Appendix 5 for a list of the material), while a small number were made confidential exhibits (see Appendix 6 for a list of these). Some of these confidential documents concerned medical records of former mine workers and residents of Baryulgil and were made confidential for reasons of medical professional privilege. The other confidential documents were transcriptions of interviews (and the tape of interviews) between Chris Lawrence, Solicitor with the Aboriginal Legal Service, and former workers at the mine. Finally, a number of documents were retained on file without being received in evidence although the documents were in some cases used in compiling the Committee's report. (see Appendix 7 for a list of this material). As these documents were used in compiling the report they have been regarded as confidential evidence for the purposes of this reference.

11 Mr Burke initially appeared before the Committee on 6 February 1984 and gave evidence in relation to a short submission he had made to the Inquiry. This submission was ordered to be incorporated in the transcript of evidence on 7 February 1984. Mr Burke was subsequently asked to attend a public hearing on 13 August 1984 and to identify and table documents in his possession relating to the operation of the

mine. He presented a large number of documents to the Committee at the hearing, a number of which were 'originals' of the photocopied documents provided to the Committee by the Aboriginal Legal Service and known as the 'Burke papers'. The collection of documents he presented to the Committee at the hearing was made a confidential exhibit to the Inquiry. A list of the documents is at Appendix 8.

12 The reasons for these documents being made confidential exhibits were complex. Hardies Trading (Services) Ltd, a subsidiary company of the James Hardie Group which presented evidence to the Inquiry, had objected to Mr Burke giving evidence in public on the first occasion on which he appeared (7 February 1984) on the grounds that the evidence 'being canvassed by this witness goes to issues which may be litigated'.<sup>2</sup> Mr Burke fell within the category of former mine employees who might be involved in litigation. Hardies was also concerned about the effect of Mr Burke's evidence on other potential or actual litigation. In particular it was concerned about litigation in which it was involved with its insurer, QBE International, about the continued application of insurance policies. It was Hardies' contention that Mr Burke's evidence should be taken in camera because it was covered by the sub judice convention. House of Representatives Practice describes the sub judice convention as a restriction on debate and discussion which the House (and its committees) places upon itself 'in the case of matters awaiting or under adjudication in a court of law'.<sup>3</sup> In deciding to make the documents presented by Mr Burke confidential the Committee's concern was to protect the interests of those who were involved in the Inquiry in view of the possible consequences of this material being publicly available. The Committee wished to examine the documents in detail to determine which would be covered by the sub judice convention. The documents submitted by Mr Burke were retained as confidential exhibits.

13 However a number of the documents presented by Mr Burke were in fact 'originals' of the photocopied documents, known as the 'Burke papers', provided to the Committee by the Aboriginal Legal Service with its first submission and published by the Committee in the transcript of evidence. Some of the 'Burke papers' thus had already been made public by the Committee despite its decision to retain the documents as confidential exhibits when submitted by Mr Burke.

14 Although Mr Burke indicated to the Committee at his second public hearing on 13 August 1984, that the documents he presented were all the documentation he had on the operation of the mine, he subsequently sent a further 5 kg of previously unmentioned documents to the Committee. These documents were returned to Mr Burke before the completion of the Inquiry and were not received as evidence to the Inquiry.

15 One of the major conclusions of the Committee's Inquiry was that, subject to some technical difficulties, there were adequate avenues of compensation available to members of the Baryulgil community who contract, or have contracted, an asbestos-related disease. The Aboriginal Legal Service is now seeking compensation through the courts on behalf of its clients and has asked for documentation presented to the Committee during the Baryulgil Inquiry to facilitate its cases.

#### Question for consideration and advice

16 The question the Committee has been asked to consider and provide advice to the House about is whether the documents referred to above should be presented to the House by the Committee for the purpose of the documents subsequently being produced to a court.

17 To assist it in determining the question the Committee wrote to the witnesses who presented the documents to the Committee, the Aboriginal Legal Service and Mr Burke, seeking

their comments on the terms of reference and in particular whether they had any objection to the documents being released. The responses from the Aboriginal Legal Service and from Mr Burke's solicitors are included as Appendixes 9 and 10 respectively. The Committee also sought the views of the James Hardie Group through their solicitors, Diamond Peisah and Co. The Committee sought the views of Hardies because of their extensive involvement in the Baryulgil Inquiry and concerns that they had expressed about the 'Burke papers' both before and after the completion of the Inquiry. A copy of the response from Diamond Peisah and Co. is included as Appendix 11. Because of the complexity of the issues before it the Committee also sought advice from the Attorney-General and referred to him the responses it received from interested parties. A copy of the Attorney-General's advice is included as Appendix 12.

18 One of the issues which the Committee addressed in considering whether or not the documents should be released for use in court proceedings was that of the protection of the witnesses who submitted the documents to the Committee. Standing Order No.362 provides that:

All witnesses examined before the House, or any committee thereof, are entitled to the protection of the House in respect of anything that may be said by them in their evidence.

This evidence includes submissions made by witnesses and documents presented by them. It was important for the Committee to satisfy itself that the witnesses who submitted the evidence to the Committee had no objection of substance to the release of the documents to a court or considered that their interests would be affected by the Committee recommending this course of action.

19 The Aboriginal Legal Service, through Mr Brassil's petition to the House, is now actively seeking the release of all the documentation provided by it to the Committee during the Baryulgil Inquiry. By this action the Aboriginal Legal Service

clearly indicates that neither it, nor its clients, believe that their interests would be prejudiced by the release of the documents. Mr Brassil, in a response to the Committee's request for comments on the terms of reference (see Appendix 9), indicates the Aboriginal Legal Services' support for the release of the documents.

20 In relation to Mr Burke, it should be noted that the decision to retain the documents presented by him as confidential exhibits was not to protect Mr Burke but for the protection of other parties to the Inquiry, in particular the James Hardie Group which had indicated its concern about the effect on litigation of matters being canvassed by Mr Burke. The letter from Mr Burke's solicitors in response to a request from the Committee for comments on the terms of reference indicates that Mr Burke has no objection to the release of the documents for the purpose of the issuing of a court subpoena. (Appendix 10).

21 The advice from the Attorney-General indicates that as the witnesses who submitted the documents to the Committee are either actively seeking the leave of the House, or are consenting, to have the documents released to a court on the issuing of a subpoena the question of the protection of the witnesses is of very much less importance.

22 A second issue addressed by the Committee was the question of public interest associated with the release of the documents to a court. The documents presented to the Committee by the Aboriginal Legal Service and Mr Burke, by being regarded as evidence to the Committee's inquiry, became the property of the Committee at the time they were submitted and could not be disclosed unless authorised for publication by the Committee at the time, or subsequently by the House. Because of the application of Article 9 of the Bill of Rights they also could not be used in courts of law without obtaining leave of the House to subpoena for the production of the documents. The

Attorney-General's advice on this matter states that, as the documents in question were only a part of the proceedings of the Parliament because they were tendered to the Committee by witnesses, there is no intrinsic need to deny them to a court hearing proceedings in which they are relevant. In fact to do so could be seen as an attempt to pre-judge or to frustrate such proceedings. According to the Attorney-General there would appear to be strong public interest grounds (the interests of the proper administration of justice) for making the documents available.

23 Mr Brassil, in giving reasons why the Committee should present the documents to the House for the purpose of the House granting leave for the issuing of a subpoena, refers to the importance of the documentary material to the cases of former Baryulgil miners and to the question of public importance involved in the documents being placed before a court for consideration (see Appendix 9). The Attorney-General stated that if Mr Brassil's description of the documents is accurate they may go to the heart of proceedings for damages for asbestos exposure being brought by the Aboriginal Legal Service on behalf of its clients and accordingly it would be in the interests of justice that this documentation be available to be placed before the Court for consideration.

24 However, the Committee had to give special consideration to some of the documents. The Committee gave consideration to whether the documents presented by the Aboriginal Legal Service which were made confidential exhibits should be released. As was indicated above, some of the confidential documents were transcripts of interviews (together with tape of interviews) between Chris Lawrence of the Legal Service and three former mine workers. The Committee made these confidential because the transcripts were not authenticated by those who gave them and the Committee did not wish to make them publicly available under those circumstances. These transcripts still have not been authenticated. The remainder of the

confidential documents concern medical evidence presented by the Legal Service about former mine workers. These were made confidential for reasons of medical professional privilege and the protection of identity of patients. The Committee also considered that some of the documents submitted by the Aboriginal Legal Service and held on file may be covered by medical and legal privilege.

25 The Committee sought advice about these questions from the Attorney-General. In relation to the unauthenticated transcripts of interviews the Attorney-General advised that their admissibility and the weight to be accorded them were matters for the court and that therefore there was no reason why they should not be made available to the courts. In relation to the medical evidence the Attorney-General did not consider that the privileges of the House would be affected by allowing them to be released to a court and hence he saw no reason why this should not be done.

26 The Committee also considered the question of the release of the documents submitted by Mr Burke and listed at Appendix 8 which were held as confidential exhibits while they were examined by the Committee. The Committee wished to examine the documents to see what effect their publication might have on actual or potential litigation and thus with the possible application to the documents of the sub judice convention.

27 The major litigation about which the Committee was concerned was that between the James Hardie Group and its insurer, QBE International, concerning the continued application of insurance policies covering companies in the Group. This litigation was proceeding during the course of the Baryulgil Inquiry. Hardies was concerned that evidence provided by itself and others might be construed as 'admissions' under policies of insurance or might otherwise be considered as factors which could vitiate contracts of insurance. It expressed its concern to the Committee that QBE would seek to use evidence presented to the



Inquiry in that litigation and that therefore the Committee should take any evidence which might affect that litigation in camera.

28 Before the completion of the Inquiry photocopies of the 'Burke documents' were provided to Hardies inviting them to identify any affecting their position in litigation. The Committee followed the same procedure in relation to some exhibits submitted by the Aboriginal Legal Service. Hardies responded identifying a number of documents which it believed affected litigation. The 'Burke documents' were retained as confidential exhibits.

29 It is understood that the litigation between Hardies and QBE has at this stage been settled and that proceedings are no longer before the courts. As this matter is not currently being litigated, the question of the documents being sub judice, at least in relation to this litigation, does not seem to arise.

30 Other issues considered by the Committee were raised in comments about the reference made by the James Hardie Group through their solicitors, Diamond Peisah and Co.. In their response to the Committee's invitation for comments on the reference (copy at Appendix 11), Diamond Peisah and Co., on behalf of their clients, asserted that the real question for consideration was the ownership of the documents. Diamond Peisah and Co. indicated that their clients had no objection to the documents being released into the custody of a court having jurisdiction in proceedings commenced for the purpose of determining the rightful ownership of the documents. They referred to proceedings recently commenced by Marlew Mining Pty. Limited in the Common Law Division of the Supreme Court of New South Wales against Mr G.F. Burke and the Aboriginal Legal Service for the purpose of determining the ownership of the documents. They expressed their clients' view that the Committee should recommend to the House that the documents should be

released only to that court and only on the receipt of a subpoena in those proceedings from Marlew Mining Pty. Limited. Diamond Peisah and Co. strongly expressed their clients' view that the documents should not be released to any other court in any other proceedings nor handed to any person. In particular, they should not be allowed to be subpoenaed in proceedings to which Mr Brassil of the Aboriginal Legal Service refers in his petition to the House (Appendix 1), nor should they be released to Mr Brassil as he could not be the rightful owner of the documents in question.

31 The Committee has noted that a petition from Mr Nutman on behalf of Marlew Mining Pty Limited was presented to the House of Representatives on 14 October 1986 (see Appendix 13). The petition seeks leave of the House to serve a subpoena on the Clerk of the House requiring the production of the documents presented to the Committee by Mr Burke at the Supreme Court of New South Wales in which proceedings have been commenced by Marlew Mining to determine the rightful ownership of the documents. The Committee referred to this further petition in a follow-up letter to the Attorney-General.

32 In relation to the comments of Diamond Peisah and Co., the Attorney-General stated that he did not think it would be appropriate for the documents to be released on the basis requested by Diamond Peisah and Co.. He considered that allegations that some of the documents in question were obtained illegally should not deter the Committee from recommending their release for use in legal proceedings to which it is said they are relevant. The Attorney-General stated that the Parliament should not put itself in the position of judging what evidence should be available to be tendered in legal proceedings. Admissibility of evidence is rightfully a matter left to the relevant court. In relation to the petition from Marlew Mining Pty Limited, the Attorney-General stated that he thought the documents should also be made available for the proceedings referred to in the petition.

as it was not the position of Parliament to attempt to resolve the question of ownership of the documents.

### Conclusions and recommendation

33 On the basis of the issues before the Committee the Attorney-General concluded in his advice that he saw:

. . . no reason why the documents should not be released to a court hearing the damages proceedings or any other proceedings in which they are to be tendered as evidence.

The Committee endorses this conclusion. There is a significant public interest in the documents being available for use in the courts that the Committee would not wish to disrupt. As the witnesses who presented the documents have consented to their release, the Committee considers that the protection of them in relation to their evidence does not affect a decision to release the documents. There are no other impediments to the release of the documents in the issues which the Committee has considered.

34 The Committee therefore recommends to the House that it grant leave to petitioners or their legal representatives to issue and serve subpoenas for the production to a court of documents tendered by the Aboriginal Legal Service Ltd and Mr Burke during the Committee's Baryulgil Inquiry.

November 1986

C.A. BLANCHARD  
Chairman

**ENDNOTES**

1. Pettifer, J. (Ed.), House of Representatives Practice, (Canberra, 1982), p. 539.
2. Baryulgil Community Inquiry, Transcript of Evidence, p. 202.
3. House of Representatives Practice, p. 464.

[P R O O F]



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES

# HOUSE OF REPRESENTATIVES

## Daily Hansard

FRIDAY, 15 NOVEMBER 1985

### CORRECTIONS TO PROOF ISSUE

This is a Proof Issue. Corrections that honourable members suggest for the Weekly Issue and the Bound Volumes should be lodged with the office of the Principal Parliamentary Reporter as soon as possible not later than Friday, 29 November 1985.

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES  
CANBERRA 1985

6. That the provision of essential services be maintained, free from industrial disruption.

And your petitioners as in duty bound will ever pray,  
by **Mr Slipper**.

Petition received.

### Changes to Veterans' Entitlements

To the Honourable the Speaker and Members of the House of Representatives in Parliament assembled. The petition of the undersigned ex-service persons in the electorate of Bass in Tasmania respectfully sheweth that:

- (i) The welfare of Australian veterans and their dependants should be kept out of bureaucratic costing exercises.
- (ii) The Veterans' Entitlement bill 1985 does not represent the actual needs of ex-service persons, especially the abolition of dependants' pensions, the alteration to the assessment of rates of disability pensions and the alteration to Section 47—the onus of proof.
- (iii) As ex service persons who served their country in time of need, and now apparently forgotten by governments, we are deeply concerned that our organisations were not consulted before the amendments were made.

Your petitioners therefore pray that:

1. The controversial parts of the Veterans' Entitlements Bill 1985 be repealed.
2. That ex-service organisations be given the chance of a "Summit" type meeting, as accorded management and trade unions, at which to express their opinions.

And your petitioners as in duty bound will ever pray,  
by **Mr Smith**.

Petition received.

### Effect of Asbestos Mining on the Baryulgil Community

To the Honourable The Speaker and Members of the House of Representatives of the Commonwealth of Australia in Parliament assembled.

The humble Petition of the undersigned Bernard Dominic Brassil, Solicitor, of Aboriginal Legal Service Ltd, Cnr. Cleveland & Abercrombie Streets, Chipendale, in the State of New South Wales, hereinafter referred to as 'the said State'.

Respectively sheweth:

1. Your Petitioner is a Solicitor acting on behalf of certain persons of Australian Aboriginal ancestry who are Plaintiffs in separate actions for common law damages commenced in the Supreme Court of New South Wales, hereinafter referred to as 'the said proceedings'.
2. Your Petitioner's clients are claiming damages for asbestos related injury and disease arising from their employment by and/or residence near an asbestos mine at Baryulgil on the north coast of the said State.
3. The said proceedings name the following corporate and statutory persons as defendants

- (i) Marlew Mining Proprietary Limited, formerly known as Asbestos Mines Proprietary Limited.
- (ii) James Hardie Industries Limited.
- (iii) James Hardie & Company Proprietary Limited.
- (iv) Seltan Limited, formerly Wunderlich Limited.
- (v) Nominal Defendant T. W. Haines, appointed pursuant to the Claims against the Government and Crown Suits Act 1912 as representative of the Health Commission, the Department of Industrial Relations and the Government of the said State.

4. The House of Representatives Standing Committee on Aboriginal Affairs, hereinafter referred to as 'the Committee', at the request of the Minister for Aboriginal Affairs, the Honourable A. C. Holding M.P., enquired into the effects of asbestos mining on the Baryulgil community. The Committee had the following terms of reference:

1. the effect of asbestos mining on the Aboriginal people who lived and/or worked at Baryulgil with particular reference to:
  - (a) the conditions under which Aboriginals worked in the asbestos mine and processing plant; and
  - (b) factors which contributed to any health risks associated with the mine and crushing plant, and the nature, adequacy and enforcement of safety measures to minimise such risks.

2. measures to protect and promote the health and welfare of the Aboriginal people who may have been affected by the Baryulgil mining operations.

3. provisions currently available to secure just compensation for individuals who have been adversely affected by the mining and processing activities at Baryulgil, and measures necessary to overcome any inadequacies in those provisions.

5. In October 1984 the Chairman of the Committee the Honourable Mr G. L. Hand, M.P., tabled the Report of the Committee in the House of Representatives.

6. The Report of the Committee was published by the Australian Government Publishing Service and made available in bound form. On page 127 of that Report, in paragraph numbered 10.22 beneath the heading 'Recommendations. Individual Compensation' the Committee recommended as follows:

'The Committee does not believe it appropriate to recommend any scheme to make individual payments of compensation. It believes that, subject to some technical difficulties, there are adequate avenues of compensation available to members of the Baryulgil community who contract, or have contracted, an asbestos-related disease.'

7. During the hearings the Committee received certain evidence from Aboriginal Legal Service Ltd and other persons. Among the evidence received were various photographs, letters, plans and a number of documents from Mr Gerald Francis Burke referred to in Mr Burke's testimony to the Committee reported on page 7 of the Report. There are some 5 kg of additional documents received from Mr Burke referred to on page 7 of the report.

8. In order to properly and adequately conduct the hearings of the claims by each of the litigants, whether

actual or prospective, it will be necessary to adduce evidence tending to show matters such as the knowledge of the Defendants of the existence of the hazard, the knowledge of the Defendants of the nature and extent of the hazard and the knowledge of the Defendants of the appropriate steps which could be taken to alleviate or remove the hazard. Evidence relating to these matters is to be found in the tendered photographs, letters, plans and also in the documents tendered or presented by Mr Burke.

9. The conduct of the said proceedings would be assisted and expedited if the Plaintiffs could call on the evidence which has been tendered to the Committee.

10. Your Petitioner has obtained the consent of Mr G. F. Burke for the documents tendered by him to be released in accordance with this Petition. The Statutory Declaration of Mr G. F. Burke to this effect is appended hereto.

11. Your Petitioner requests that the photographs, letters, plans and documents be released not subject to any condition that they be returned after any lapse of time. The second and third named Defendants by their Counsel have indicated that they will not be consenting to the disposal of the major issues of liability by means of a 'test case' procedure. Accordingly, it is anticipated that it will be necessary to re-present the evidence as each matter is dealt with by the Supreme Court or the District Court of the said State.

12. Your Petitioner desires to inform the house that there has not yet been in the Courts of this Commonwealth a single successful case leading to an order for damages to be paid to a person who is suffering the disease Asbestosis. There are no Australian precedents or authorities other than the Report of the Committee.

13. Your Petitioner therefore humbly prays that this Honourable House will grant leave:

- (a) To your Petitioner to take possession of the photographs, letters and plans tendered by Aboriginal Legal Service Ltd.
- (b) To your Petitioner to take possession of the documents tendered or presented by Mr G. F. Burke as aforesaid.
- (c) To all persons seeking compensation for their injuries and damages arising from their employment in and/or residence near the asbestos mine at Baryulgil to refer to the Report of the House of Representatives Standing Committee on Aboriginal Affairs titled 'The Effects of the Asbestos Mining on the Baryulgil Community' in those Court proceedings.
- (d) To an appropriate Officer or Officers of the House to attend in Court as and when necessary to produce the official Report of the House of Representatives Standing Committee on Aboriginal Affairs titled 'The Effects of the Asbestos Mining on the Baryulgil Community' and to give evidence in relation to the conduct of the inquiry which led to that report, providing that such Officer or Officers should not be required to attend at any time which would prevent the performance of his, her or their duties in the Parliament.

Dated the 8th day of November 1985.

Bernard Dominic Brassil  
Solicitor of the Supreme  
Court of New South Wales

And your petitioner as in duty bound will ever pray.

by Mr Blanchard.

Petition received.

## INTEREST RATES

### Discussion of Matter of Public Importance

**Madam DEPUTY SPEAKER**—Mr Speaker has received a letter from the Leader of the Opposition (Mr Howard) proposing that a definite matter of public importance be submitted to the House for discussion, namely:

The deteriorating state of the economy due to the Government's high interest rate policies.

I call upon those members who approve of the proposed discussion to rise in their places.

*More than the number of members required by the Standing Orders having risen in their places—*

**Mr HOWARD** (Bennelong—Leader of the Opposition) (3.25)—I do not believe it would be an exaggeration to say that middle Australia faces a living standards and economic crisis, the like of which it has not faced for many years. The essential reason why it faces that crisis is that for the last 2½ years this country, and more particularly the leaders of the Hawke Government, have lived a lie about the effectiveness of the economic policies that this Government has followed. For 2½ years the Hawke Government has been able to get away with the proposition that the policies it has had in place since being elected to office in 1983 have been good ones—policies which have made Australia competitive, has enabled Australia to earn her way in terms of world trade and have made this country competitive in the international arena.

However, over the past few months a crisis of confidence has developed amongst other countries and within the world finance markets regarding the effectiveness of the policies that the Hawke Government has followed. The inability of the Hawke Government to respond effectively to that changed economic climate flows from the failure of many people in the Government to understand the real implications of the decision that they took—and let me say that it was a decision that was courageously taken by the Hawke Government—in December 1983 to float the exchange rate. I, for one, will never criticise the Government for having taken the decision to float the exchange rate. It was the right decision and the present troubles the Government has are not a result of having made that



INQUIRY INTO THE EFFECTS OF ASBESTOS MINING ON THE  
BARYULGIL COMMUNITY

The Committee has been requested by the Minister for Aboriginal Affairs to inquire into and report on:

1. the effect of asbestos mining on the Aboriginal people who lived and/or worked at Baryulgil with particular reference to:
  - (a) the conditions under which Aboriginals worked in the asbestos mine and processing plant; and
  - (b) factors which contributed to any health risks associated with the mine and crushing plant, and the nature, adequacy and enforcement of safety measures to minimise such risks.
2. measures to protect and promote the health and welfare of the Aboriginal people who may have been affected by the Baryulgil mining operations.
3. provisions currently available to secure just compensation for individuals who have been adversely affected by the mining and processing activities at Baryulgil, and measures necessary to overcome any inadequacies in those provisions.



### APPENDIX 3

#### DOCUMENTS ATTACHED TO FIRST SUBMISSION FROM THE ABORIGINAL LEGAL SERVICE AND AUTHORISED FOR PUBLICATION ON 14 DECEMBER 1983

1. Report of visit to Asbestos Mine, Baryulgil, dated 28.2.66, signed E.G. Reeve, Chief Draftsman.
2. Inter-house letter, Asbestos Mines Pty Limited, dated 15 December 1966, re mill capacity.
3. Interhouse letter, Asbestos Mines Pty Ltd., dated 26th June 1968, signed by L.C. Denmead, Accountant, re bagging.
4. Inter-house letter, James Hardie & Coy. Pty. Limited, from S.F. McCullagh, Medical Officer (Federal), to Mine Manager, Baryulgil, re "Industrial Hygiene - Baryulgil".
5. "Report on the Industrial Hygiene Survey of Asbestos Mines Pty Ltd., Baryulgil", dated 14-17 Sep 1974" signed by J. Winters, Industrial Hygiene Engineer, 26.10.70.
6. Memo. from J. Winters, Industrial Hygiene Engineer, dated 14th April 1970, headed "Method of Taking Membrane Filter Samples for Monthly Recounts".
7. Memo. "Report on the Industrial Hygiene Survey of Baryulgil 30 Aug - 3 Sep 1971", signed by J. Winters, Industrial Hygiene Engineer.
8. Inter-house letter, James Hardie & Coy Pty Limited, from S.F. McCullagh, Federal Medical Officer, to Mine Manager, Baryulgil, headed "Industrial Hygiene - Baryulgil", dated 20th May 1971.
9. Inter-house letter, James Hardie & Coy. Pty Limited, from S. F. McCullagh, Medical Officer (Federal), to Personnel Director, headed "Medical Review - 1971 - Baryulgil", dated 3rd February 1972.

10. Inter-house letter, James Hardie & Coy Pty Limited, from S.F. McCullagh, Medical Officer (Federal), to Mine Manager, Baryulgil, headed "Industrial Hygiene", dated 12th January 1971.
11. "Report of the Joint Dust Survey of the Baryulgil Asbestos Mine - August 1972" signed by J. Winters, Industrial Hygiene Engineer, attaching "Summary of Results - Industrial Hygiene Survey Baryulgil - August 1972".
12. Computer printout of employees headed "Plant 04-1972".
13. Inter-house letter, James Hardie & Coy. Pty Limited, from S.F. McCullagh, Medical Officer (Federal), to Local Manager, Baryulgil, headed "Industrial Hygiene - 1971 - Baryulgil - Medical Officer's Inspection", dated 7th February 1972.
14. Inter-house letter, James Hardie & Coy. Pty. Limited, from F.A. Page, Director, to Mr G.F. Burke, headed "Visit F.A. Page, J.S. Proud to Baryulgil - 27-29 July 1973", dated 31 July 1973.
15. Inter-house letter, James Hardie & Coy Pty. Limited, from S.F. McCullagh, Chief Medical Officer, to Local Manager, Baryulgil, headed "Industrial Hygiene - Baryulgil - Industrial Hygiene Engineer's visit of 31 Jan - 02 Feb 73", dated 23rd March 1973.
16. Memo. headed "Report of the Dust Survey of Baryulgil Asbestos Mine - 31 Jan 73 - 1-2nd Feb 73", from J. Winters, Industrial Hygiene Engineer, attaching "Results of Dust Survey - Baryulgil Feb 1973", dated 12.3.73.
17. Inter-house letter, James Hardie & Coy Pty Limited, from S.F. McCullagh, Chief Medical Officer, to Local Manager, Baryulgil, headed "Industrial Hygiene - Noise - 1974 - Baryulgil", dated 11 November 1974.
18. "Report of the Industrial Hygiene Noise Survey of Baryulgil Asbestos Mine - Sep 1974", with attachment "Summary of results of personal samples - Baryulgil Survey September 1974".
19. "Summary of Results of Baryulgil Survey. September 1974."

20. Inter-house letter, James Hardie & Coy Pty Limited, from S.F. McCullagh, Chief Medical Officer, to Secretary, Asbestos Mines Pty Ltd, headed "Department of Mines Inspection of 11 Oct 73", dated 21st February 1974.
21. Inter-house letter, James Hardie & Coy. Pty. Limited, from S.F. McCullagh, Chief Medical Officer, to Local Manager, Baryulgil, headed "Industrial Hygiene - Dust - Baryulgil - Chief Medical Officer's visit of 18 Feb 74", dated 21st February 1974.
22. Inter-house letter, James Hardie & Coy Pty Limited, from S.F. McCullagh, Chief Medical Officer, to all State Managers and all Factory Managers, headed "Comparison Tables of Dust Sampling Stations" with attachments, "Comparison Table of Dust Sampling Stations as at 18 Feb 75", "Dumping of Asbestos Dust 17.4.75", and "Asbestos in Air Levels - Recounts for E.C.C. Meeting of 23.4.75 issued on 17.4.75", dated 19th February 1975.
23. Paper "Maintenance of Respiratory Protective Equipment within the J.H.A. Group of Companies in the Asbestos Industry", dated 23rd February 1976.
24. Inter-house letter, James Hardie & Coy Pty Limited, from A.P. Higgins to G.F. Burke, headed "Protective Equipment", dated 15th March 1976.
25. "Industrial Hygiene - Bi-monthly Personal Dust Samples - Baryulgil, 21/9/76" with note from John. W. to Jerry.
26. Copy of newspaper clippings from The Northern Star, Thursday, June 22, 1961, titled "Opportunity for Development on North Coast - World's Largest Asbestos Field".
27. Table titled "Velocity and Capacity of Exhaust Ducts ..... Dust Stations".
28. Article, "New South Wales Asbestos Occurences", NSW Dept. of Mines.

29. Paper headed "Operating Procedure for Mill".
30. Table "Monthly Dust Counts".
31. Industrial Hygiene, Baryulgil, dust counts for December 1970, May 1971, June 1971, July 1971 and August 1971, signed by J. Winters, Industrial Hygiene Engineer.
32. Inter-house letter, James Hardie & Coy Pty Limited, from J. Winters, Industrial Hygiene Engineer, to Mine Manager, Baryulgil, dated 29th February 1972, enclosing membrane filter samples taken for the month of Feb. 1972.
33. Membrane filter samples taken for the month of March 1972, signed by J.W. Winters, Industrial Hygiene Engineer.
34. Inter-house letter, James Hardie & Coy Pty Limited, from J.W. Winters, Industrial Hygiene Engineer, to Local Manager, Baryulgil, dated 15/5/72 enclosing dust samples taken for the month of May 1972.
35. Inter-house letter, James Hardie & Coy Pty Limited, from J. Winters, Industrial Hygiene Engineer, to Mine Manager, Baryulgil, dated 11th July 1972, enclosing counts of membrane filter samples taken for the month of June 72.
36. Industrial Hygiene - dust samples taken for the month of July 1972.
37. Inter-house letter, James Hardie & Coy Pty Ltd, signed by J. Winters, Industrial Hygiene Engineer, dated 5/10/72, titled "August Joint Dust Survey" (dust counts not attached).
38. Inter-house letter, James Hardie & Coy Pty Ltd, from J. Winters, Industrial Hygiene Engineer, to Mine Manager, Baryulgil, dated 3rd November 1972, enclosing dust results for the month of October 1972.
39. Inter-house letter, James Hardie & Coy Pty Ltd, from J.W. Winters, Industrial Hygiene Engineer, to Mine Manager, Baryulgil, dated 14th December 1972, enclosing dust counts for the month of November 1972.

40. Inter-house letter, James Hardie & Coy Pty Ltd, from J.W. Winters, Industrial Hygiene Engineer, to Mine Manager, Baryulgil, dated 24/5/73, enclosing dust counts for the month of May 1973.
41. Inter-house letter, James Hardie & Coy Pty Ltd, from S.F. McCullagh, Chief Medical Officer, to Local Manager, Baryulgil, dated 4th July 1973, enclosing membrane filter samples taken for the month of June 1973.
42. Inter-house letter, James Hardie & Coy Pty Ltd, from S.F. McCullagh, Chief Medical Officer, to Local Manager, Baryulgil, dated 18th July 1973, enclosing membrane filter samples taken for the month of July 1973.
43. Inter-house letter, James Hardie & Coy Pty Ltd, from S.F. McCullagh, Chief Medical Officer, to Local Manager, Baryulgil, dated 6th September 1973, enclosing membrane filter samples taken for the month of August 1973.
44. Inter-house letter, James Hardie & Coy Pty Ltd, from J. Winters, Industrial Hygiene Engineer, to Mine Manager, Baryulgil, dated 3/10/73, enclosing results of dust counts taken for the month of Sept. 1973.
45. Inter-house letter, James Hardie & Coy Pty Ltd, from J. Winters, Industrial Hygiene Engineer, to Mine Manager, Baryulgil, dated 29th November 1973, enclosing results of dust samples taken for the month of November 1973.
45. Membrane filter samples taken for the E.C.C. meeting of April, dated 8/4/75.
46. Membrane filter samples taken for the E.C.C. meeting of June 1975, dated 20/5/75.
47. Membrane filter samples taken for the E.C.C. meeting of April 1976, dated 15/3/76.
48. Membrane filter samples taken for the E.C.C. meeting of June 1976, dated 24 May 1976.
49. Membrane filter samples taken for the E.C.C. meeting of October 1976, dated 14/9/76.

DOCUMENTS SUBMITTED BY THE ABORIGINAL LEGAL SERVICE AND INCORPORATED  
IN THE TRANSCRIPT OF EVIDENCE

1. Inter House letter, James Hardie and Coy Pty Limited, from S.F. McCullagh, Medical Officer (Federal), headed "Industrial Hygiene - 1971 - Baryulgil - Medical Officer's Inspection", dated 7 February 1972.  
(Transcript of Evidence, pp. 93-94)
2. Inter House letter from James Hardie and Coy Pty Limited, Head Office, to Mr G.F. Burke, Asbestos Mines, dated 15 March 1976.  
(Transcript of Evidence, pp. 95-96)
3. Selected bibliography of articles discussing the measurement and control of asbestos dust.  
(Transcript of Evidence, pp. 97-147)
4. Letter from N. Thomson, Senior Research Fellow, Aboriginal Health, Australian Institute of Aboriginal Studies, to Mr C. Lawrence, Aboriginal Legal Service, dated 19 June 1984.  
(Transcript of Evidence, pp. 2381-82)
5. Letter from R.C. Jones, Officer-in-Charge, Industrial Hygiene Branch, Division of Occupational Health, N.S.W. Department of Industrial Relations, to Mr L.E. Phelps, Director of Education, N.S.W. Central Coast Region, dated 30 March 1984.  
(Transcript of Evidence, pp. 2604-05)
6. Mundine Family Tree.  
(Transcript of Evidence, p. 3078)
7. Letter from D. Roper, Assistant Director, Housing, N.S.W. Region, Aboriginal Development Commission, to Mr C. Lawrence, Aboriginal Legal Service, dated August 1984.  
(Transcript of Evidence, pp. 3095-98)

APPENDIX 5

DOCUMENTS SUBMITTED BY THE ABORIGINAL LEGAL SERVICE AND ACCEPTED  
BY THE COMMITTEE AS EXHIBITS

1. Document entitled "Memorandum of Chrysotile Corporation of Australia Pty Ltd" signed by D.K. Barwick, dated 20 July 1977.
2. Sample of a respirator used at the mine at Baryulgil.
3. VOL. I:
  - A. Sharland's radiology report of 15/1/49 - report on x-rays of 'employees' examined at Grafton Base Hospital - "fibrosis".
  - Dr Pooks radiology reports of 2/4/52 - re-examination of two men referred to in prior document. Both are Baryulgil workers (A. Preece and H. Mundine) now have asbestosis.
  - Letter of 8/5/78 written by S.F. McCullagh (Hardies Chief Medical Officer). Letter describes the medical surveillance of Baryulgil workers with particular reference to certain men. It notes that "John Stanley Waghorn was first exposed to asbestos in 1944".
  - P.2 of list of workers and comments on their x-rays (annexed to document 2) Dr McCullagh's report of his readings of chest x-rays.
  - Letter dated 14/9/77, Dr S.F. McCullagh to Dr Ben Bartlett. Discussion of relative carcinogenicity of asbestos types and the unorthodox views on this subject of the Australian asbestos industry.
  - Letter dated 3/5/74, K. Apps (Hardie Ferodo) to Dr Eva Francis. Official remonstrations with Dr Francis' view that an asbestos hazard existed in Hardie-Ferodo.
  - Extracts from proceedings of 1968 Penumoconiosis Conference. Mr N.E. Gilbert of James Hardie & Co., P/L on record describing new hygiene policies not effected at Baryulgil till years later (dust sock shaking and hopper emptying).

VOL I (contd.):

- Extracts from Hearing before Sub-Committee on Crime (Committee of Judiciary, House of Reps. 9th Congress U.S.A.) "Work as a health hazard" presented.
- Documents regarding the death of Andrew Donnelly:
  - (a) P.M. Report
  - (b) Dr Hiatt's report of 30/3/78
  - (c) Application to Dust Disease Board 13/4/78
  - (d) Prof. Gandevia's report to Dust Diseases Board
  - (e) Pathology report of 26/4/78 (C.M. Atkins)
  - (f) Prof. Gandevia's further report to D.D.B. of 8/5/78
  - (g) Certificate of Cause of Death (D.D.B.)
  - (h) Letter of 3/11/83, D.D.B. to A.L.S.
  - (i) Death Certificate
  - (j) Letter of 29/8/83 A.L.S. to Grafton Courthouse
  - (k) Letter of 31/8/83, Grafton Court to A.L.S.
- Report of 31/5/84, Dr Perkins to A.L.S. (mesothelioma diagnosis)
- Documents regarding Simon Tomsana:
  - (a) Respiratory Function Test results 6/8/81
  - (b) D.D.B. report of 24/10/77
  - (c) Lung Function test results
  - (d) table of examination results for Baryulgil workers
  - (e) Dr Josephj's repor to A.L.S. (undated - late 1983)
  - (f) Autopsy report (part I), Dr R.H. Steele 3/4/84
  - (g) Letter dated 23/5/84, Dr Steele to A.L.S.
  - (h) Autopsy report (Part II), Dr Steele 23/5/84.
- Documents regarding Carl Schultz:
  - (a) Report by G.B. Field to D.D.B. 24/12/81
  - (b) Letter of 15/3/82, D.D.B. to Schultz
  - (c) Post Mortem report dated 5/9/83
  - (d) Letter of 19/9/83, Prince of Wales Hospital to Mr Schultz sister
  - (e) Death Certificate
  - (f) Letter of 28/3/84, Prof. Selikoff to Dr Lim.
- Letter of 16/5/79, Health Commission to D.A.A.
- Letter of 30/11/79, Health Department to D.A.A.
- Letter of 31/10/79, Health Commission to Health Department
- Provisional Summary of Findings - Health Commission



VOL. I (contd.):

- Division of Occupational Health (DCH) report to Health Commission, dated 31/12/81. (envir. pollution)
- Letter, dated 23/3/81, Health Commission to D.A.A. (report on environ. pollution)
- Letter, 24/11/80, Dept. of Health to DAA (notes health hazard in Square & social factors in relocation of community).
- Letter of 19/11/80, Dept of Health to DAA (notes NSW Health Commission report is deficient with respect of assessment of medical risk).
- Letter, 13/11/80, Campston to Langford (both Dept. of Health) - opinions as to asbestos health risks in Baryulgil.
- Letter, 19/11/81, Dr Gianoutsos to DAA (opinions as to asbestos health risks in Baryulgil).
- Part of report, Author and date unknown (opinions as to asbestos health risks in Baryulgil).
- Letter, 30/4/80, State Pollution Control Commission to V.C. Abraham (report as to water pollution).
- Report, 13/10/80, K.C. Cross (geogolist) on "Investigation of the degree of Asbestos Pollution in the vicinity of Baryulgil and Bugilgar Gap, NSW" (report frequently referred to by DAA).
- Letter, 31/12/83, Prof. Selikoff to Dr Nossar (Selikoff's commentary of Health Commission surveys of Baryulgil workers).
- Letter, 24/6/83, ALS to Chief Inspector of Mines (questions as to departmental actions re Baryulgil).
- Letter, 20/9/83, CIM to ALS (replies to questions in previous document).
- Letter, 29/6/83, ALS to State Pollution Control Commission (SPCC) (questions as to Commission's actions).
- Letter, 29/8/83, SPCC to ALS (replies to questions in previous document).
- Letter, 27/10/83, SPCC to ALS (further replies. Notes inspection by SPCC in 1977).

## VOL. II:

- Regarding the AWU:
  - (a) Letter of 14/5/84, W. Sinclair to ALS (AWU claims officer details recovery of underpaid wages to Baryulgil workers).
  - (b) Letter of 12/7/77, R. McBeth to AWU H.Q. (report on mining operation).
  - (c) Letter of 12/7/77. R. McBeth to AWU H.Q. (advising of Andy Donnelly's death).
  - (d) Letter of 12/7/77, R. McBeth to AWU H.Q. (advising of actions re Andy Donnelly's death)
  - (e) Letter of 8/8/77, R. McBeth to Mrs Donnelly (condolences and claim form).
  - (f) Letter of 8/8/77, R. McBeth to AWU (covering letter for above).
  - (g) Letter of 28/9/77, R. McBeth to AWU (reports on meeting with ALS).
  - (h) Letter of 17/12/77, McBeth to AWU
- Extracts from James Hardie Asbestos Ltd Annual Report 1978.
- Extracts from James Hardie Asbestos Ltd Annual Report 1979.
- Extract from Harmful Gases etc., Regulations 1945 (pursuant to Health Acts (Vic.)).
- List of deceased Baryulgil workers (origins unknown).
- Press Release dated 9/12/83 by W.A. Attorney General (comment on Asbestos Related Diseases Act 1983).
- Extracts from 1941 Edition "Halsbury's Laws of England".
- Article "The Acute Effects of Chrysotile Asbestos Exposure on lung function", Harless et al. Environmental Research, 16, 360, 372 (1978).
- "Preliminary Announcement" regarding this year's Conference on occupational disease compensation.
- Anthropology Resource Centre Newsletter, Vol.4, No.3 (1980).
- Article by R.W. Motley, "Trial", April 1980.
- Article by Kahn et al "a 10 point plan for resolving the Asbestos Litigation Crisis", Risk Management, 1983.

**VOL. II (contd.):**

- Extracts from Hearing before Sub-Committee on Crime (Committee of Judiciary, House of Reps. 9th Congress U.S.A.) "Work as A Health Hazard" presented.
- Paper by Matt Peacock to Legal Service Bulletin Conference 17/2/79.
- Casenote on Cuthill's case. Industrial Law Review U23 No.9.
- Note from Product Liability International Jan. 1984.
- Judgement of Commission In re Government Railways and Tramways (Construction) Award. (1926) IR 92.
- Judgement of Yeldham J. in Bakers case (extracts only).
- Transcript of "Broadband" 29/9/77 (Matt Peacock's expose of the situation at Baryulgil).
- Extracts from "Medical Aspects of Death Certification", Journal of Royal College of Physicians of London, 4/10/82.
- "Annotated bibliography of Cause of Death Validation Studies", US Public Health Service.
- Tariff Board's report on Asbestos Fibre, 24/3/55.
- A selection of newspaper clippings on various aspects of the Baryulgil story and the asbestos debate.

5.

**VOL. III:**

- Head Office Memorandum, dated 5/5/65, by F.A. Page (attaching recent copy of Financial Review, "Lung Danger in Asbestos").
- Article "Lung danger in Asbestos".
- Mine Manager's reports:
  - dated a) 16/10/68.
  - b) 2/4/68 (re mess facilities)
  - c) 18/9/70 (re dust counts by Depts of Public Health & Mines)
  - d) 2/9/71 (re use of excavator and notes D.D.B. reps. have been to mine on annual visit).
  - e) 28/5/77 (notes increase in mill throughput to almost 100 tons/shift).
  - f) 27/6/77 (refers to test run with throughput of 20 tons/hour. Notes need to increase ventilation capacity as workload above design capacity).

Last two reports after Hardies sold the operation to Woodsreef.

VOL. III (contd.):

- Letter by L.C. Denmead, dated 28/2/68, requests the Brisbane plant to send "regular consignments of used bags" to Baryulgil.
- Letter, Burke to McCullagh, dated 20/1/71, refers to measures taken to reduce dust at the tailings hopper to a 2000 fibres/cc reading at dust station 5, and to respirators.
- Letter, dated 24/6/71, Burke to Denmead, "The use of plastic bags is a thing which must come ...".
- "X-ray Report", Asbestos Miners, 10/9/71, 3 pages of comments on Baryulgil miners x-rays. R. Robinson's report puts the company on notice that he had early asbestosis in 1971.
- Letter, dated 2/12/71, G. Burke to F.A. Page, comments on the Industrial Hygiene Survey of 1971.
- Letter, dated 22/6/72, McCullagh to D.D.B. - discusses Burke's Venturi invention.
- Head Office memorandum, dated 28/8/72, by Dr S.F. McCullagh re acultivating a journalist who had published unfavourable comments.
- Extract from "The Australian Worker" (the article the subject of document 96).
- Letter, dated 19/9/72, Winters to all Managers, (circulates dust counting period).
- Memo. on Membrane Filter Method, dated September 1972 (paper discusses method)
- Letter, dated 22/11/73, Burke to Denmead, (Burke discusses trials with impervious bags).
- Letter, dated 22/11/73, McCullagh to Burke.
- Head Office Memo., dated 14/2/75, (circulates, at highest level in the group, a Bulletin article on asbestos.
- "A Macabre Waiting Game", Bulletin, 15/2/75, (the article referred to in document 102).
- Extracts from "Asbestos" 1975 (re dust conveying velocities).
- Letter, dated 24/8/76, (Woodsreef advises Burke of its purchase of the operation).

VOL. III (contd.)

- Letter, dated 27/9/76, F.A. Page to G.F. Burke, (notes sale to Woodsreef).
- Woodsreef Memo., dated 9/5/77, Robinson advises that Tony Callose to be liaison between Baryulgil operation and Barraba.
- Memo, dated 31/5/77, discusses improvements to fibre recovery.
- Letter, dated 30/3/79, Robinson to Burke, Managing Director of Woodsreef advises of mine closure.
- Extracts from regulations (?), setting 5 mppcf standard.
- Film envelope.
- "Updated Method" for M.P. Apparatus.
- Longhand notes (presumably Mr Burke's - being his comments on the Industrial Hygiene reports).
- Longhand notes headed "also on file ..."  
(A list of the only documents made available by Mr Burke but not copied by the ALS.)
- Reports from State Government Agencies (from Mr Burke)  
(DOH-DIV. OCC. Health CIM- Chief Inspector of Mines  
DDB - Dust Diseases Board)
  - 2/10/70, DOH to CIM -The Report (Jones & Simpson) is already in evidence.
  - 26/4/72, DOH to DDB, - The Report (Francis and Jones) is already in evidence.
  - 23/5/72, DOH to DDB, - already in evidence?
  - 26/10/72, DOH to DDB, - already in evidence.
  - 19/12/73, Dept/Mines Minute (this document is probably already in evidence).
  - 29/1/74, CIM to Managing Director, James Hardie Asbestos Ltd, encloses 1973 report.
  - 7/9/77, Dept/Mines Minute, report of what appears to be a 100% non-compliance situation on 23/8/77.
  - 23/8/77, (appears to be results of that date).

VOL. III (contd.):

- 8/12/77, Dept. of Mines Minute dated 18/1/78, reports on surveys of 8th and 9th/12/77/
  - 6/2/78, Dept. of Mines Minute.
  - 20/7/79, Mines Dept. Report dated 29/8/77, reports on survey of 20/7/78.
  - 6/2/78, CIM to AMPL, reports on survey of 21/11/78.
  - Compliance/Non Compliance Table.
6. VOL. IV - list of people who worked at the Baryulgil mine together with some basic data about those individuals.
7. Album of photographs taken of the asbestos mine at Baryulgil.
8. Plans of the asbestos mine at Baryulgil.
9. Basden report, Investigation of Site of Recent Mining Operations for Environmental Asbestos Contamination at Baryulgil, N.S.W., prepared on behalf of Unisearch Limited for the Aboriginal Legal Service, N.S.W.

APPENDIX 6

DOCUMENTS SUBMITTED BY THE ABORIGINAL LEGAL SERVICE AND ACCEPTED  
BY THE COMMITTEE AS CONFIDENTIAL EXHIBITS

1. Transcript of interview between Chris Lawrence and Mr Eric Olive (25/7/84).
2. Transcript of interview between Chris Lawrence and Mr Gerry Burke (26th July 1984).
3. Transcript of interview between Chris Lawrence and Mr Bill Hindle.
4. Letters from Dr C.W. Clarke to Mr Chris Lawrence dated 6th July 1984 and 30th July 1984.
5. Tape of interviews:
  - (a) Eric Olive
  - (b) Gerry Burke
  - (c) B. Hindle.
6. Autopsy Report - Mr Glen Simon Tomsana - 3/4/84.
7. List of medical records of persons exposed to asbestos at Baryulgil, obtained by the Aboriginal Legal Service for the purpose of the Inquiry.

DOCUMENTS SUBMITTED BY THE ABORIGINAL LEGAL SERVICE AND RETAINED  
ON FILE - NOT OFFICIALLY INCORPORATED IN THE EVIDENCE TO THE  
INQUIRY

1. Copy of "Harmful Gases, Vapours, Fumes, Mists, Smokes and Dusts Regulations 1945", Extract from the Victoria Government Gazette, No.21, dated 7th February 1945.
2. Copy of paper, "Notes on Baryulgil Aboriginal Community".
3. Copies of documents recovered by the Aboriginal Legal Service from the Division of Occupational Health and Radiation Control (N.S.W. Department of Industrial Relations). This material was obtained by the Aboriginal Legal Service pursuant to a Freedom of Information type request. The documents were submitted to the Committee under a covering letter from Chris Lawrence, Solicitor, Aboriginal Legal Service, dated 11 April 1984.
4. Mine Managers' Reports 1968-1976.
5. Medical Examination Report on Mr Kenneth Gordon (21.6.84).
6. Workers Compensation Claim by Mr G.F. Burke (8th August 1979)
7. Copy of Minutes of Meeting of Directors held at Asbestos House, 65 York Street, Sydney, on 23rd September 1976 - re Asbestos Mines - Sales of Shares.
8. Medical reports of former miners and residents of Baryulgil.
9. - Copy of letter from A. Sharland to Mr Peters, dated 15th January 1949, containing x-ray results of Mr Albert Preece and Mr H. Mundi.  
- X-ray results of Mr Albert Preece and Mr Harry Mundine from the Grafton Base Hospital signed by W. Pook, Radiologist, dated 2.4.52.
10. Copy of letter from Dr R.J. Gobijs, Grafton Base Hospital to M.E. Brook, Occupational Physician, Hardie Trading (Services) Pty Ltd, re Andrew Robert Donnelly, dated 24 January 1984.



11. Copy of death certificate for Andrew Terrance Donnelly signed by the Principal Registrar, dated 9th January 1984, Sydney.
12. Copy of death certificate for Cyril Mundine signed by the Principal Registrar, dated 9th January 1984, Sydney.
13. Copy of death certificate for Andrew Terrance Donnelly, signed by Local Registrar, dated 14.12.77, Grafton.
14. Department of Industrial Relations, Mines Inspection Division, Intern.Minute titled "Baryulgil Mine", dated 9.2.84.
15. Letter from Prof. B. Gandevia, Prince Henry Hospital, Sydney, dated 16th May 1978, to Dr S.F. McCullagh, Chief Medical Officer, James Hardie & Coy. Pty Ltd, re Andrew Donnelly.

APPENDIX 8

DOCUMENTS SUBMITTED BY MR G.F. BURKE AND ACCEPTED BY THE COMMITTEE  
AS CONFIDENTIAL EXHIBITS

1. Inter-house letter plus newspaper cutting on the effects of asbestos from F.A. Page, Director, James Hardie and Coy Pty Ltd, to the Manager, Asbestos Mines Limited, dated May 5, 1965.
2. Letter from L.C. Denmead, Accountant, Asbestos Mines Pty Limited, to the Manager, A.D. Keech Bulk Freights Pty Ltd, Lismore, dated 29th February 1968.
3. Inter-house letter from S.F. McCullagh, Federal Medical Officer, James Hardie & Coy Limited, to the Mine Manager, Baryulgil, re industrial hygiene - Baryulgil, dated 20th May 1971.
4. Inter-house letter from S.F. McCullagh, Medical Officer (Federal), to the Personnel Director re medical review - Asbestos Mines Pty Ltd, Baryulgil - 1970, dated 29th September 1971.
5. Inter-house letter from S.F. McCullagh, Medical Officer (Federal), James Hardie & Coy Limited, to Local Manager, Baryulgil re Cyril Mundine, dated 26th June 1972.
6. Confidential memo. from G.F. Burke, Local Manager, to Dr S.F. McCullagh re Cyril William Mundine - 6/12/1922, dated 3rd July 1972.
7. Computer printout of employees headed 'Plant 04-1972'.
8. Inter-house letter from R.D. Palfreyman, Personnel Director, James Hardie & Coy Pty Limited, to G.F. Burke re Medical Review - 1972 - Baryulgil, dated 19th April 1973.
9. Inter-house letter from J. Winters, Industrial Hygiene Engineer, James Hardie & Coy Pty Limited, to Mine Manager, Baryulgil, re 'Results of Monthly Dust Count' dated 3 October 1973, enclosing dust counts for month of Sept. 1973.

10. Inter-house letter from J. Winters, Industrial Hygiene Engineer, James Hardie & Coy Pty Limited, to Mine Manager, Baryulgil, dated 29th November 1973, enclosing results of dust samples taken for the month of November 1973.
11. Confidential handwritten memo. from June Willard, Industrial Hygiene Office, to Mine Manager, Baryulgil, containing results of Engineering Bi-monthly dust samples, dated 14.9.1976.
12. Inter-house letter from J. Winters, Industrial Hygiene Engineer, James Hardie & Coy Pty Limited, dated 16th September 1976, containing dust counts for October E.C.C. Distribution.
13. from John Winter - Industrial Hygiene Bi-monthly Dust Samples for Bayulgil Plant, dated 21.9.1976.
14. Handwritten note re reports from Department of Mines made available after take over from Woodsreef Mines Limited, undated, (reports not attached).
15. "Summary of Dust Levels Recorded during the Industrial Hygiene Survey of Asbestos Mines Pty Ltd, Baryulgil, 14-17 Sep 1970".
16. "Updated Method of Taking Membrane Filter Dust Samples by Using a Modified M.S.A. Monitare Dust Pump" (not dated).
17. Letter from S.F. McCullagh, Chief Medical Officer, James Hardie & Coy Pty Ltd, to Mr Jerry Burke, Baryulgil, dated 22nd November 1973.
18. Inter-house letter from S.F. McCullagh, Chief Medical Officer, James Hardie & Coy Pty Limited, to Secretary, Asbestos Mines Pty Ltd, dated 21st February 1974, re Dept. of Mines Inspection of 11 Oct 1973, plus letter from J.H. Burford, Chief Inspector of Mines, NSW, to The Managing Director, James Hardie Asbestos Ltd, dated 29th January 1974, enclosing a copy of a report by Mr R.J. King, Inspector of Mines (Special Duties) entitled "Asbestos Mines Ltd - Baryulgil, N.S.W. Inspection and Dust Sampling Results - October 1973".

19. James Hardie and Co. Pty Ltd Industrial Hygiene Surveys:

- Station 13A (mill loading dock), Baryulgil, Asbestos Mill, Sheets 1 and 2
- Station 12 (quarry truck bin [driver]), Baryulgil, quarry - primary crusher, Sheet 1
- Station 11 (quarry face), Baryulgil, quarry loading bins, Sheet 1
- Station 10 (personal sample attached to mill operators lapel, Baryulgil, Asbestos Mill, Sheets 1-2
- Station 9 (dust collector: emptying storage hoppers - centre of floor), Baryulgil, Asbestos Mill, Sheet Sheets 1-3
- Station 8 (primary crusher beside operator), Baryulgil, Asbestos Mill, Sheets 1-3
- Station 7 (Next to No.1 shaker screen), Baryulgil, Asbestos Mill, Sheets 1-3
- Station 6 (quarry against rock face), Baryulgil, Open Cut Quarry, Sheets 1-3
- Station 5 (dust collector sock level centre of floor), Baryulgil, Asbestos Mill, Sheets 1-3
- Station 4 (area between No. 1 & 3 beside steps), Baryulgil, Asbestos Mill, Sheets 1-3
- Station 3 (area around No.7 screen top of screen cover), Baryulgil, Asbestos Mill, Sheets 1-3
- Station 2 (asbestos bagger beside operator), Baryulgil, Asbestos Mill, Sheets 1-3
- Station 1 (tailings binn beside operator), Baryulgil, Asbestos Mill, Sheets 1-3
- Dump area, tailings dump downwind of truck, Baryulgil, Asbestos Mill

20. Inter-house letter from S.F. McCullagh, Chief Medical Officer, James Hardie & Coy Pty Limited, to Personnel Director, "Medical Review - 1974 - Baryulgil", dated 10th April 1975.

21. Inter-house letter from J. Winters, Industrial Hygiene Engineer, James Hardie & Coy Pty Limited, "Bi-monthly Medical Control Dust Samples" with attachment "Method of taking medical control dust samples by using a personal dust sampling pump", undated, to Factory Manager, Meeandah, Factory Manager, Newstead, State Manager, NSW, Quality Control Supt., NSW, Factory Managers, Brooklyn, Largs Bay, Elizabeth, Welshpool, General Manager, Penrose, Safety Engineer, Penrose, Factory Manager, Hardie Ferodo, Quality Control Supt., Hardie Ferodo, and Mine Manager, Baryulgil.
22. Minute dated 18.1.78 from J.C. Collins, Inspector of Mines (Special Duties), and A.N. Coundouris, Inspector of Mines, Dept. of Mines, Sydney, headed "A Comprehensive Dust Sampling Survey at Asbestos Mines Pty Ltd., (Chrysotile Corporation of Australia) Baryulgil, 8th-9th December, 1977", enclosing:
- Appendix 1 (Copy)  
Personal Dust Sampling Survey Results
  - Appendix 2 (Copy)  
Personal Dust Sampling Survey Method of Analysis
  - Appendix 3 (Copy)  
Compliance/Non Compliance Table for Long Term Samples
  - Appendix 4 (Copy)  
Photographs showing Conditions of Mill Tailings and Public School Conditions etc.
23. Handwritten cover sheet and paper entitled "Hygiene Control Reports", undated.
24. Inter-house letter from G.F. Burke, Local Manager, Asbestos Mines Pty Ltd, to S.F. McCullagh, dated 20.1.71.
25. Inter-house letter from S.F. McCullagh, Chief Medical Officer, James Hardie & Coy Pty Limited, dated 11th November 1974, to Chief Executive Officer, Technical Director, Personnel Director, Gen. Mgr. Ops. Aust. & N.Z., Production Manager, Manager Factory Ops., and Sec. Asbestos Mines P/L, Head Office, and Technical Manager, Ind. Hyg. Engineer, R & E Centre, and Local Manager, Baryulgil, with attachment dated 8 October 1974, signed by J. Winters, Industrial Hygiene Engineer, titled "Report on the Industrial Hygiene Noise Survey of Baryulgil Asbestos Mine - Sep 1974".

26. Inter-house letter from R.V. Bolton, Manager, Community Relations, James Hardie & Coy Pty Ltd, to Mr G. Burke, dated 14/2/75, enclosing article entitled "A Macabre Waiting Game", from The Bulletin, dated February 15, 1975.
27. Inter-House letter from S.F. McCullagh, Chief Medical Officer, James Hardie & Coy Pty Limited, dated 19th February 1975, to all branches: "Comparison Tables of Dust Sampling Stations as at 18 Feb 75" attached.
28. Minute dated 28th May 1977, from G.F. Burke, Local Manager, to Mr D.K. Barwick, "Mine Manager's Report for week ending 27/5/77.
29. Tables:
- "Dumping of Asbestos Dust" issued on 17.4.75 for E.C.C. Meeting of 23/4/75
  - "Asbestos in Air Levels" issued on 17/4/75, sheets 1-2, - Recounts for E.C.C. Meeting of 23/4/75
30. NSW Department of Mines: "Comprehensive Dust Sampling Survey at Asbestos Mines Pty Ltd. (Chrysotile Corporation of Australia) Baryulgil, N.S.W. - 20th July, 1978" and attachment "Personal Asbestos Dust Sampling Survey Results Long Term, Baryulgil, 20/7/78"
31. Minute from L.C. Denmead, Accountant, to Branch Secretary, Brisbane, noted "Copy: Mr G.F. Burke - Baryulgil", dated 28 February 1968 re "Bags - Baryulgil".
32. Press clipping titled "Many face early death - Govt. Depts. Duck Asbestos Protection Law" by Frank Roberts, undated.
33. NSW Department of Public Health: "Results of x-rays taken of miners at the Asbestos Mine, Baryulgil", dated 14th April 1971.
34. Minute from G.F. Burke, Local Manager, to Mr L.C. Denmead, headed "Palletising & Plastic Bags", dated 24th June 1971.
35. Illegible "Industrial Hygiene Survey, Baryulgil, 31 Aug - 04 Sep 1971"

36. Minute "Industrial Hygiene Survey - Baryulgil" from Mr G.F. Burke, Local Manager, to Mr F.A. Page, dated 2nd Dec. 1971.
37. Paper dated 29/2/72 titled "Industrial Hygiene - Baryulgil" containing table listing counts of membrane filter samples for the month of March 1972.
38. Inter-house letter from J. Winter, Industrial Hygiene Engineer, James Hardie & Coy Pty Limited, to Local Manager re montly dust samples, dated 15.5.72, attaching results of dust samples dated 10.5.72.
39. Letter from S.F. McCullagh, Medical Officer (Federal) dated 22nd June 1972, to Dr D.C. Trainer, Workers Compensation, Dust Diseases Board, Sydney and the Secretary, National Safety Council, Sydney, and attached drawing of the Venturi, drill hole venting device used at Baryulgil.
40. Inter-house letter from J. Winters, Industrial Hygiene Engineer, James Hardie & Coy Pty Limited, dated 11th July 1972, entitled "Industrial Hygiene - Monthly Recounts - Baryulgil", to Mine Manager, Baryulgil, and attached counts of membrane filter samples taken for the month of June 1972.
41. Press clipping from The Northern Star, Thursday, June 22, 1961, entitled "Mining - Opportunity For Development on North Coast - World's Largest Asbestos Field".
42. Minute from S.F. McCullagh, Medical Officer (Federal), James Hardie & Coy Pty Limited, to Mine Manager, Baryulgil, dated 20th July 1972, re Employee Medical Service.
43. Inter-house letter from S.F. McCullagh, Medical Officer (Federal), James Hardie & Coy Pty Limited, dated 19th September 1972, to Personnel Director, re "Biological Effects of Asbestos - The Australian Worker of 02 Aug 72" (article not attached).
44. Inter-house letter from J. Winters, Industrial Hygiene Engineer, James Hardie & Coy Pty Limited, dated 19th September 1972, to Manager, Asbestos Mines, Baryulgil, and attached paper "Updated Method of Taking Membrane Filter Dust Samples by using a modified M.S.A. Monitare Dust Pump", dated September 1972.

45. Handwritten note to "Jerry" signed "John W." dated 3.12.72, and unsigned handwritten note dated 12.12.72.
46. Table "Asbestos in Air Levels" 27 Sep 1973, and Table "Dumping of Asbestos Dust", Sep 1973.
47. Minute from G.F. Burke, Local Manager, to Mr L.C. Denmead, "Packing of Fibre", dated 22nd November 1973.
48. Inter-house letter from J. Winters, Industrial Hygiene Engineer, James Hardie & Coy Pty Limited, to Mine Manager, Baryulgil, "Bi-monthly Airborne Asbestos Personal Dust Samples", dated 15 October 1975.
49. Inter-house letter from J. Winters, Industrial Hygiene Engineer, James Hardie & Coy Limited, dated 3.8.76, to Mine Manager, Baryulgil.
50. Inter-House letter from F.A. Page, Director, James Hardie Asbestos Ltd, Sydney, to Mr G.F. Burke, Baryulgil, "Asbestos Mines Pty Ltd", dated 27 September 1976.
51. Inter-house memo. from E.A. Taylor, Chrysotile Corporation of Australia Pty Limited, dated 31st May 1977, "Asbestos Mines: Modifications to Air System".



**ABORIGINAL LEGAL SERVICE LTD.**

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Reply:

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43-45 Belgrave Street, Kempsey. 2440.  
Tel: (065) 62 6546  
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Tel: (066) 42 5298

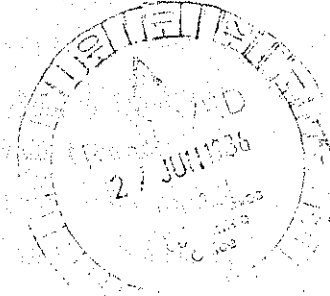
P.O. Box 292, Walgett. 2832  
Tel: (068) 28 1364  
P.O. Box 197, Moree. 2400.  
Tel: (067) 52 3244  
P.O. Box 2073, Dangar. 2309.  
Tel: (049) 61 5800

Our Ref:

Your Ref:

24th June, 1986.

Mr. D.R. Elder,  
Secretary,  
House of Representatives  
Standing Committee on Aboriginal Affairs,  
Parliament House,  
CANBERRA A.C.T. 2600



Dear Mr. Elder,

Re: Baryuqil documents enquiry

I refer to your letter of 6 June 1986 regarding the abovementioned matter. In addition I refer to our telephone conversation of 11 June last regarding this matter.

Since I spoke to you the Aboriginal Legal Service Limited has been served with a Statement of Claim in a proceeding relating to these documents. The Submission has been drafted to take into account the new proceeding and accordingly varies from the outline of the Submission which I indicated that I would be forwarding to you.

I should be glad if you could place my Submission before the Committee and advise me of the outcome in due course.

I look forward to your reply at your earliest convenience. If there is any further matter apparent to the Committee on which it would be appropriate for me to prepare a Submission, kindly advise me of same at your earliest convenience.

Yours faithfully,  
ABORIGINAL LEGAL SERVICE LTD

Bernard D. Brassil  
Solicitor

SUBMISSION TO THE HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON ABORIGINAL AFFAIRS

BARYULGIL DOCUMENTS ENQUIRY

TO The Honourable G.L. Hand, M.P., Chairman,  
The Honourable Mr. C.A. Blanchard, M.P., and  
The Honourable Mr. I.M.D. Cameron, M.P.

comprising the Sub-Committee of the House of Representatives  
Standing Committee on Aboriginal Affairs;

(a) I have petitioned the House of Representatives to grant  
leave to me to take possession of the photographs, letters  
and plans tendered by Solicitors employed by the Aboriginal  
Legal Service Limited to the Baryulgil Enquiry and to take  
possession of the documents tendered or presented by Mr.  
Gerald Francis Burke to the Enquiry. The Petition  
presented on my behalf to the House recited that I am the  
Solicitor employed by the Aboriginal Legal Service Limited  
(hereinafter called the "A.L.S") and am instructed by a  
majority of the aboriginal workers formerly employed at the  
asbestos mine at Baryulgil.

(b) The Petition included a Declaration by Mr. G.F. Burke that  
he consented to the disposal of the documents tendered by  
him in accordance with my request.

(c) My intention has always been to tender those documents as  
exhibits before a Court in a proceeding by one of my  
clients seeking compensation for asbestos-related injuries  
and disease.

My Submission to this Sub-Committee is that the documents should be presented to the House by the Committee for the purpose of the House granting leave to a petitioner or his or her legal representatives to issue and serve a subpoena for the production of those documents to a court.

In Support of that Submission I set out the following matters for the due consideration of this Sub-Committee:

1. The Documents are a matter of public importance

- They disclose that at the asbestos mine the mine operators conducted workplace atmosphere testing which showed dust levels up to five hundred (500) times the acceptable level. (e.g. letter form 12/1/71)
- They disclose that James Hardies Asbestos Limited, now called James Hardie Industries Limited, played a major and direct part in the operations and conduct of the Asbestos mine at Baryulgil, controlling the subsidiary Asbestos Mines Pty. Ltd.
- They disclose that the health dangers were known to the mine operators, but not the workers. e.g. "hazard" found in 1st sentence of 1st document 28/2/66)
- They disclose that the operators effectively did nothing to correct or improve working conditions until well after the earliest time that the hazard of the situation is obvious from the documents.
- They disclose that dust protective masks were made available by the operator to all workers only at the very end of the life of the mine and then in a grudging fashion. (Letter from 15/3/76).

- They disclose that the N.S.W. Government did dust testing at the mine and obtained dust readings significantly lower than the results of tests conducted by the operators. This tends to confirm the evidence given to the Inquiry as to forewarning of inspections and consequent slowing of machinery thereby lowering dust emissions. (This is the only documentary evidence available which corroborates such testimony).
- In short, they disclose a great variety of matters of substance which in the interests of justice should be placed before a court for consideration.

2. There is no doubt of the authenticity of the documents.

- None of the companies affected by the matters raised in the documents have at any time said that they were "forged" or in any other way fraudulently manufactured by the Aboriginal Legal Service, Mr. G.F. Burke or any other person. They are obviously genuine.
- The mine operator has commenced Supreme Court proceedings, against the A.L.S. and Mr. G.F. Burke as Defendants seeking return of the documents. This can only be an assertion that the documents are authentic. (I have made further comment on these new proceedings below).

3. The documents are necessary to establish the cases of the Baryulgil miners.

- The only parties with present access to original documents and others like these are the companies who

will be and are defendants in such proceedings. There is no likelihood at all that such companies will voluntarily provide the court with other copies of these documents held by them.

- An essential part of the case for each man is proof that the companies knew of the dust hazard at the time and knew of practical measures which could reduce it. The documents prove these points.

#### THE FRESH PROCEEDINGS:

The Supreme Court Statement of Claim (copy attached) was issued by the solicitors for the insurers of Marlew Mining Pty. Limited (formerly Asbestos Mines Pty. Limited) on 12 June 1986. The document appears to have been hastily drafted and it does not disclose any valid claim in law. These proceedings purport to claim documents which the A.L.S. or Mr. G.F. Burke "have or may receive" from the Committee. At best it is a misconceived claim and at worst an abuse of the Court's process. The pleadings state that the Plaintiff "has, and by these presents does demand the return of the documents". The A.L.S. has never received a demand from the company at any time for the return of the documents. The A.L.S. has applied to the Court to strike out the proceedings.

The company's Statement of Claim might also be seen as an attempt to influence the decision of this Sub-Committee. If that is the case, perhaps the facts should properly be referred to the Attorney-General of the Commonwealth for examination as to whether a contempt of Parliament by the Company is involved.

If this Sub-Committee has any further matter which you consider you should prefer to hear from me further, I should be pleased to so assist.

B.D. Brassil  
Solicitor

SYDNEY REGISTRY

COMMON LAW DIVISION

No. 16057 1986.

MARLEW MINING PTY.  
LIMITED

Plaintiff

GERALD FRANCIS  
BURKE

First Defendant

ABORIGINAL LEGAL  
SERVICE LIMITED

Second Defendant

STATEMENT OF CLAIM

A.O. ELLISON & CO.  
Solicitors,  
2 O'Connell Street,  
SYDNEY NSW 2000

D.X. 306 SYDNEY  
TEL: 233 5900  
REF: GJN:MV

1. The Plaintiff is a corporation entitled to sue in its corporate style and name.
2. The Second Defendant is a corporation liable to be sued in its corporate style and name.
3. The First Defendant was in or about 1958 employed by the Plaintiff until 1978.
4. In the course of the First Defendant's employment the First Defendant had access to certain papers and documents the property of the Plaintiff.
5. The First Defendant did during 1983 and 1984 present documents including letters, photographs and plans, to the House of Representatives Standing Committee on Aboriginal Affairs ("The Committee") which documents included documents the property of the Plaintiff.
6. The Second Defendant in 1983 and 1984 presented to the Committee various documents, plans and photographs the property of the Plaintiff.
7. The Plaintiff did not authorise the conduct of the First Defendant referred to in paragraph 5 hereof nor was the conduct part of the First Defendant's duties as an employee of the Plaintiff.

8. In the presents the First and Second Defendants converted the said papers, plans and documents to their own use and benefit.

9. The First or Second Defendants have or may receive the documents, plans and photographs from the Committee.

10. Such documents of the Plaintiff held by the First and Second Defendants are wrongfully detained by the First or Second Defendants.

11. The Plaintiff has, and by these presents does, demand the return of the documents, yet the Defendants refuse to deliver up the documents.

And the Plaintiff claims:

- (a) An order pursuant to S.93 Supreme Court Act that the Defendants deliver up to the Plaintiff all documents, plans and photographs the property of the Plaintiff.
- (b) A declaration that such documents, plans and photographs of the Plaintiff tendered to the Committee by the Defendants or either of them were wrongfully converted by the Defendants to their own use and benefit.
- (c) An order that to the extent the Defendants may hereafter come into possession of the documents tendered to the Committee, being documents of the Plaintiff, the Defendants deliver up such documents to the Plaintiff.
- (d) Such further or other orders as the Court think meet.
- (e) Costs.



TO THE DEFENDANTS:

GERALD FRANCIS BURKE  
of Melaleuca Ponds,  
Glenreagh, Via South Grafton NSW 2461

ABORIGINAL LEGAL SERVICE LIMITED  
of Cleveland Street (Cnr Abercrombie St)  
Redfern NSW 2016

You are liable to suffer judgment against you unless the prescribed form of notice of your appearance is received in the Registry within 14 days after service of this Statement of Claim upon you and you comply with the rules of the Court relating to your defence.

PLAINTIFF: MARLEW MINING PTY. LIMITED  
of Woods Reef, Via Barraba NSW 2347

SOLICITOR: George Joseph Nutman  
c/- A.O. Ellison & Co.  
2 O'Connell St. Sydney NSW 2000

PLAINTIFF'S ADDRESS FOR  
SERVICE: c/- A.O. Ellison & Co.  
2 O'Connell St. Sydney NSW 2000

ADDRESS OF  
REGISTRY: Supreme Court of New South Wales,  
Queen's Square, Sydney NSW 2000



*George Joseph Nutman*

Solicitor for the Plaintiff

FILED:

12 JUN 1986

# Pollack Greening & Hampshire

Solicitors

W. T. HAMPSHIRE, LL.B.  
M. J. EMERSON, B.A. LL.B.  
P. R. BRENNAN

Tel (066) 42 3411 Address Mail Box 10  
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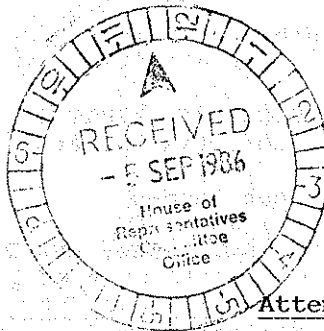
Associate:  
D. J. CLARK

PRB:JOD

Our ref:

2nd September, 1986

The Secretary,  
House of Representatives,  
Standing Committee on  
Aboriginal Affairs,  
CANBERRA. A.C.T. 2600



Attention Mr. David Elder

Dear Sir,

RE: GERALD FRANCIS BURKE

Reference is made to the writer's recent telephone conversation with an officer of your section, Mr. David Elder. We confirm our client's instructions that he has no objection to the release of documentation held by yourself pursuant to any Court Subpoena.

Yours faithfully,

*P. R. Brennan*  
POLLACK GREENING & HAMPSHIRE

## DIAMOND PEISAH &amp; CO.

SOLICITORS

13-15 BRIDGE STREET, SYDNEY  
AUSTRALIA 2000TELEPHONE:  
SYDNEY (02) 251 2911

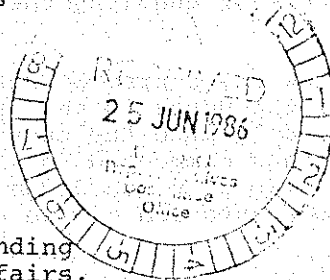
D.X. 707 (Sydney)

Partners:  
MICHAEL S. DIAMOND M.B.E. LL.B.  
FRED PEISAH LL.B.  
JACK S. DIAMOND Dip Law (SAB)  
JOHN L. BOWMAN B.Ec. LL.B.  
PHILLIP B. MEISNER B.A. LL.B.  
JAMES E. BEHRINGER LL.B.  
ASHLEY NEILSON Dip Law (SAB)Telex National : 71460  
International : AA 10101 INTSY } Attention Dimpah  
Facsimile (612) 251 2903

Our Ref. MSD:IM 25176

Associate:  
LUCAS J. KANAKIS B.A. B.Ec. LL.B.

Your Ref.



24th June, 1986.

The Secretary,  
House of Representatives Standing  
Committee on Aboriginal Affairs,  
Parliament House,  
Canberra. A.C.T. 2600. Attention Mr. D. R. Elder

Dear Sir,

Hardie Trading (Services) Pty. Limited,  
James Hardie Industries Limited and  
James Hardie & Coy. Pty. Limited

We refer to your letter of 6th June, 1986 addressed to our Mr. M. S. Diamond.

You have asked us to advise whether or not our clients have any objections to the Committee presenting to the House the documents presented by Mr. G. Burke and Aboriginal Legal Services Limited during the course of the Committee's inquiry in 1983 and 1984.

The real question under present consideration is the ownership of the documents. That appears from paragraph 2 of the letter of 21st May, 1986 from the Leader of the House to Mr. Diamond. Mr. Young there said:-

"The Attorney-General....has advised me that it is not, in his opinion, the House's function or duty to determine ownership of the documents, and that this matter is one more appropriate for a court to decide."

The Attorney-General's answer to the question, therefore, was twofold:-

1. It was not for the House to determine ownership;
2. It was for the courts to determine ownership.

The Leader of the House went on to say that he would refer to the Committee the question of whether the confidential material should be made available and that, if the Committee recommended release, and an "appropriate subpoena" was served from a court, he would move that the documents be released into the custody of that court.

...../2

The Secretary,  
House of Representatives Standing  
Committee on Aboriginal Affairs

24th June, 1986.

There is no doubt that the object for which Mr. Young contended was that the documents should be released to the custody of a court for the purpose of enabling the court to determine their ownership.

In our clients' view the course of action referred to in the letter from the Leader of the House is the proper course, and the documents should be released only into the custody of a court having jurisdiction in proceedings commenced for the purpose of determining the rightful ownership of those documents. Our clients have no objection to the presentation of the documents to the House for this purpose.

We note, however, that the terms of reference (unlike the first paragraph of your letter under reply) appear to confine the person who may issue a subpoena to a person who is a petitioner before the House, and appear further to permit production of the documents in answer to a subpoena in any litigation, rather than confining such subpoenas to subpoenas issued in proceedings commenced for the purpose of determining the ownership of the documents.

We believe that it was inappropriate that the Terms of Reference should limit the House to making the documents available to a court of suitable jurisdiction only on receipt of a subpoena issued by a petitioner.

We understand that Marlew Mining Pty. Limited has recently commenced proceedings in the Common Law Division of the Supreme Court of New South Wales (proceedings No. 16057 of 1986) against Mr. G. F. Burke and Aboriginal Legal Service Limited for the purpose of determining the ownership of the documents.

Our clients are of the view that the Committee should recommend to the House that the documents in question should be released only to the Common Law Division of the Supreme Court of New South Wales in proceedings No. 16057 of 1986 and then only on receipt of a subpoena in those proceedings from Marlew Mining Pty. Limited. The ownership of the documents can then be determined while they remain in neutral hands and the documents can then be returned to their rightful owners. In our clients' view, the documents should not be released to any other court or in any other proceedings. Of course, they should not be handed to any person, but only to the custody of the court. This matter is far from academic. The petition from Mr. Brassil shows that he is acting for plaintiffs in existing proceedings in respect of which he apparently wishes to have access to the documents and which have not been commenced for the purpose of determining the ownership of the documents. It would be quite wrong for the documents to be subpoenaed in any of those proceedings.

Our clients further believe that the court in which proceedings have been commenced is the proper court to determine the question


...../3

The Secretary,  
House of Representatives Standing  
Committee on Aboriginal Affairs

24th June, 1986.

of the rightful ownership of the documents as between the parties to those proceedings. We should also point out that on no view could the rightful owner of the documents in question be the petitioner, Bernard Dominic Brassil.

Yours faithfully,  
DIAMOND PEISAH & CO.





DEPUTY PRIME MINISTER  
ATTORNEY-GENERAL  
PARLIAMENT HOUSE  
CANBERRA A.C.T. 2800

M86/2822: NW

Dear Allen

14 NOV 1986

I refer to your letter of 16 October 1986 and earlier correspondence concerning the question whether certain documents, tendered to the House of Representatives Standing Committee on Aboriginal Affairs during its inquiry into the effects of asbestos mining on the Baryulgil community, should be presented to the House so as to allow it to grant leave to petitioners to arrange their production to a court. The House has referred the question to your Committee for its consideration.

The documents in question are the subject of a petition by a solicitor from the Aboriginal Legal Service Ltd ("ALS") who acts for several aboriginal people who are plaintiffs in actions against defendants including James Hardie Industries Ltd for damages allegedly suffered from exposure to asbestos at Baryulgil. The documents include numerous documents tendered by the ALS to the inquiry, some of which were formally classed, or informally treated, as confidential exhibits, together with medical records of certain Baryulgil miners and residents. They also include documents tendered to the inquiry by a Mr G.F. Burke. Those documents are the subject of another petition by Mr G.J. Nutman, solicitor for Marlew Mining Pty Ltd, which has sued Mr Burke in the NSW Supreme Court for recovery of the documents on the ground that they belong to the company.

Your Committee wrote to the ALS and Mr Burke asking if they object to presentation of the documents to the House for the purpose mentioned above. Responses on behalf of both have indicated that they do not object to that course of action.

Your Committee also wrote to Messrs Diamond Peisah & Co., solicitors for the James Hardie Group of companies. The solicitors have responded that the real issue is the proper ownership of the documents. They say that their client would not object to presentation of the documents to the House for purposes related to a subpoena in proceedings concerning the ownership of the documents. However, it would object to such a presentation for purposes related to a subpoena in the proceedings brought by the ALS, for certain of its clients, for damages related to asbestos exposure.

You have asked that I consider the responses from the ALS, Mr Burke's solicitors and Diamond Peisah & Co. and Mr Nutman's petition and advise you about the implications of issues raised by them for the Committee in deciding whether or not to present the documents to the House. You have also asked for my views on whether the Committee should present to the House medical records and unauthenticated transcripts of interviews tendered to the Committee by the ALS.

My short answer is that I see no reason why the documents should not be released to a court hearing the damages proceedings or any other proceedings in which they are to be tendered as evidence.

The requirement for leave of the House to be obtained before evidence of parliamentary proceedings, or documents in the custody of the Clerk of the House, can be used in Court proceedings exists to preserve the privilege of the House deriving from Art.9 of the Bill of Rights. The evidence given by witnesses to, and documents received in evidence by, a Parliamentary Committee are part of proceedings in Parliament which Art.9 provides are not to be impeached or questioned in any court or place out of Parliament. Witnesses who appear before Parliamentary Committees are entitled as a result of Art.9 to the protection of the House in respect of anything said by them in their evidence. This protection properly extends to documentary evidence tendered by those witnesses. But where, as here, the witnesses submitting the documents to the Committee are either actively seeking the leave of the House, or are at least consenting, to have the documents answerable to a subpoena issued out of a court, and the documents were not brought into existence for the purposes of the Committee's inquiry the question of protection of the witnesses is of very much less importance.

Moreover, the documents are part of proceedings in Parliament only because they were tendered to the Committee by witnesses. There seems to be no intrinsic need to deny them to a court hearing proceedings in which they are relevant. To do so could be seen as an attempt to pre-judge or to frustrate those court proceedings. There would appear to be strong public interest grounds (namely the interest of the proper administration of justice) for making the documents available.

Turning to the specific comments made by the ALS and the solicitors I make the following observations. In its submission relating to your Committee's consideration of the question whether to release the documents, the ALS describes the nature of the information that they contain. If this is an accurate description the documents would disclose matters which may go to the heart of the proceedings for damages for asbestos exposure brought by clients of the A.L.S. This being the case, it seems to me that it would be in the interests of justice that they be available to be placed before the Court for consideration.

Messrs Diamond Peisah & Co. have submitted to your committee that the documents should be made available to the NSW Supreme Court only for the purposes of Marlew Mining Pty Ltd's action against Mr Burke for their recovery. I do not think that it would be appropriate for them to be released on that basis. I do not think that allegations that some of the material in question was illegally obtained should deter the Committee from recommending their release so as to enable them to be tendered in evidence in legal proceedings to which it is said they are relevant. Evidence that is illegally obtained is not for that reason inadmissible in legal proceedings so that, even were any of the documents in question wrongfully in the possession of those who tendered them to the Committee (and I express no opinion about that) it would not, I suggest, be a sufficient reason to withhold them from the Court. In other words the Parliament should not, I think, put itself in the position of judging what evidence should be available to be tendered in legal proceedings in circumstances such as exist in the present case. Admissibility of evidence is a matter properly left to the relevant Court. Similarly the weight to be accorded that evidence, if admitted, is a matter for the Court. That is, the unauthenticated transcripts of interviews need not, I think, be treated differently from the other documents. Now that an approach has also been made to the Parliament for those documents the ownership of which is in dispute to be produced in legal proceedings regarding their ownership, I think that they should be made available for those proceedings also. That is, Parliament should not put itself in the position of attempting to resolve the question of ownership of the documents.

Finally, I turn to the medical records. These were kept confidential on the grounds of medical professional privilege. Such a professional privilege is not recognised by the common law although some jurisdictions have given it statutory recognition. If it exists, it is the privilege of the patient and not that of the medical practitioner. Where medical reports are obtained by a legal practitioner on behalf of his clients, there can generally be no objection to their return to that legal practitioner or to releasing them to a court with his consent. In this case, that consent is forthcoming. As far as other medical records are concerned, they may be subpoenaed, if admissible in proceedings, even in the hands of a medical practitioner. It does not appear to me that the privileges of the House would be affected by allowing release of them to a Court and I see no reason why this should not be done.

Yours sincerely

LIONEL BOWEN

(Lionel Bowen)

Mr C.A. Blanchard, M.P.  
Chairman  
House of Representatives Standing  
Committee on Aboriginal Affairs  
Parliament House  
CANBERRA ACT 2600



[ P R O O F ]



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES

# HOUSE OF REPRESENTATIVES

## Daily Hansard

TUESDAY, 14 OCTOBER 1986

### CORRECTIONS TO PROOF ISSUE

This is a Proof Issue. Corrections that honourable members suggest for the Weekly Issue and the Bound Volumes should be lodged with the office of the Principal Parliamentary Reporter as soon as possible but not later than Tuesday, 28 October 1986.

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES  
CANBERRA 1986

Your petitioners therefore request that the Commonwealth Government acts promptly to rectify the serious deficiencies in Higher Education in the Western Sydney Region by taking all actions necessary to enable ???????.

by Mr Free.

Petition received.

### Fringe Benefits Tax

To the Honourable the Speaker and Members of the House of Representatives assembled in Parliament.

The petition of certain residents of the Northern Territory of Australia draws to the attention of the House that the Fringe Benefits Tax Legislation recently passed by Parliament is unfair and will prejudice the current working conditions of all Territorians.

1. It will increase both personal and company taxation.
2. It will undermine employment levels through reducing profitability and international competitiveness of industry.
3. It will result in price increases.
4. It will force employers to withdraw voluntary incentives to employees paid over and above existing payments.
5. It endangers stable industrial relations because of the potential for forced withdrawal of Fringe Benefits.

Your petitioners therefore pray that the House take such action as is necessary to rescind the Fringe Benefits Tax Assessment Act 1986, the Fringe Benefits Tax Act 1986, the Fringe Benefits Tax (Application to the Commonwealth) Act 1986 and the Fringe Benefits Tax (Miscellaneous Provisions) Act 1986.

by Mr Everingham.

Petition received.

### Taxation: Capital Gains

To the Honourable the Speaker and Members of the House of Representatives in Parliament assembled. The petition of certain citizens of Victoria respectfully sheweth:

That all legitimate business expenses incurred in earning or producing assessable income should be allowable deductions.

That the proposed Capital Gains Tax is an unwarranted burden on the rural sector, which will severely affect its long-term viability.

That the delay by the Government in introducing the legislation into Parliament is causing confusion and hindering farmers in the organisation of their affairs.

Your petitioners humbly pray that the Government introduces the Capital Gains Tax legislation without delay and that the Australian Democrats join with the Opposition to defeat the proposed legislation.

by Mr Hawker.

Petition received.

### Uranium Sales to France

To the Honourable the Speaker of the House of Representatives in Parliament assembled. The petition of the undersigned, respectfully sheweth that we, the people of Victoria would like to remind you of your moral duty in regard to your decision to sell Uranium to France, against ALP Policy.

The French are still nuclear testing in the South Pacific, despite world wide protests. We therefore call on you to reverse the decision to sell Uranium to France.

by Mr Milton.

Petition received.

### Release of Documents

To the Honourable the Speaker and Members of the House of Representatives of the Commonwealth of Australia in Parliament assembled. The humble petition of the undersigned George Joseph Nutman, Solicitor of the Supreme Court of the State of New South Wales, of 2 O'Connell Street, Sydney in the said State respectfully sheweth:

1. Your petitioner is a solicitor acting on behalf of Marlew Mining Pty Limited in proceedings brought against it by various persons of Australian Aboriginal ancestry in the Supreme Court of New South Wales and the District Court of New South Wales claiming damages.

2. The House of Representatives Standing Committee on Aboriginal Affairs, at the request of the Minister for Aboriginal Affairs, the Honourable A. C. Holding, M.H.R., enquired into the effects of asbestos mining on the Baryulgil community.

3. In October 1984 the Chairman of the Committee the Honourable G. L. Hand, M.H.R., tabled the Report of the Committee in the House of Representatives.

4. During the hearings of the Committee certain photographs, letters, plans and a number of documents were received in evidence from one Gerald Francis Burke.

5. I am instructed that most or all of the material received in evidence from the said Gerald Francis Burke comprised records kept by Marlew Mining Pty Limited and was the property of that Company.

6. It has been brought to the attention of my client that the Aboriginal Legal Service Limited which acts on behalf of most of the plaintiffs in the proceedings brought against the Company has petitioned for the release of the said documents to it for the purpose of conducting the proceedings.

7. Marlew Mining Pty Limited has commenced proceedings in the Supreme Court of New South Wales against Gerald Francis Burke and the Aboriginal Legal Service being matter No. 16057 of 1986 seeking an order that the said documents, plans and photographs be delivered up to it.

8. It is necessary for the documents to be before the Supreme Court when the matter proceeds so that the Court can consider the right of Marlew Mining Pty Limited to possession.

9. The proceedings were before Master Sharpe of the Supreme court of New South Wales on the 25th day of July, 1986 when Master Sharpe gave leave to Marlew

Mining Pty Limited to appoint a return date for a subpoena addressed to the Clerk of the House of Representatives requiring the production of the documents at the Supreme Court, King Street, Sydney.

10. Your Petitioner therefore humbly prays that this Honourable House will grant leave:

- (a) To serve a subpoena on the Clerk of the House of Representatives requiring the production of the various photographs letters plans and documents received in evidence from Mr Gerald Francis Burke at the Supreme Court, Queen's Square, Sydney.
- (b) That the said photographs, letters, plans and documents be released into the custody of the Supreme Court of New South Wales for the purpose of determining the issues raised in matter No. 16057 of 1986 concerning the rights to possession and ownership thereof.

And your petitioner, as in duty bound, will ever pray.  
by Mr Connolly.

Petition received.

### ASSENT TO BILLS

Assent to the following Bills reported:

Superannuation and Other Benefits Legislation Amendment Bill 1986.

Health Legislation Amendment Bill (No. 2) 1986.

Loan Bill 1986.

### FRINGE BENEFITS TAX

#### Discussion of Matter of Public Importance

**Mr DEPUTY SPEAKER (Mr Leo McLeay)**—Madam Speaker has received a letter from the honourable members for MacKellar (Mr Carlton) proposing that a definite matter of public importance be submitted to the House for discussion, namely:

The confusion, frustration and high cost burden on the community arising from the Government's muddled decision making and appalling administration of the Fringe Benefits Tax.

I call upon those members who approve of the proposed discussion to rise in their places.

*More than the number of members required by the Standing Orders having risen in their places—*

**Mr CARLTON (Mackellar) (4.04)**—The Treasurer (Mr Keating) has come back from another one of his overseas visits during which he tried to convince people that the Australian economy is better than it is. He has come back to the most appalling mess in taxation that this country has ever seen. This month, from 1 October, hundreds of thousands of business taxpayers, large and small, and tens of thousands of farmers are all required to submit a fringe benefits tax return with a cheque. They have to

have that in, initially it was said, by 28 October. That date has been extended by a miserable two weeks. These taxpayers have to pay the tax; but they do not know what tax because, despite the fact that we had 139 pages of legislation, 176 pages of explanatory memorandum, 69 pages of explanatory notes sent out to business, another pamphlet on the fringe benefits tax and farmers, and a very expensive video which is now out of date—

**Mr Howard**—With Richard Carleton.

**Mr CARLTON**—Yes, with Richard Carleton doing the interviews. Despite all that, the people who are required to submit a very complicated tax return—originally by 28 October but now with a miserable two weeks extension—do not know what tax they have to pay. This became crystal clear when the Treasurer was away, despite the denials that he had made over a series of months.

What exactly has been going on here? The Treasurer, obviously, is desperate to collect the money. He has spent the money already with excessive spending over three years. In his Budget he has already put up the tax in total by \$1½ billion. He already has a system of phoney tax cuts coming into operation in December, which will leave small to middle income earners worse off. So he is obviously desperate to get more money. But he cannot tell the Australian Taxation Office and the taxpayers themselves exactly on what basis this tax is supposed to be paid. All I can tell honourable members is that out there there is confusion, frustration, waste and cost. Time is being spent, and time means money. There is rage and fury out there, and the honourable members on the other side of the House know it.

It is a mess of this Treasurer's own creation. He has only himself to blame. He did not get into this tax because he lost out on option C at the Taxation Summit. He cannot blame the unions for this. This tax was in his original recommendations. It was in option A, which was part of option C. The Treasurer said at the Taxation Summit: 'I want the fringe benefit tax and, in addition, I want a broadly based consumption tax'. He did not get the second, but he got what he wanted in the first—if, indeed, it is what he really wanted. I do not think that he understood the first thing of what he was asking for. Anyone with business experience would know that this tax was unworkable. The Treasurer might be at home spending most of his time being duchessed in the board rooms of the big finance houses, or being flown around in

