

# **THE BARYULGIL MINE: ASBESTOS AND ABORIGINALITY**

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## **ABSTRACT**

This paper documents the history of corporate paternalism and the effects of asbestos mining on the indigenous community at Baryulgil in northern New South Wales. Despite the lack of profitability of the asbestos mine at Baryulgil, the operations continued for over 30 years leaving a legacy of asbestos-related issues. The transfer of social responsibility for indigenous human rights from the State to a corporate entity lacking appropriate accountability mechanisms is evidenced in this historical case study. The Baryulgil case is instructive in a number of ways: first it demonstrates the subtlety with which human rights abuses can occur in an environment where paternalistic attitudes towards indigenous peoples prevail; it demonstrates the clash between pursuit of corporate objectives and human rights; and finally it demonstrates that denial of corporate accountability in the asbestos industry.

**Keywords:** Asbestos; James Hardie; Baryulgil; Indigenous Australians; Corporate Accountability.

## **Introduction**

In the corporate social responsibility literature, the business-as-usual approach has been cited as the cause of unfettered environmental degradation, the current carbon crisis and human rights abuses (Lohmann, 2009). Social and environmental concerns are conveniently defined as externalities and are often absent from corporate accountability discourses. The economic rationalist argument that supports the rights of corporations to profits can also override the maintenance of the rights of indigenous peoples. This paper explores the story of the Baryulgil aboriginal community in northern New South Wales (NSW) and the asbestos mining and milling practices between 1944 and 1976 which epitomises the clash between indigenous rights and corporate activities.

The experience of the Baryulgil community do, however, raise fundamental human rights and race relation issues...These issues arise partly from the relationship of Baryulgil as an Aboriginal community with various employers and government authorities over the past four decades (HREOC, 1990, p. 7).

It is a case study demonstrating the oppression of indigenous peoples by western practices of protectionism and paternalism prevalent in colonial discourses. In an ironic twist, the protection afforded the indigenous people through stable employment became the very reason for the misery resulting from asbestos exposure.

Asbestos was discovered at Baryulgil in northern NSW in the early 20<sup>th</sup> century and was mined and milled by Asbestos Mines Pty Ltd, a former subsidiary of the James Hardie Group, for several decades (Standing Committee on Aboriginal Affairs, 1984). The James Hardie Group of companies is now a multinational supplier of building and construction materials with a long history of asbestos manufacture and mining

and the associated legacy of asbestos-related litigation claims. The workforce for the mine was sourced almost exclusively from the local community at Baryulgil and surrounding indigenous communities. Although, the health-related dangers associated with asbestos had been acknowledged by health professionals since the early 20<sup>th</sup> century, the health and safety conditions associated with the mine were largely ignored by management (Peacock, 2009). The insidious nature of asbestos-related disease has also compromised the health of the associated non-mining community. Therefore, the story of Baryulgil provides a unique historical case study of a differentiated ‘closed’ community.

During European colonisation the doctrine of *terra nullius* was used as a convenient rationale to acquire inhabited lands and ignore the sovereignty of the indigenous inhabitants of Australia (Thornberry, 2002). The notion of paternalism or guardianship whereby the more ‘advanced’ civilisations owe a duty to care for the welfare of the ‘backward natives’, stems from this view. As stated by Lindley (in Thornberry, 2002, p. 76),

Their [governments] professed aim has been to raise them in the scale of civilisation and furnish them with the mental and manual training and the material equipment necessary to enable them to improve their conditions; and the duty of the advanced toward the backward.

While the story of Baryulgil could be seen as “an example of the ruthless exploitation of an Aboriginal labour force by a major Australian company”, there is little evidence that James Hardie operated a financially successful subsidiary at Baryulgil (McCulloch, 1986, p. 159). Only in 1969 and 1970 was the Baryulgil mining subsidiary profitable and, according to James Hardie management, the mine continued to operate from an obligation to prevent permanent unemployment among the

aboriginal workers in the local area (McCulloch, 1986; Peacock, 2009). This paper highlights how the notions of welfare and rights along with the ideals of paternalism and protectionism stemming from the doctrine of *terra nullius* have contributed to the tragedy at Baryulgil. Thus, it contributes to the literature on asbestos and corporate social responsibility at the interface of indigenous rights and western practices of oppression.

In order to explore these themes the next section provides a brief overview of issues related to race, ethnicity and indigenous peoples. This is followed by an account of the history of asbestos in Australia. To frame the story, notions of *terra nullius* and paternalism are examined. The next sections present the story of the Baryulgil mine and describe how accountability was transferred from the state to a corporation. The paper concludes with some observations on how the interactions between the state and corporations have the potential to subjugate human rights and, in this case, exposing the particular issues relating to indigenous rights.

### **Race, Ethnicity and Indigenous Peoples**

The term indigenous is ambiguous and several agencies and commentators have contributed to a series of descriptors that include: precedent habitation; historical continuity; attachment to land; the communal sense and community right; a cultural gap with dominant groups in the State; colonial context; and, self identification as indigenous (Thornberry, 2002, p. 55). Why agencies decide to include indigenous peoples as in need of ‘powers’ to preserve their rights beyond that inscribed in existing legislation is not straightforward. In general, indigenous peoples have lost their sovereignty and been subsequently exploited by Eurocentric ideals and laws.

History is replete with instances of the detrimental effects arising from western industrial practices on indigenous communities. Race and ethnicity are potent social forces in contemporary society and, despite a rising prominence in other fields of enquiry, the number of accounting studies in this area are limited (Annisette, 2009). Both race and ethnicity are social constructions shaped by agency and structure, however, Annisette (2009) draws a distinction between the terms. Race is a social categorisation by a dominant group based on certain physical characteristics and “represents the fault line along which power, prestige and respect are distributed” (Dalton in Annisette, 2009, p. 453). On the other hand, ethnicity involves self-ascribed identity. As a subset of racial and ethnic studies, accounting studies dealing with indigenous peoples have been explored in various sites, including Australia (see for e.g. Chew and Greer, 1997; Gibson, 2000; Greer and Patel, 2000). These studies however, concentrate on the technologies and policies of the state as colonisers to “control and govern indigenous peoples” (Greer and Neu, 2009, p.470).

At the interface of accounting and indigenous peoples, a group of studies highlight the role of accounting in mediating power relationships with the effect of disabling “indigenous agency” (Greer and Neu, 2009, p. 479). The use of discourses of race can serve to normalise and rationalise decisions, whether by governments or, as in this paper, corporations. Accounts of asbestos disease often provide a scientific model of causation and subsequently ignore the social roots of the disease (Braun and Kisting, 2006), as demonstrated by the case in South Africa. Disempowered black and coloured workers from poor areas with high unemployment dominated the workforce

where miners and their communities were subjected to unacceptable asbestos levels and appalling conditions (Braun and Kisting, 2006).

Braun (2008) explores the structuring of invisibility of asbestos-related disease by the scientific community in South Africa as an intended consequence arising from the protection of multinational profits and socio-political conditions. At a time when other countries, notably the United Kingdom, were recognising the effects of asbestos and litigation, structural conditions such as apartheid<sup>1</sup>, the hierarchies of power within asbestos mines and living conditions around asbestos outcrops contributed to continuing high levels of exposure. In addition the asbestos industry developed “systematic efforts to engage scientists in its agenda of suppression, manipulation and distortion of information” where “organised efforts to control knowledge took place in a particular historical context” serves to marginalise the social dimensions of disease” (Braun, 2008, p. 74). Similar to the South African asbestos industry, Baryulgil provides insights into occupational and environmental asbestos exposure with differentiated indigenous issues.

Annisette (2009, p. 464) calls for accounting studies that observe the “wider impacts of accounting on identity”, including the labour market as a “construction site” (Cornell and Hartmann in Annisette, 2009, p. 464). In South Africa, the ‘invisibility’ of asbestos disease is said to be shaped by labour practices and policy and government legislation. Asbestos provides an opportunity to study the particular construction of identity through disease and employment of aboriginal workers and the indigenous community at Baryulgil and mediated through corporate activity.

## **Asbestos**

Asbestos is a family of fibrous silicates with the desirable qualities of strength, flexibility alongside acid and heat resistance and is found in products ranging from brake linings, building materials, fire-resistant clothing to insulation. Three types of asbestos are commonly used: crocidolite (blue), chrysotile (white) and amosite (brown). While asbestos has been used since ancient times, its commercial properties became significant during the 19<sup>th</sup> century with peak production occurring during the post-World War II (WWII) economic boom in the 1950s and 1960s (McCulloch, 2003). The health-related risks of exposure to asbestos have been documented from those ancient times, however it was not until several landmark studies in the late 1950s through to early 1960s that a definitive link between linked asbestos and asbestosis, lung cancer and mesothelioma was accepted. Indeed, worker's compensation was available to asbestos workers in the UK from 1931 (Tweedale, 2001). Evidence is now available that asbestos also causes cancer of the ovary and larynx (IARC Monograph Working Group, 2009). While the potency of different types of asbestos is debated (Lee, 2005), evidence has shown that all types of asbestos are carcinogenic to humans (IARC Monograph Working Group, 2009).

Asbestosis is a progressive lung disease positively correlated with the length and quantum of exposure to asbestos. Despite difficulties establishing asbestos as a cause of lung cancer, it is now widely accepted that a causal link exists between the length of exposure and the risk of lung cancer (McCulloch, 2003). Mesothelioma, however, can occur from trivial exposure to asbestos, sometimes decades later and is considered both an occupational and environmental disease. Despite the known dangers and the banned or restricted use of asbestos in many jurisdictions, it is used increasingly in

Asia, South America and the former Soviet Union (IARC Monograph Working Group, 2009).

## **Framing the Story**

Over 200 years of law and rule-making in Australia have been founded on the legal doctrine of *terra nullius*, a Latin term meaning land belonging to no one. While recent judicial decisions have dented this idea<sup>2</sup>, the notion that Australia's indigenous population was 'uncivilised' before English settlement was "a foundation myth that underpinned legal regimes that relegated the Indigenous peoples to the margins of the nation" (Stokes, 2004, p. 9). Accordingly, *terra nullius* and its related assumptions allowed other ideas and policies "that rendered the Indigenous inhabitants invisible to white settlers, or resulted in their genocide, ethnocide and oppression" (Stokes, 2004, p. 9) to develop. Historically government policy has been to protect the perceived dying race or "smooth the dying pillow" (Bolton 1982 in Dodds, 1998, p. 107), primarily through segregation and the denial of basic rights such as 'citizenship'.

More recently, the Aboriginal and Torres Strait Islander Social Justice Commissioner, Mick Dodson (1995, p. 97) reinforced this discrepancy:

The wholesale violation of our basic 'citizenship rights' is hardly news. Such citizenship rights include the right to a decent standard of health, the right to education, rights to housing and essential services, and the right to equality before the law.

According to every socio-economic indicator, including health, education, income and employment, Aboriginal and Torres Strait Islander peoples suffer significant disadvantage when compared to all other Australians. I trust I do not need to again cite the studies, surveys, Royal Commissions and parliamentary inquiries to confirm this fact. Their unanimous conclusion is that the basic citizenship rights all Australians

enjoy are consistently and often profoundly violated in the case of Indigenous Australians.

The doctrine of *terra nullius* and consequent lack of ‘citizenship’ that prevailed allowed the concomitant paternalistic policies to protect those who are weak or vulnerable to emerge (Dodds, 1998). The “assertion of settler sovereignty was legitimised by a self-imposed mandate of ‘guardianship’ that humanitarians promoted” (Rowse, 2009, p. 1). The Baryulgil story relates a situation whereby the State’s paternalism towards indigenous communities was transferred to a corporate entity without democratic authority or accountability mechanisms afforded by government institutions. The Baryulgil operations were conducted in mainly what has been described as an Aboriginal policy period of “assimilation” (1950 – 1970) (Rowse, 2009). The assimilation policy ideal envisaged the end of colonial guardianship (Rowse, 2009). The Baryulgil community was seen by policymakers as a shining example of assimilation, primarily through employment and the other social and economic benefits that brings. Therefore the employment at Baryulgil effectively transferred to the corporate owners of the mine the guardianship of the community. By considering the community ‘assimilated’ their Aboriginality was rendered ‘invisible’ to the State for the period of the mining operations.

This paper takes an historical approach to examine the transfer of accountability for the welfare of the indigenous community from the state to a corporate entity. Historical studies necessitate the use of primary and secondary archival material that may be incomplete. Indeed the 1984 Inquiry initiated by the Aboriginal Legal Service (ALS) identified that “[f]or the period 1970 to the closure of the mine the data available to us is by no means comprehensive but is comparatively rich compared to

that relating to earlier years of the mine's operation. For the period of the '60s we have had to rely on eye witness accounts of former employees and fragmented documentary material which became evident through the 'Burke Papers'<sup>3</sup> "(Standing Committee on Aboriginal Affairs, 1984, p. 7).

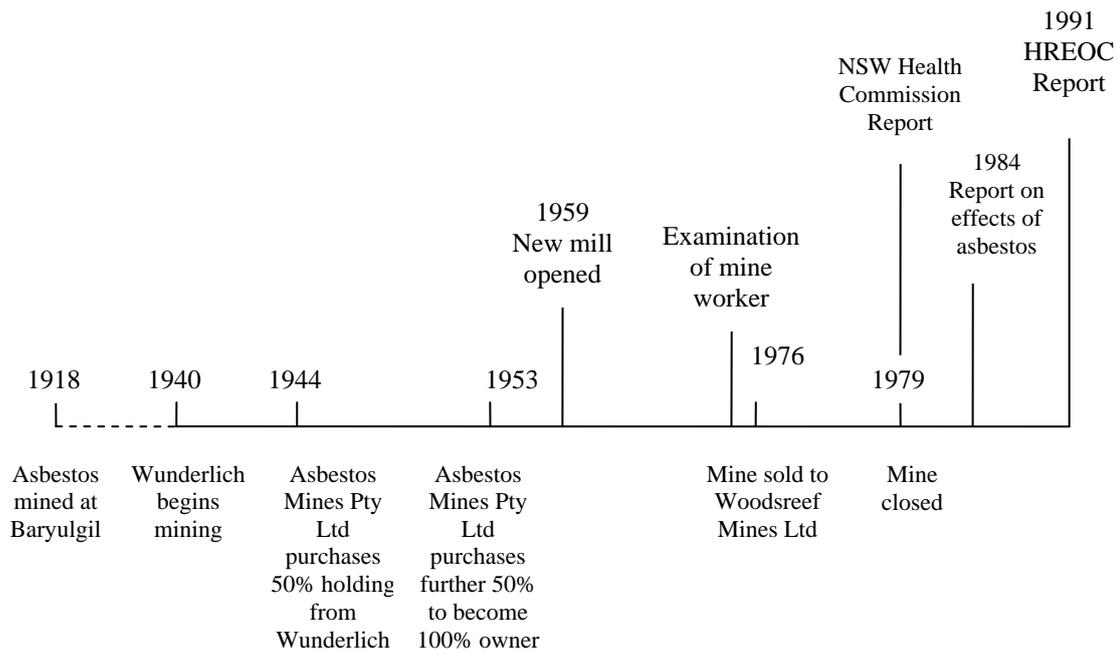
### **James Hardie & the Baryulgil Mine**

Following the need for cheap housing and associated infrastructure coinciding with increased immigration after WWII, Australia became the world's highest per capita user of asbestos and consequently suffers the highest incidence of mesothelioma (O'Meally, 2007). James Hardie Industries Limited (James Hardie) began asbestos operations in 1916 and dominated the market for asbestos products in Australia with the production of fibrous building sheets and brake linings (Carroll, 1987). James Hardie imported almost all of its raw asbestos from overseas, especially from Canada and South Africa but owned and operated a mine extracting chrysotile at Baryulgil in northern NSW between 1944 and 1976.

The mine at Baryulgil was open-cut resulting in significant amounts of asbestos dust entering the surrounding environment. The ore was processed at an on-site dry mill (original mill replaced in the late 1950s) with few safety precautions to measure or mitigate dust levels. Therefore, both mine and mill caused persistent problems of airborne asbestos fibres for the life of the operation (McCulloch, 1986).

Asbestos was initially mined on a small scale (2,500 tons) by Asbestos Mining Company of Australia at Baryulgil from 1918. The mine failed due to competition from South African asbestos imports and ceased operation in 1924. In 1940 mining

was re-established by Wunderlich and extracted asbestos for use in the manufacture of cement sheeting, not exclusively but almost certainly for James Hardie products (McCulloch, 1986). McCulloch and Tweedale (2008) maintain that in the asbestos industry the price of raw asbestos is the key to a manufacturers' profitability and in an effort to control prices manufacturers vertically integrated mines<sup>4</sup>. During WWII, the market for raw asbestos became unreliable and, in 1944 James Hardie purchased a 50% holding through its subsidiary Asbestos Mines Pty Ltd. Nine years later, in 1953, Asbestos Mines Pty Ltd purchased the remaining shares giving James Hardie a 100% interest in the operations at Baryulgil. In 1976, James Hardie sold the mine to Woodsreef Mines Ltd and it subsequently ceased production in 1979 (see Figure 1). The former James Hardie subsidiary, Asbestos Mines Pty Ltd (renamed Marlew Mining Pty Ltd) went into liquidation in 2002 (JHINV, 2005b).



**Figure 1: Time line of events at Baryulgil**

(sourced from Standing Committee on Aboriginal Affairs, 1984)

The subsequent liquidation of Asbestos Mines Pty Ltd presented legal problems for litigants seeking compensation for asbestos-related disease resulting from the operations at Baryulgil. In an inquiry into The Effects of the Asbestos Mining of the Baryulgil Community in 1984 (1984 Inquiry) it was established that “notwithstanding the group’s corporate structure, it operated very much as a cohesive entity” but acknowledged that “[t]he James Hardie Group will no doubt be keen to rely on the fact that [Asbestos Mines] was a ‘separate’ legal entity” to avoid paying adequate compensation<sup>5</sup> (Standing Committee on Aboriginal Affairs, 1984, p. 41 & 4). Additionally, in 2001 James Hardie successfully quarantined its former asbestos manufacturing subsidiaries from the parent company by transferring these entities to a special fund, the Medical Research and Compensation Fund (MRCF)<sup>6</sup>. Following an inquiry into the adequacy of funding of the MRCF to meet asbestos claims, a new

agreement was reached for a special purpose entity between the NSW Government, trade unions, asbestos support groups and James Hardie. This agreement established provisions to bring the previously excluded Baryulgil community within the scope of the new agreement (JHINV, 2005b). Concerns over the financial viability of this new funding arrangement have recently surfaced (see Moerman and van der Laan, 2009).

An ABC<sup>7</sup> journalist Matt Peacock visited the aboriginal community at Baryulgil in 1977 and recorded their stories<sup>8</sup> about mining and asbestos. Many of those interviewed were direct descendents of the original landowners, the Banjalang<sup>9</sup> people. The colonial experience in Australia has often resulted in dispossession of land for aboriginals. While the traditional owners lost their land to a pastoralist, an area known as Baryulgil Square was set aside as a camp which allowed the original inhabitants to stay on their home territory (Peacock, 1978) and retain a degree of cultural independence (McCulloch, 1986). The Banjalang were therefore given the opportunity to “remain unfettered by mission life and thereby retain a degree of freedom unique for a black community in New South Wales during that period” (McCulloch, 1986, p. 133).

The population of Baryulgil Square during the operation of the mine oscillated at around 100 – 200 people (James Hardie, 2005). The importance of land to Australian aboriginals cannot be understated and contributed to the ease with which the aboriginal community supplied a stable workforce for the operations at Baryulgil. For aboriginals, the connection to the land is spiritual<sup>10</sup>.

We live here. We can't go away and live anywhere else or in town because this is where our people and our people's father and my great grandmother and all our people lived. We're a part of this town. It mightn't mean anything to anybody else

but we're part of this. When we die we will go back into the ground from where we came from. That dirt there. That's where we'll all get buried over on the hill there, the cemetery there and that's it. Even if there's no work we'll still live here. This is our home here (Pauline Gordon in Peacock, 1978, p.117).

While workers are able to claim for dust disease through a statutory scheme in NSW, common law claims for environmental exposure has been unavailable until recent times because aboriginals living at Baryulgil did not have the necessary land tenure on reserves<sup>11</sup>. As the 1984 Inquiry found "it appears less than just that Aboriginals...should have no right to compensation for injuries arising from the encroachment of others on that land, merely because the practices of an earlier society, whose protectionist policies often involved substantial disadvantage to and neglect of Aboriginal people (Standing Committee on Aboriginal Affairs, 1984, p. 115).

## **Indigenous Identity**

The aboriginal identity and the construction of this identity was given force in the labour market.

In the case of Baryulgil, the miners were Aboriginal, and the employer, the trade union, and the state government authorities treated the labour force according to its marketing position. That position was determined by the Aboriginal identity of the men, by their lack of marketable skills, by their small number and by their social and geographical isolation. It was a labour force without a semblance of bargaining power (McCulloch, 1986, p. 187)

Baryulgil is estimated to have employed a total workforce of 350 over its operating life. At any one time employing about 20 – 25 workers and up to forty at peak

production times (James Hardie, 2005). The mine had a white manager and almost all the workers were Aboriginal (NSW Health Commission, 1979).

The whole mine business is run by us people from the Square, the Aborigines. There's foreman, truck drivers, mill drivers, engine drivers, powder monkeys, the whole lot of them. The majority were Aborigines. The only white men that worked there were the manager and the fitter. All the other jobs were done by the Aboriginal community from here and most of them are dead now. Most died between the ages of forty and fifty (Neil Walker in Peacock, 1978, p. 109).

During the time of the mines operation the aboriginal community in Australia lacked political leverage. In fact it was until the 1960s that aboriginal people were given the right to vote in Australia. The paternal attitude contributes to explaining why the rhetoric of corporate benevolence was accepted by society and regulators at the time.

And when we confronted him [the manager] with [evidence of the dangers of asbestos], he said: 'Oh no, I don't think that would affect you'. I said: 'Why, it affects people overseas. Why can't it affect us? He said 'I don't think so.' I said 'Why not, only because we're aboriginal people?'

And,

You go to your doctor and say 'Look doctor I'm sure it's dust.' He says: 'Oh no, it's not dust, it's just bronchitis', and well, you don't argue with your doctor. You think he knows more than you, we're only Aborigines, unintelligent Aborigines (Pauline Gordon in Peacock, 1978, p. 110-111)

The 1984 Inquiry established that "workers cannot be expected to play their part in minimising hazards if they are kept ignorant of the existence and nature of those hazards, particularly an "unsophisticated aboriginal community" (Standing Committee on Aboriginal Affairs, 1984, p. 57 &58). Reviewing internal documents available revealed that James Hardie management provided not one warning or directive to inform or educate the workforce at Baryulgil.

Compared with other indigenous communities, the overarching welfare of the community at Baryulgil was considered to be exemplary as a result of the continuity of gainful employment. Full employment meant that “the community broke away from the chronic poverty which characterised other rural reserves” (Standing Committee on Aboriginal Affairs, 1984, p. 12).

We do all our shopping. We have the mailman coming up here and his truck's full of vegetables and groceries for the families every day...So it's not malnutrition. I mean it might be in some cases in some areas with Aboriginal children but not here (Pauline Gordon in Peacock, 1978, p. 111)

Despite this apparent relative prosperity of the Baryulgil community, the miners and their families endured inadequate living standards, such as housing and access to health care. Additionally, asbestos permeated every facet of the community's lives. For example, the recycled hessian bags used to transport asbestos “found their way into the miner's homes and were used for a variety of purposes” (McCulloch, 1986, p. 157). These bags had originated from James Hardie's imported asbestos, including blue asbestos<sup>12</sup>, increasing the opportunity for environmental exposure.

The mines closure in 1979 ended a period of full employment and the community at Baryulgil “who had for so long been independent of government welfare payments, now became dependent on the welfare system (Standing Committee on Aboriginal Affairs, 1984, p. 15). “Asbestos Mines Pty Ltd had protected the community from the unemployment which was the fate of most Aboriginal people” but the closure “ended the exposure of the men, women and children of Baryulgil to intolerably high levels of asbestos fibre” (McCulloch, 1986, p. 158). The problem of environmental exposure continues today.

The NSW Health Commission (1979) noted that the communities and miners had little knowledge of the dangers of asbestos. Tailings from the mine were used as road fill and in the school grounds, wives handles contaminated clothing and children played in tailings dumps.

...it's in your hair, in your eyes. All over your body, in your clothes, in your nose, in your ears (Neil Walker in Peacock, 1978, p. 113).

...the wind just blows the dust and it comes in on your clothes, in through your window and in on your cups and plates and everything (Pauline Gordon in Peacock, 1978, p.106)

Baryulgil was visited many times by various agencies including the government regulatory authority, the Mines Inspectorate, that visited to test the condition and operation of the plant and check dust levels, however little was done to curb exposure to asbestos dust.

It is clear from only a cursory reading of the Mines Inspectorate documents that the department made little attempt to regulate or control activities of Asbestos Mines Pty Ltd. At best the inspectors had absolute faith in the goodwill of the manager and owner to correct any fault and to protect the workforce (McCulloch, 1986, p. 149)

The policy of NSW departments and instrumentalities responsible for asbestos hazards was to operate "by advice, help and persuasion" as there were "no dramatic work-stopping agents associated with the asbestos-related diseases and industry would achieve negligible savings in production time by reducing their incidence. The benefits of reduced compensation payments and tort claims has, until recently, been negligible and therefore, the total economic benefits to an employer of reducing

asbestos hazards are minimal (1982 Report on Hazard Chemicals in Standing Committee on Aboriginal Affairs, 1984, p. 89 & 90)

In submissions to the 1984 Inquiry, it was established that James Hardie was unwilling to install a new dust extraction system expected to cost between \$70 000 – \$80 000 because the mine only had a short life and expensive modifications “*might require closure of the mine*” (Chairman of the Dust Diseases tribunal cited in Standing Committee on Aboriginal Affairs, 1984, p. 66, emphasis in original). The disappointing record of dust control and excessive levels of dust were primarily due to a lack of concern for the workforce by management, the lack of commitment to the mine’s future and failure to inform and involve the workforce.

In 1979 the NSW Health Commission investigated the Aboriginal community at Baryulgil “to answer some of the questions concerning asbestosis” (1979, p.1). The people at Baryulgil requested an investigation “following the deaths of several young men in the community and concern about the number of men being forced to cease working...because of respiratory problems” (NSW Health Commission, 1979, p. iii). As one of the local community asserted: of this identified workforce (approximately 160), “fifty per cent [of the workers died], and what we know of the ones that did die, was that they all died from a heart and chest complaint” (Neil Walker in Peacock, 1978, p.110).

## **Accountability**

The history of the failure of responsible authorities to address this significant health risk to the Baryulgil community constitutes a gross disregard for the human rights of the

residents, including their right to equal protection of the law and equality in the enjoyment of economic, social and cultural rights, including public health (HREOC, 1990, p. 12)

There is some debate about James Hardie's motives for continuing mining and milling asbestos at Baryulgil. On the global asbestos scene James Hardie was sourcing its 'white' asbestos from Canada. However, the Australian government, wishing to support the Wittenoom 'blue' asbestos mining industry, proposed the introduction of a tariff on imported asbestos. Hardie management argued that blue asbestos was unsuitable for its products but nevertheless negotiated to purchase blue asbestos within Australia to forestall the introduction of future tariffs (Peacock, 2009). The mine at Baryulgil was "a best a marginal operation that required substantial investment to bring it up to the still-unsafe standards of Hardie's factories" (Peacock, 2009, p. 98). The ALS also claims that Hardie kept it open as a local producer to have a seat at the Tariff Board to influence the tariff policy on imported fibre and asbestos products (McCulloch, 1886, p. 160).

The company is also adamant that there is no particular health problems among the ex-miners, and that both mortality and morbidity rates are much the same as those in other aboriginal communities. This, of course, hardly gives a flattering picture of life at The Square [Baryulgil] in what was from 1944 to 1976 a company town run by one of Australia's largest corporations. (McCulloch, 1986, p. 163)

At Baryulgil, accountability for the guardianship to the indigenous community was non-existent. The community had been rendered 'invisible' to the State due to the imagined complete assimilation that stable employment brought. This invisibility through assimilation allowed James Hardie to exemplify the institutional and structural oppression of indigenous peoples.

It was an abdication of this responsibility for [James Hardie] to rely on the very infrequent visits of the government

agencies, rather than upon their own initiatives to ensure the health and safety of its workforce (Standing Committee on Aboriginal Affairs, 1984, p. 62).

According to McCulloch, (1986, p. 182) the “fate of the Baryulgil community should be viewed as a consequence of the withdrawal of private industry from the site of long-term social, medical and environmental problems which it has created, albeit by neglect”. Indeed the struggles to be included in compensation by James Hardie in 2001 highlighted this neglect and abrogation of responsibility. While it was not surprising that mining operations caused more dust than James Hardies’ manufacturing operations, “what *is* surprising is that Baryulgil with its known problems, should have had such a low priority” (Standing Committee on Aboriginal Affairs, 1984, p. 63) These conditions are inconsistent with the companies repeated claims to benevolence. As the former James Hardie PR officer explains “[t]he bloody thing never paid two bob anyway. It was just a nightmare of a thing” (Jim Kelso, in Peacock, 2009, p. 98).

## **Conclusion**

The reasons why the situation at the Baryulgil community remained ‘hidden’ are complicated. The 1984 Inquiry acknowledged that aboriginality had led “poignancy to their plight” however rejected their aboriginality as a contributing factor to their vulnerability by “isolation and naivety” (Standing Committee on Aboriginal Affairs, 1984, p. 8). However, a further inquiry in 1990 found;

In the apparent absence of any other compelling and logical reasons, the residents of Baryulgil can hardly be blamed for concluding that their Aboriginality has been a factor in the apparent reluctance of various responsible authorities (HREOC, 1990, p. 16)

The isolation of the community and its workforce contributed to the lack of intervention in workers' affairs from trade unions and the absence of any public scrutiny (McCullough, 1986). Several issues of aboriginal identity have emerged as likely reasons: a reliance by authorities on 'hard' evidence as opposed to oral stories; indigenous ancestry and spiritual connection to the land; and, paternalistic government policies.

Reliance on sources of information that was considered "impressionistic, subjective and therefore unreliable" (Standing Committee on Aboriginal Affairs, 1984, p. 7) contributed in masking conditions and disease at Baryulgil. Issues of aboriginal spirituality and their connection to their land provided James Hardie with a stable and pliable workforce, which they could manipulate through lack of access to information due to their perceived economic privilege compared to other aboriginal communities. "Ironically, the very mine that has enabled them to retain some sense of security and identity is now suspected of quietly but surely killing them" (Peacock, 1978, p. 104).

The greatest paradox in the Baryulgil story is related to paternalism. On one hand, James Hardie had the ability to oversee all facets of life, so common in 'private' mining towns, which gave the image of a successful independent community over the short-term. This diminished the need for state intervention or 'guardianship' for the welfare of the indigenous community. However, the Baryulgil story over the longer term is one of indigenous oppression and human rights abuse by a corporate entity where de facto accountability for the indigenous community was delegated by the state. A telling example is the abrogation of responsibility for asbestos dust control by authorities to the management of James Hardie. The rhetoric of indigenous welfare

gained traction with a society with entrenched notions of paternalism and guardianship. It allowed James Hardie, without question, to implement corporate strategy inconsistent with the idea of an 'unprofitable' mine at the expense of a vulnerable community.

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<sup>1</sup> Braun (2008) cites that white workers home were segregated further from the mine than black workers.

<sup>2</sup> While this issue is not completely resolved the High Court of Australia in *Mabo v. Queensland* (1988) 166 C.L.R. 186 overturned the doctrine of *terra nullius*. The Court recognised native title survived white settlement and recognised these rights could be claimed where indigenous peoples had maintained their connection with the land.

<sup>3</sup> Burke was a foreman and later mine manager employed by Asbestos Mines Pty Ltd for a period of 23 years. He tendered original documents to the ALS that were regarded as “the most direct source of evidence concerning the history and operation of the mine (Standing Committee on Aboriginal Affairs, 1984, p. 7). James Hardie management contested the use of the documents as prejudicial to other disputes, including a dispute with its long-term insurer, QBE.

<sup>4</sup> See for example Turner and Newell and Cape Asbestos that were British companies owning South African asbestos mines along with U.S. company, Johns-Manville, with ownership interests in Canadian asbestos mines McCulloch (2002).

<sup>5</sup> A landmark case *Briggs v James Hardie & Co. Pty. Ltd.* (1989) 16 NSWLR 549 involved a miner from Baryulgil seeking compensation from the parent company and challenged the status of the corporate veil. Despite the claim being unsuccessful Rogers AJA that the commercial reality of control and legal doctrine were inconsistent.

<sup>6</sup> These events occurred as part of a corporate restructure. The two subsidiaries (Amaca and Amaba) which held most of the asbestos liabilities became subsidiaries of the MRCF.

<sup>7</sup> The ABC is the Australian Broadcasting Commission, the independent Australian government-funded broadcaster.

<sup>8</sup> The interviews formed the basis of a series of radio programs about occupational health and safety in 1977. Transcripts of these programs and excerpts from interviews are published in *Asbestos: Work as a Health Hazard*.

<sup>9</sup> The spelling of the name of the indigenous tribe varies from Banjalang (McCulloch, 1986) to Bunjalung (Standing Committee on Aboriginal Affairs, 1984).

<sup>10</sup> Aboriginal life and spirituality is governed by the laws of the Dreaming. The Dreaming and Dreamtime are complex concepts lacking universal agreement on their precise meaning and of which non-aboriginals can claim little understanding (Dean, 1996). However, here the claim is well-accepted and merely that Aboriginal spirituality is inexorably linked to the land and this link informs all other aspects of Aboriginal life, including social, economic and legal relationships (Greer and Patel, 2000).

<sup>11</sup> Many widows of aboriginal miners were unable to claim compensation because tribal marriage was not recognised by the law (Standing Committee on Aboriginal Affairs, 1984).

<sup>12</sup> It has been argued that blue asbestos is the most dangerous to human health due to the structure of its fibres (Lee, 2005).

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