QCPCI 3 (e)

Date: 18-06-2013

Exhibit number: 368

# Submission to Queensland Child Protection Commission (Carmody Inquiry) in respect to Order 3(e) of the Orders in Council on 1 July 2012.

## 20 July 2012

Gordon Lyle Harris, Solicitor seeks the leave of the Queensland Child Protection Commission of Inquiry to appear and represent **Annette McIntosh**, formerly known as Annette Harding and **Shelley Ann Farquhar** formerly known as Shelley Ann Nyman and Shelley Ann Neal.

We say that legal representation would be the only way in which fairness can be obtained for Shelley and Annette as their matters are very serious and complex and they are incapable as witnesses of representing themselves.

The issues raised in the cases of Annette and Shelley fall within the ambit of 3 (e) of the Orders.

**Overview and Outline of their cases:**

Shelley Farquhar born 29 January 1976, was an inmate of the John Oxley Youth Centre (JOYC) in 1991. On 4 April 1991, Shelley Farquhar was a 15 year old child and was raped by an employee of the Department of Family Services and Aboriginal and Islander Affairs. The rape occurred at Wivenhoe dam. Threats were made to Shelley to remain quiet over the allegations by three female inmates who were involved in giving sexual favours to the employee for favouritism. When Shelley told a male inmate of the rape of her by the employee, she was set upon by the three girls and seriously assaulted. It is reported in correspondence dated 14 May 1991, that on 16 April 1991 Shelley advised that she had been sexually assaulted. We understand the employee ceased his employment on that day. The police became involved on 18 April 1991.

Annette McIntosh, born 12 February 1974, was an inmate of the JOYC in 1988 and 1989. Annette McIntosh was a 14 year old child and was packed raped twice whilst in the care of JOYC. The first rape occurred at Mr Barney and the second rape at Mt French. JOYC was a juvenile detention centre operated by the Department of Family Services.

What happened to Shelley and Annette in JOYC can also be described as a crime against humanity. The United Nations on 19 June 2008, through Resolution 1820 stated "rape and other forms of sexual violence may represent a war crime, a crime against humanity or an element of genocide." The United States Secretary of State, Condoleezza Rice said "Rape is an unpardonable crime..." We appreciate that the United Nations and Secretary Rice were talking about rape in the perspective of a war crime. In Shelley's and Annette's case there was no war, there was no fighting, no acts of aggression, there was no violence to bring about the vile act of rape.

Shelley or Annette's cases remain uninvestigated. At page 168 of the Commission of Inquiry into Abuse in Queensland Institution (the Forde Inquiry), the following is reported:

> *Sexual assault*
> *In a report to the Minister dated 17 February 1995 it was stated that two reported allegations of sexual assault by a child on another child had been made. Those allegations were investigated by the police, but no charges resulted from the investigation.* ***Evidence from a staff member also suggests that one female***

***resident complained of rape by another staff member during an outing. That resident did not proceed with an official complaint, but the staff member allegedly involved resigned.*** *Two staff members indicated their concern about possible sexual assaults by the older, bigger residents on the younger, more vulnerable ones. Another indicated that the opportunity for sexual abuse existed, particularly when residents were doubled up in the cells.(emphasis added)*

We believe that the above emphasis relates to Shelley. There is no mention of Annette's sexual assault.

We do not intend to, at this early stage delve into the full details with respect to Shelley's and Annette's cases and have been instructed to assist the Inquiry with respect to their cases.

Shelley's and Annette's cases happened in a country and environment where the rule of law governed throughout the country, with the police upholding the law and other persons in the country bound by the rules and laws of the country. Their case goes to the heart and soul of our society, the crime against them was committed in cold blood, to make it more reprehensible is they were children. What is incomprehensible is that it happened whilst they were in the care of a government institution. It is beyond comprehension why the matters were not properly investigated and finalised then.

Both cases bring shame on our political, media and legal system. They are cases were the crime of rape and carnal knowledge were covered up and the facts distorted to protect a system that failed them and has had a serious impact on their lives.

Carnal Knowledge is a criminal offence. The prosecution must prove that:

1. The defendant had carnal knowledge of the complainant. Carnal knowledge means the insertion of the defendant's penis into the genitalia of the complainant;
    (a) the offence is complete upon penetration;
    (b) penetration to the slightest degree is sufficient;
    (c) ejaculation is not necessary.
2. The carnal knowledge was unlawful. I.e. not authorised, justified or excused by law.
3. That the complainant was under 16.

Consent to carnal knowledge by the complainant is irrelevant.

Rape is a criminal offence. The prosecution must prove the defendant:

1. Had carnal knowledge of (the complainant). The prosecution must prove that the defendant penetrated the genitalia of the complainant with his penis. Any degree of penetration is sufficient. It is not necessary for the prosecution to prove that the defendant ejaculated.
2. Without her consent. Consent is a common word in every day use. When it is used in the context of sexual activity it means consciously permitting the act of sexual intercourse to occur. Consent may be defined as the agreement to, or the acquiescence in, the act of sexual intercourse by the complainant. The defendant does not have to prove she consented, the prosecution must prove that she did not.

**Serious and Complex**

The seriousness and complexity of Shelley's and Annette's case are highlighted below. We have used Annette's rape at Mt Barney to highlight the seriousness and complexity and why they should be represented.

In Annette's case it is much easier to turn a blind eye to an offence which has racial boundaries, one only has to look at the Aurukun case in the Queensland Court of Appeal.[1] In that case a 10 year old girl was raped by nine offenders. The presiding judge gave them lenient sentences until it was exposed by a newspaper reporter. The public reaction was that no matter which race the person belongs to, a rape is a rape and a criminal offence and a sexual assault is a sexual assault and a criminal offence.

The failure to properly investigate, let alone prosecute Annette's case is dire warnings that if you're an aborigine girl in Queensland, do not expect justice. What makes it worse is the crime against Annette happened under the watchful eyes of the State's representatives, and as it appears from the attached documentation, the bureaucracy of the Department of Family Service, at its highest level, knew off and actively tried to prevent the truth from coming out. Why was Annette not given immediate medical help? Why was so much pressure brought to bear on a 14 year old child to withdraw a complaint? Why were the police involved so late? Why was there a failure by the police to properly investigate the crime? Does the reasonable person draw an inference that nothing was done because Annette was aborigine!

We are aware from the public record that the Department of Family Services knew they had problems at JOYC, they hired former Magistrate Noel Heiner to investigate. Mr Heiner's investigation appears to have opened up a can of worms. Not only did the highest echelon of the Department of Family become involved, but as we understand the Cabinet of Queensland government also became a party.

Annette the only female and five other male inmates, under the control of JOYC staff went to a tranquil and peaceful place known as the Lower Portals in the Mt Barney National Park. At the Lower Portal, Annette was raped and there began the first steps in the cover up.

Rather than paraphrase what the documents say, we have outline the following chronology:

1. 24 May 1988 – 8:15am - Outing to the Lower Portals.
2. 24 May 1988 – Lunch/Noon - Rape/ Sexual Assault of Annette.
3. 24 May 1988 – 3:15pm – 4 boys abscond from Lower Portals.
4. 24 May 1988 – 4:45pm - Police notified that boys absconded.
5. 24 May 1988 – 6:45pm - Jeff Manitzky notifies Peter Coyne.
6. 24 May 1988 – 7:15pm - Peter Coyne attends JOYC.
7. 24 May 1988 – Disturbance in progress at Admission area at JOYC by boys who had absconded and were located by police.
8. 24 May 1988 – Peter Coyne has conference with J Manitzky, K Mersiades and S Moynhan – Concerns that Annette had been sexually assaulted.
9. 24 May 1988 - Boys taken to rooms and separated.
10. 24 May 1988 – Peter Coyne states he went to see Annette but she was asleep. Annette states Peter Coyne spoke with her and she confirmed sexual assault.
11. 24 May 1988 – 9.00pm - Peter Coyne left John Oxley Youth Centre.
12. 25 May 1988 – 9.00am - Conference with staff members who were in attendance at Lower Portals. – Concern that Annette had been sexually assaulted but no evidence available.
13. 25 May 1988 – 10:30am – Mark Freemantle attends upon Peter Coyne – Brendan Turbane describes the sexual assault on Annette and other boys watching and masturbating. Describes how Jeff Manitzky walks onto scene.
14. 25 May 1988 – Mark Freemantle returns to Blaxland Living area to ensure Annette's safety.

[1] *R v KU & Ors; ex parte A-G (Qld)* [2008] QCA 154

15. 25 May 1988 – 11:00am - Peter Coyne interviews 4 boys re sexual assault on Annette. The boys tell Peter Coyne about sexual assault and masturbation.
16. 25 May 1988 – Report by R O'Hanley.
17. 25 May 1988 – Report by G Cooper.
18. 25 May 1988 – Report by J Manitzky.
19. 25 May 1988 – Report by K Mersiades.
20. 25 May 1988 – Report by S Moynihan.
21. 26 May 1988 – Peter Coyne attempts to reinterview the boys involved. They decline to be interviewed.
22. 27 May 1988 – 12:30 - Peter Coyne and Ms Foote spoke at length with Annette – Inspector Dave Jefferies JAB Brisbane informed of complaint.
23. 27 May 1988 – Annette taken to Mater Public Hospital for examination. Annette names the boys who sexually assaulted her.
24. 27 May 1988 – Peter Coyne writes report to Director General, Community and Youth Support.
25. 28 May 1988 – 10:30 – Police attend JOYC. Annette is surrounded by 2 police and 2 employees of JOYC and Annette under duress withdraws her complaint.

The original documents are held by the Department of Family Services. The offence and the offenders have all been identified in the documents. We have the FOI released documents.

Annette made a complaint to the Queensland Police Service on 23 October 2006. On the 30 May 2008, the Assistant Commissioner of the Queensland Police Service wrote to our office saying there would be no further police investigation in the matter. The police have determined there is insufficient evidence on which to proceed with the rape allegation or the carnal knowledge. The Assistant Commissioner cites differing versions by Annette and the absence of any medical evidence to forensically support the complaint. We have attached a copy of the Assistance Commissioners letter for your information.

Against what the Assistant Commissioner states, we say the picture the documents paint is quite clear, it shows those in charge of the JOYC had knowledge of the sexual assault on Annette. It appears from the Freemantle document (the report by Mark Freemantle – 25/5/88) that Jeff Manitzky walked in on and stopped further acts of rape occurring. The inference that a pack rape was being conducted is supported by the fact the other boys were masturbating, which would indicate they were preparing to have sex with Annette.

In the Assistant Commissioner's letter, they have determined there is insufficient evidence on which to proceed with the rape allegation or any lesser charge. The letter goes on to state "her self-admitted little, clear independent recollection of the matter except which she acquired through reading Freedom of Information material or through contact with the media".

There is an important timing point with respect to what the Assistant Commissioner states. By way of a small comparison, in Annette's statement to police on 23 October 2006, she states "I was up against the rock there was some fella penetrating me and Jeff the screw was up on top of the rock, he yelled out "What' are you doing there, get back round to where I can see you".

In the Fremantle document, Mark Freemantle reports, written on 25 May 1988 he states: "So the story goes, both [FOI delete] took turns at having sex with Annette while the other three boys watched and masturbated. ... [FOI delete] said one staff member, namely Jeff Manitzky, had come up to where the young people were and had seen [FOI delete] masturbating and said "Cut that out". [FOI delete] ran off into the bush and then returned shortly.

Annette's police statement and the Freemantle document corroborate each other with the facts. The point which we would like to make here is that the Freemantle document, which supports

Annette's version of events, was only released in full, with the names deleted on 4 July 2007. Annette is not a mind reader and did not have access to the document until it was released. It is hard to understand how they would think that Annette had access to documents which had not been released.

The Assistant Commissioner further states that the "absence of any medical evidence to forensically support the complaint". We enclose for your information a Clinical Examination from the Mater Public Hospital for the 27 May 1988. The medical officer who saw Annette wrote "4 boys took Annette into bushes – took off pants, laid on top of her. Penetrated vagina with penis. Re[redacted] and [redacted] ... Says didn't want to have intercourse – Not physically held. Did struggle."

The Assistant Commissioner goes on to state that "other significant impediments to a successful prosecution includes the inadmissibility of evidence of statements made by potential suspects due to circumstances in which they were taken." There are two points here, the first is the admission by the police that there was interference in a criminal investigation. The question is why the police have not investigated the interfering into those criminal offences. The second point is whether the evidence given by Annette to officers of the Department of Family and to the medical staff is corroborated. The reading of the Assistant Commissioner's letter would make you believe it is not corroborated. We are of the view the police are choosing to ignore the confession of [redacted] to Mark Freemantle. The confession took place on the 25 May 1988, the day after the rape. Mr Freemantle documented the confession and we refer to it earlier as the Freemantle document. The checks and balances of the court allow a judge to direct a jury on how to view out of court confessions.

Further, the independent evidence of the clinical examination, 3 days after the sexual assault on Annette puts the police decision in disarray and confirms our view that their decision is based on political considerations and not the evidence.

The report by Peter Coyne to the Deputy Director General, Mr George Nix on 27 May 1988 summarises the events and clearly indicates Annette's plight in that she did not consent to the sexual intercourse. Annette said she wanted to bring charges against the boys. Again this was not released in full until 4 July 2007.

It is clear from the above accounts there a human rights violations and criminal offences being committed by the offenders, and further there are human rights abuses, criminal and misconduct offences committed by the Officers of the Department of Family. The Department had knowledge shortly after the incident and now some 20 years later they still have that knowledge.

The question that needs to be raised at this point is whether or not Peter Coyne and the Department of Family Services were involved with obstructing or perverting the course or administration of justice. The "course of justice" commences when the jurisdiction of the court is invoked. The "course of justice" is synonymous with the "administration of justice"[2] but the offence can be committed when no curial proceedings are on foot "...action taken before curial or tribunal proceedings commence may have a tendency and be intended to frustrate or deflect the course of curial or tribunal proceedings which are imminent, probable or even possible"[3] and "Although police investigation into possible offences against the criminal law or a disciplinary code do not form part of the course of justice, an act calculated to mislead the police during investigations may amount to an attempt to pervert the course of justice."[4]

Turning to the investigation which Mr Heiner was asked to investigate, because of the irregular running of the JOYC the staff had become dissatisfied and there were many complaints which

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[2] *R v Rogerson* 1992 174 CLR 268 at 276, Mason CJ
[3] Ibid, Mason CJ at 277
[4] Ibid, Brennan and Toohey JJ at 283-284 and *R v Murphy* 1985 158 CLR 596 at 618.

the Director General became aware of. We understand the then Director General of the Department of Family Services, around the 14 September 1988, decided that an investigation needed to be conducted into the operations of the JOYC.

The Secretary of the Queensland State Service Union on 10 October 1988 wrote to the Director General, the Department of Family Services enclosing statement of complaints from the Youth Workers about the style of management of Mr Coyne, the manager of the JOYC which outlined serious allegations.

On 1 March 1989, the Director General of the Department of Family Services wrote to the then Minister of Family Services advising that Mr Noel Heiner, formerly a stipendiary Magistrate, had agreed to head up the inquiry.

The Courier Mail ran a story reporting the Minister of Family Services had stated that at the time of the alleged sexual assault on the girl at JOYC she was 17 years of age. We understand this was the information given to the Minister by the Department of Family Services. This story was about Annette's circumstances.

On 3 November 1989 Mr Heiner was advised by letter from Mr Pettigrew that his appointment had been approved and that a copy of the terms of reference were attached.

It appears at this point in time, that Mr Heiner was only doing an internal investigation into the JOYC. We understand Mr Heiner had interviewed 35 staff members at the JOYC and that such interviews as he had had been recorded by tape recorded and the tapes had been transcribed.

On 2 December 1989, Wayne Goss was elected as Premier and the Labor Party came to power in Queensland.

On 11 December 1989, Ms Ruth Matchett was appointed as acting Director General and later was appointed to be Director General.

On 18 January 1990, Mr Coyne began questioning the legislative basis for Mr Heiner's investigation.

On 18 January 1990, Ms Matchett was advised by the Crown Solicitor that, since Mr Heiner had not been appointed by the Governor in Council to conduct the inquiry under the Commissions and Inquiry Act 1954-1989 had no application. Mr Heiner had no power to subpoena witnesses or examine them on oath or subpoena documents in the power of any person and the possibility was raised of defamation proceedings arising out of the information given to Mr Heiner.

On 19 January 1990, Mr Heiner wrote to Ms Matchett expressing his serious doubt as to the validity of his inquiry. He said that he was not prepared to continue any further with the inquiry until he had received written confirmation that his actions to date, including his appointment and authority to act, are "*validated.*" Mr Heiner retained all the evidence and advised he would not continue with the inquiry until he received the advice sought.

On 19 January 1990, Mr O'Shea the Crown Solicitor, looked into the validity of Mr Heiner's appointment, concluded that since Mr Heiner was not an officer of the public service the Chief Executive of the department could not delegate his powers under Regulation 63 to Mr Heiner.

We understand the 'Heiner Documents' were handed to the Director General Ms Matchett on 22 January 1990.

On 23 January 1990, Mr B J Thomas Senior Legal Officer in the Appeals and Advocacy Branch of Crown Law Solicitors Office prepared a memorandum to Mr O'Shea, the Crown Solicitor. Mr Thomas raised the possibility of proceedings for defamation, the possibility of an approach being made by the Director-General, Department of Family Services, to Cabinet for an indemnity for

any legal costs to be extended to Mr Heiner, and he suggested that the material handed by Mr Heiner to Ms Matchett be sorted into those which were originally in possession of the department **[the original material]** and those which had been created as a purpose of the inquiry **[the Heiner documents].** (our emphasis are in bold)

We understand Mr Thomas went on to say:

> *"as no legal action has been commenced concerning those documents **[the Heiner documents]** I believe the safest course would be the immediate destruction of those records to ensure confidentiality and to overcome any claim of bias if such documents somehow became available to any new investigation."*

We understand that Mr O'Shea endorsed Mr Thomas recommendations.

On 7 February 1990, Ms Matchett wrote to Mr Heiner requesting him not to continue the inquiry any further and advising him that the material collected by him in the form of interviews with various staff members would remain confidential. We understand the letter also advised him that Ms Matchett was continuing to pursue the matter of his indemnity for any legal costs which might result from his involvement in the inquiry.

On 9 February 1990, Mr Trevor Walsh, acting Executive Officer of the Department of Family Services, wrote a memorandum to Ms Matchett relating to a phone call he had received from Mr Coyne. In part it read: *"He (Mr Coyne) requests that they (Mr Coyne and Ms Dutney) be given an opportunity to receive information from you about the inquiry, including the responses to his letters which, to date, are still unanswered."*

Later that same day Mr Walsh received a further phone call from Mr Coyne. His record of that conversation, as we understand it was made the subject of a further memorandum to Ms Matchett. We understand it contains information that Mr Coyne was contemplating legal action if he did not receive a phone call by 5:00 pm.

We understand in the developing situation that Mr Coyne was seeking **the Heiner documents** and indicated his preparedness to go to the court to have the documents supplied to him. We understand that Mr Coyne did not have knowledge of what was in the documents. Mr Heiner, the Director General, the Crown Solicitor did have knowledge of the contents of **the Heiner documents.**

On 13 February 1990, Mr S P Tait Acting Cabinet Secretary sought advice from the Crown Solicitor *"as to what action might be taken should a writ be issued to obtain information that is considered to be part of the official files of Cabinet."* Mr Tait advised Mr O'Shea that *"the information was gathered during the course of a Departmental investigation will be submitted to Cabinet and retained in the Cabinet secretarial."* We understand that in response to that request for advice, Mr O'Shea contacted Mr Ken Littleboy and was told that all Noel Heiner's papers were now in the Cabinet secretarial.

We understand, that shortly afterwards, possibly within days, Mr Coyne was seconded, with Ms Matchett's approval, to perform duties associated with *"a project with the youth programme relating to the provision of the Department's services to young offenders."* Mr Coyne opposed his secondment.

Ms Dutney was appointed "officer in charge of the John Oxley Youth Centre" pending finalisation of the arrangement for the appointment a relieving manager.

We understand that on 14 February 1990, Mr Walsh received a telephone call from Mr Berry of Rose Berry and Jensen Solicitors seeking assurance from Ms Matchett's that the documents related to the Heiner inquiry will not be destroyed. We understand Mr Berry also made the claim

that there was still the intention to proceed to an attempt to gain access to the Heiner documents and any Departmental documents relating to the allegations against Mr Coyne.

We understand there was correspondence from Mr Berry to Ms Matchett on 15 February 1990 stating their intention to commence court proceedings against the secondment of Mr Coyne to another section.

On Friday 16 February Mr O'Shea advised Mr Tait that the Heiner documents could not be fairly described as Cabinet documents and they were public documents which were in the meaning of the *Libraries and Archives Act 1988*. The consequence were that, in accordance with section 55 of the *Libraries and Archives Act*, the documents may only be disposed of by depositing them with the Queensland State Archives, or by obtaining consent from the State Archivist to dispose of the documents or, after receiving Notice in writing of an intention to dispose of the documents, the State Archivist has not within a period of 2 months exercised his power to take possession of the documentation.

We understand Mr O'Shea also drew attention to the fact that there may be potentially defamatory material on the documents now being held, and that reference was to "*the material produced by Mr Heiner*" and he stressed there must be a pending action, commission of inquiry, or other civil or criminal proceedings pending before anyone could seek production of the documents. It is also clear from the terms of the letter that Mr O'Shea was responding to a request to be advised as to "*what options are open to the Cabinet as far as retention or disposal of those documents*" clearly the Heiner documents "*is concerned and could they be obtained by way of subpoena or third party discovery should the writ be issued touching or concerning them.*"

On 23 February 1990, after receiving Mr O'Shea's advice, Mr Tait wrote to the State Archivist seeking urgent advice as to "*the appropriate action to be taken in light of the fact that the Government is of the view the material is no longer required or pertinent to the public record.*"

On 23 February 1990, Ms McGregor, State Archivist, received a phone call from Mr Littleboy. We understand he told her about the termination of the Heiner investigation, of the handing over of Mr Heiner's "*notes*" to the Department, of Cabinet's feeling that they contain most defamatory material and would prefer them destroyed. We understand she recorded that one carton of records was delivered to her office where she and Ms Kate McGuckin went through them. Her note also contains a record that the State Librarian had been notified of the situation and that Mr Littleboy had been told that the disposal would be approved. A letter of reply to Mr Stuart Tait, we understand was to "being faxed across this afternoon."

We understand on receipt of the correspondence, Ms McGregor informing Mr Tait that the "*documents*" were not required for permanent retention when she gave her approval, under the terms of s5 of the *Libraries and Archives Act 1988*, for the destruction of the records. Arrangements, she told Mr Tait, have been made for the records to be returned to the Cabinet secretariat and they were.

On 5 March 1990, State Cabinet decided that the records of investigation conducted by Mr Heiner be handed to the State Archivist for destruction. The decision related only to the **Heiner documents**, and not to the **original material**. The **original material** remains with the Department of Family Services.

We understand the **Heiner documents** were destroyed on the 23rd of March 1990.

We do not know why the Heiner documents were destroyed. We are of the view that if they contained evidence of the rape of Annette, then the extent of the cover up of the evidence would raise a serious public outcry. It must be remembered that Queensland was coming to terms with the political and social fallouts of the Fitzgerald Inquiry at this time.

Ms Ann Warner, the Minister for the Department of Family Services tells the Queensland Parliament:[5]

> Mr Heiner informed my director-general in early 1990 that he did not feel he could proceed with the inquiry because there was a problem with the legal basis on which the inquiry was set up. He said he had a number of statements from witnesses which were not privileged—again because the inquiry did not have the appropriate legal status. Mr Heiner also informed the director general, on the basis of the information that he had, that he would make no findings. Mr Heiner was concerned that individuals may have taken legal action against each other.

We would respectfully suggest that Ms Warner's speech answers the question as to why the Cabinet of Queensland became involved. The Cabinet became involved because the evidence which would be put before the Supreme Court would compromise the State of Queensland. One could argue the State knew of the abuse allegations at JOYC but did not want it to be exposed for the public to see.

The then Premier of Queensland, Peter Beattie was aggressive in his attack on Dr Peter Hollingsworth over his benign handling of earlier sex abuse cases, yet at the same time the State was claiming "Hollingsworth defence" to protect itself. Premier Peter Beattie said:[6]

> It is not feasible for Dr Hollingsworth to encourage Australians to speak out against child abuse and sexual abuse—a topic which should unite us. It would not be believable for Dr Hollingsworth to articulate the horror which Australians feel about child abuse. It is impossible for Dr Hollingsworth to represent all those Australians who want a national figurehead who can stand tall and denounce child abuse, speak out against child abusers and talk proudly of his record.

The record shows the officers and the Director General knew of the sexual assault on Annette shortly after it happened. Using the comparison which Peter Beattie advocated towards Dr Hollingsworth, we are concerned about government institutions speaking out against child abusers.

In the *Australian* newspaper, Mr Noel Heiner (The Heiner Inquiry Chairman) said (as reported on 13/10/07) that the inquiry was into the administration of the home, nothing else. The FOI documents that were released and the fact that the Heiner Inquiry interviewed some 35 staff members raises that the executive decisions to destroy "administration documents" is a misnomer.

In hindsight, the pressure must have been enormous, especially in light of the cover up and corruption exposed in the Fitzgerald Inquiry, it would have been detrimental to any government to allow such atrocities to become publicly known.

Annette was a child who was the victim of a pack rape inside a government institution. We believe that no government can allow and condone the rape of a child in one of its detention centres. It is an abuse of her human rights and is equal to the human rights abuses we see in the third world country. In its recent report on sexual assaults in Burundian, Amnesty International claimed the authorities are failing to exercise due diligence to prevent, investigate and punish rape and other sexual violence and the perpetrators are escaping prosecution and punishment by the State. It is hard not to draw the same conclusion in Queensland. The politicians, the lawyers, the police and the media have all lost the focus of the serious criminal offence which happened to Annette. Annette is a human being, she suffers hurt and pain, she has been abused by the perpetrators who committed the crime and then by the State who sought to pretend it never happened.

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[5] 1 September 1994 - Hansard
[6] 13 May 2003 - Hansard

Annette made a formal complaint to the Queensland Police. The evidence is that a sexual assault took place in a government institution is without question. The exploitation of young children in state care or anywhere has to be totally condemned.

The Assistant Commissioner of Police made comments with respect to the Case Evaluation Committee.

The common law is that every police officer is the master of their own ship, it is their decision alone, based on the available evidence as to whether or not they should arrest and charge the person. It is the police officer who answers to the court, not some committee made up of people who have different agendas. Our view is it is being used as a political tool to undermine the independence of police officers. There is common law precedent which keeps our police officers above politics. Our view is the committee is trying to usurp a constable's power at common law in order to protect the many people who have said this matter has been completely investigated.

For example the Criminal Justice Commission (CJC) in a Media Release on 16 November 2001, say they completed an investigation of the alleged rape cover-up, but only as far as their legislative obligations go. In their press release they say they have obtained and examined relevant police notebooks and diaries and they go on to state there is no reasonable basis to suspect any official misconduct by any departmental staff in respect to their duty to report the alleged rape of the girl.

We find it difficult to understand how the CJC came to their conclusion when the common law since 1927 has made it clear that consent is no defence to a charge of carnal knowledge. Simply put, a 14 year old girl cannot consent to the offence of carnal knowledge, nor can she consent to the withdrawal of the charge. The offence of carnal knowledge was also committed against the girl. It was the duty of the police officer and departmental officers to investigate and protect evidence.

The police have a duty to investigate, the department officers have a duty to report the matter to police, to preserve evidence and they have a higher duty of care to Annette.

We hold instructions to insist the inquiry.

In accordance with the Orders in Council and the Commissioners request we seek leave to appear before the Commission to represent Shelley Farquhar and Annette McIntosh as their matters are very serious and complex and they are incapable as witnesses of representing themselves.

We await your decision.

Gordon Harris

20 July 2012