



Keyworth Harris & Lowe
Family Lawyers
Realistic Advice & Effective Representation

Telephone: (07) 3236 4044

Facsimile: (07) 3221 9422

Email: admin@khlfamilylaw.com.au

Level 7, Northpoint Building
231 North Quay
BRISBANE QLD 4000

All correspondence to:
PO Box 12056
George Street QLD 4003
ABN: 20 680 775 398

Final Submission to Queensland Child Protection Commission of Inquiry

Terms of Reference 3(e) QCPCI 3 (e)

Date: 06.05.2013

Annette Harding

Exhibit number: 362

1. Annette Harding was born 12 February 1974, she is a full blooded aborigine from the Bundjalung community who was born on Cabbage Tree Island on the Richmond River, near Evan Heads, via Ballina.
2. On 24 May 1988, Annette was confined in the John Oxley Youth Centre (JOYC) at Wacol. The centre was described as "a secure detention facility to house boys from the ages 10 to 15, and girls to the age of 18, who have been before the courts."¹
Annette turned 14 years of age on 12 February 1988.
3. Annette was under the age of 16 years of age and was unable to consent to carnal knowledge.²
4. On that day Annette with other youths from the JOYC centre went on an excursion to the Lower Portals. JOYC had Youth Workers and Professional Staff working together to rehabilitate the children. On the 24 May 1988, no Youth Worker was rostered on the excursion, five professionals, Karen Mersiades (Teacher in Charge), Bob O'Hanley (Teacher), Gordon Cooper (Teacher), Jeff Manitzky (Psychologist)

¹ Exhibit 251 - Media Release of Hon Craig Sherrin MLA

² *R v Cook* [1927] St R Qd 348.



and Sarah Moynihan (Art worker) accompanied the children.³ In all there were twelve persons, five adults and seven children on the excursion.

5. The excursion split into two groups, the first group with Bob O'Hanley and Gordon Cooper and six youths including Annette had already had lunch and commenced exploring⁴. The group with Jeff Manitzky, Karen Mersiades and Sarah Moynihan and one other youth had taken a wrong turn and when they had arrived at the Lower Portal sat down and had lunch.⁵ This group was about 35 minutes late at arriving at the Lower Portals.⁶ Annette had removed her jeans and had a jumper wrapped around her waist as she had apparently fallen in the river.⁷
6. Whilst the second group sat down with the first group to eat their lunch at the Lower Portals, five of the youths, including Annette left the selected lunch spot.⁸ Gordon Cooper was seated near Karen Mersiades as she had lunch.⁹
7. Bob O'Hanley had taken a child to the lower pool.¹⁰ The other six were missing for about 15 to 20 minutes.¹¹
8. A search by Gordon Cooper and Jeff Manitzky found the youths on a nearby small hill. The youths did not see him coming and he saw Annette Harding and (name omitted) standing up embracing.¹²
9. Annette Harding was examined by Dr Crawford¹³ on 27 May 1988, who wrote "4 boys took ... into bushes. took off pants, laid on top of her penetrated vagina with

³ Exhibit 240 – Report on Outing to Lower Portals by Karen Mersiades.

⁴ Exhibit 241 – Jeff Manitzky.

⁵ Exhibit 241 – Jeff Manitzky

⁶ Exhibit 240 – Report on Outing to Lower Portals by Karen Mersiades.

⁷ Exhibit 241 – Jeff Manitzky.

⁸ Exhibit 241 – Jeff Manitzky

⁹ Exhibit 240 – Report on Outing to Lower Portals by Karen Mersiades.

¹⁰ Exhibit 240 – Report on Outing to Lower Portals by Karen Mersiades.

¹¹ Exhibit 241 – Jeff Manitzky.

¹² Exhibit 241 – Jeff Manitzky.

¹³ Exhibit 250 – Clinical Examination by Dr Crawford.



penis.” Five boys were with Annette and three were kissing and fondling her, the boys took off their jumpers and laid them down so Annette could lie down on the ground and not hurt her back. Two of the boys had sex with Annette and the two/three others were watching and masturbating.¹⁴

10. The two boys who had sex with Annette were supposed to have gone off into the trees to ejaculate.¹⁵ The professional staff members were all down the bottom of the hill talking¹⁶ and Jeff Manitzky found one of the boys masturbating, who ran off into the bush when challenged.¹⁷ Annette went crying to the staff and the staff became distressed feeling for Annette and her situation.¹⁸

11. Jeff supervised the children in the water and Annette and another youth remained with Karen.¹⁹ We returned to the vehicle and the groups separated.²⁰ On the way back suspicion arose about sexual contact²¹ and while walking back the four boys were talking about sexual activities with Annette,²² suspicion were further raised.²³

12. Four boys went to the toilet²⁴ and Jeff went to discuss his suspicion with the remainder of the staff²⁵ and the 4 boys were sneaking from the toilet into the bush²⁶ and were gone.²⁷

13. Police were involved and all parties were returned to the JOYC, with the four absconding boys arriving around 6.45pm.²⁸ In a meeting over an hour long, the

¹⁴ Exhibit 248 – Mark Freemantle.

¹⁵ Exhibit 248 – Mark Freemantle.

¹⁶ Exhibit 248 – Mark Freemantle.

¹⁷ Exhibit 248 – Mark Freemantle.

¹⁸ Exhibit 248 – Mark Freemantle.

¹⁹ Exhibit 240 – Report on Outing to Lower Portals by Karen Mersiades.

²⁰ Exhibit 240 – Report on Outing to Lower Portals by Karen Mersiades.

²¹ Exhibit 241 – Jeff Manitzky.

²² Exhibit 241 – Jeff Manitzky.

²³ Exhibit 241 – Jeff Manitzky.

²⁴ Exhibit 241 – Jeff Manitzky.

²⁵ Exhibit 241 – Jeff Manitzky.

²⁶ Exhibit 240 – Report on Outing to Lower Portals by Karen Mersiades.

²⁷ Exhibit 241 – Jeff Manitzky.



events of the day were discussed by Peter Coyne, Jeff Manitzky, Karen Mersiades and Sarah Moynihan and they told Peter Coyne they were most concerned about a suspicion that Annette Harding may have been sexually assaulted.²⁹ Peter Coyne went to see Annette, however she was asleep.³⁰ Peter Coyne left JOYC at about 10.00pm and had arranged a meeting at 9.30am on the 25 May 1988.³¹

14. It is respectfully submitted that once the suspicion had been raised that Annette may have been sexually assaulted that the matter should have handed over to the police. The evidence of George Nix³² provides evidence that the absconding of the four boys was put at a higher priority to the sexual assault on Annette.
15. The delay to inform the police robbed the investigators of evidence that would have been able to establish whether an offence of rape had been committed.³³ A police investigation into rape would need to be established if carnal knowledge and the absence of consent was present. The police investigation would also have been able to gather physical evidence, such as taking possession of the complainant's clothes, have a medical examination of the complainant for semen and other evidentiary specimens that could assist in the investigation. Further, police would have been able to obtain statements when they were fresh in the complainant's mind and the witnesses.
16. On 25 May 1988, Youth Worker Mark Freemantle told Peter Coyne the conversation he had with one of the youths who had been on the environmental bush-walk. Mark Freemantle later committed what he told Peter Coyne to writing.³⁴

²⁸ Exhibit 242 – Peter Coyne letter to George Nix on 27 May 1988.

²⁹ Exhibit 242 – Peter Coyne letter to George Nix on 27 May 1988.

³⁰ Exhibit 242 – Peter Coyne letter to George Nix on 27 May 1988.

³¹ Exhibit 242 – Peter Coyne letter to George Nix on 27 May 1988.

³² Evidence of George Nix Day 22 13/2/2012 from Page 22-66 – Line 23 to Page 22-67 – Line 18

³³ Exhibit 359 – Policeman's Manual – GI 4.344 – Rape

³⁴ Exhibit 248 – Mark Freemantle.



Peter Coyne was told by Mark Freemantle that a youth had admitted having sexual intercourse with Annette and there were fears for Annette's safety.³⁵ Peter Coyne then questioned the five youths with Annette about the sexual assault.³⁶

17. It is respectfully submitted that Peter Coyne was the Manager of JOYC and was a person in authority. Further, there is no evidence that the youths were warned about self-incrimination and that their statements or confessions had to be done of their own free will without any threat or promise and could be used against them in a court against them. Any future confession by the youths would not be admissible against them in court.³⁷

18. Annette was interviewed by Jenny Foote at JOYC and said that denied any sexual intercourse took place on the outing. Annette was told she would not be in any trouble.³⁸

19. Peter Coyne again attempted to reinterview the youths on the 26 May 1988, the youths declined to be interviewed.³⁹

20. Peter Coyne spoke with Annette shortly after lunch on the 26 May 1988 and asked if she had sexual intercourse with anyone on the previous day. Annette replied yes.⁴⁰ Annette identified the youths. Annette said she felt a lot of pressure and consented because of the pressure. Annette said that she tentatively wanted the youths charged.⁴¹

21. It is respectfully submitted that the evidence in any alleged sexual assault against Annette was being contaminated by the actions of the Management staff at JOYC in

³⁵ Exhibit 242 – Peter Coyne letter to George Nix on 27 May 1988.

³⁶ Exhibit 242 – Peter Coyne letter to George Nix on 27 May 1988.

³⁷ Exhibit 359 – Policeman's Manual – GI 4.55 and 4.56 – Confession and Judge's Rules.

³⁸ Exhibit 243 – Jenney Foote.

³⁹ Exhibit 242 – Peter Coyne letter to George Nix on 27 May 1988.

⁴⁰ Exhibit 242 – Peter Coyne letter to George Nix on 27 May 1988.

⁴¹ Exhibit 242 – Peter Coyne letter to George Nix on 27 May 1988.



an effort to discover the truth. No evidence had been obtained from Annette. It is respectfully submitted that the Management was in damage control over the fear that a sexual assault had been committed. As no complaint had been made by Annette, the warring factions with JOYC and the infighting within JOYC made any internal investigation into Annette's complaint virtually impossible. The differing versions of events of what occurred at the Lower Portals as described by the professional staff⁴² and the youth workers.⁴³

22. Peter Coyne at 1.50pm advised Ian Peers of Annette's complaint.⁴⁴

23. It is respectfully submitted that at this time, if the police had been investigating, they would need to strengthen any complaint of sexual assault on Annette as this would be critical for any prosecution to succeed.

24. A message was given to Annette's mother and she called JOYC on 26 May 1988 at 6.45pm. Annette spoke with her mother on the phone.

25. On Friday 27 May 1988, a series of events occurred. Jenny Foote had a further conversation with Annette, this appears to have been after interviews with the boys. Annette was told of what the boys had said and she admitted that she had intercourse with the boys.⁴⁵ Jenny Foote told Annette that her mother was attending to JOYC to talk with the Manager and her.⁴⁶

26. Mrs Harding attended to JOYC at 12.30pm and she then spoke privately with Annette for approximately 30 minutes. Annette and her mother told Ms Foote and

⁴² For example Karen Mersiades and Jeff Manitzky – Annette not being upset

⁴³ For example Mark Freemantle – Annette had gone crying to the staff.

⁴⁴ Exhibit 242 – Peter Coyne letter to George Nix on 27 May 1988.

⁴⁵ Exhibit 243 – Jenney Foote.

⁴⁶ Exhibit 243 – Jenney Foote.



Peter Coyne that they wanted a complaint made to police. Peter Coyne contacted Inspector Dave Jefferies immediately.⁴⁷

27. Mr Coyne gave evidence that he spoke to the police after he had complied with Ian Peers request that the family be notified first.⁴⁸

28. Sometime on the 27 May 1988, Annette attended to the Mater Public Hospital in company with Youth Worker June West.⁴⁹ Dr Crawford wrote in the Clinical Examination that Annette “didn’t want to have intercourse - not physically held - did struggle.”⁵⁰ Dr Crawford wrote to Dr Forbes on 9 June 1988, wherein she wrote: “I was asked to examine on 27th May 1988 on the request of the Juvenile Aid Bureau.”⁵¹

29. A communication occurred sometime prior to 7.15pm on Friday 27 May 1988 that caused serious concerns with respect to what had happened to Annette. Trevor Cox⁵² wrote:

Friday evening at 7.15pm. Dr H Forbes phoned in re Annette Harding, after ascertaining that I was aware of the situation regarding Annette, he gave me a list of contraceptive pills that could be taken by Annette ...

...

....At 8.37pm Mr Peter Coyne phones back re approval for the contraceptive pills to be given to Annette as per Dr H Forbes prescription.

30. Detective Podlick police diary states that she received a job from Inspector Jefferies and ceased duty at 4.00pm.⁵³ There is no evidence as to what this job was. There is

⁴⁷ Exhibit 242 – Peter Coyne letter to George Nix on 27 May 1988.

⁴⁸ Evidence of Peter Coyne Day 9 11/12/2012 from Page 9.89 line 35

⁴⁹ Exhibit 216 – June West.

⁵⁰ Exhibit 250 – Letter Dr Forbes and Clinical Examination Dr Crawford.

⁵¹ Exhibit 250 – Letter Dr Forbes and Clinical Examination Dr Crawford.

⁵² Exhibit 249 – Letter to P Coyne re Annette Harding

⁵³ Exhibit 252 – Detective Podlick’s diary entry.



no record or evidence that Detective Podlick, Detective Tomsett or Inspector Jefferies spoke with Dr Crawford and requested Annette to be examined by her for the sexual assault. Police are required to obtain the consent of a women or girl complainant before being medically examined. On the material before the Commission, this did not happen.⁵⁴

31. It is respectfully submitted that the call to Inspector Jefferies by Peter Coyne was to advise the police of a potential complaint from a person in JOYC.

32. It is respectfully submitted that if the police had received a complaint of rape or sexual assault on the afternoon of Friday that they would have acted immediately to such a serious complaint.⁵⁵ Failure to act would not only bring public criticism but could result in criminal charges being laid against police as the police would have been in breach of their duty.⁵⁶

33. It is respectfully submitted that the request which was made by the Juvenile Aid Bureau (JAB), was not made by the JAB, as they would have owned the investigation at that stage. Although there is no evidence before the Commission, other than Ms West evidence, it is respectfully submitted that when Dr Crawford was spoken to, she would have been told that the JAB are being involved in the matter by Management of JOYC.

34. Both Detective Tomsett⁵⁷ and Detective Sergeant Podlick⁵⁸ evidence is that they received the information with respect to the job on the morning of Saturday 28 May 1988. Detective Tomsett was the investigating officer of the matter⁵⁹ and with

⁵⁴ Exhibit 359 – Policeman’s Manual 4.344: Suggested Action: (b)

⁵⁵ Exhibit 359 – Policeman’s Manual 4.344

⁵⁶ Section 200 Criminal Code Queensland

⁵⁷ Exhibit 295 – Affidavit Detective Tomsett

⁵⁸ Exhibit 234 – Affidavit of Detective Sergeant Podlick

⁵⁹ Evidence of Janelle Podlick Day 8 10/12/2012 from Page 8.17 line 10 to 20



Detective Sergeant Podlick attended to JOYC. No complaint came from Annette for the police to commence their investigation. Detective Tomsett did not receive from JOYC any documents or information with respect to the JOYC investigation.⁶⁰ At this stage there were numerous documents in place, including the clinical examination of Annette.

35. Annette did not have her mother present when the police attended to JOYC, the only people present were the two police officers and youth workers Hayward and Pekelharing. Pekelharing wrote the reasons for Annette not going ahead with the complaint was because of the length of time before it was going to court and she was receiving verbal abuse from the boys and a female.⁶¹
36. Whilst Annette was not being questioned by the police, she was a child and an aboriginal. If Annette had been an offender, she would have been treated as a person under disability by the police officers.⁶² Being an aborigine, an adult person concerned with the welfare of her race should have been present.⁶³ Whilst it is clear from Mr Coyne, that Annette wanted the matter investigated, firstly when she was spoken to him on 26 May 1988 and when her mother was present on 27 May 1988. The evidence is that Annette had a rapport with Lorriane Hayward, a youth worker at the Centre.⁶⁴
37. It is respectfully submitted that the police could not investigate the complaint because they had not received a complaint. The evidence of both Podlick and Tomsett confirm that no complaint was made. The police are guided by the Policeman's Manual, the law and the common law with respect to their duties.

⁶⁰ Exhibit 244, Exhibit 250, Exhibit 241, Exhibit 248 and Exhibit 240.

⁶¹ Exhibit 245 – R Pekelharing

⁶² Exhibit 359 – Policeman's Manual 4.54A

⁶³ Exhibit 359 – Policeman's Manual 4.54A (c).

⁶⁴ Evidence of Lorraine Hayward Day 11 13/12/12 Page 11-65 Line 30



Unless they are charged with the complainant's complaint they cannot carry out their investigation. In Annette's case, as no complaint went to the police, the police had no complaint to investigate.

38. This is a case in which the facts and evidence of the case are withheld from the police. It appears on the face of the evidence before the Commission that the matter was handed to the police to investigate. It is submitted that the police were in a vacuum with respect to the complaint. It appears that the Minister was also in a vacuum as to the evidence. As to whether there was a deliberate or intentional act to withhold the facts or evidence from the police or the Minister is unknown. The facts and evidence were known within the Department and selected parts of the facts and evidence were known through the chain of command up to the Minister, who did a press release.⁶⁵ It is submitted that the Minister had the wool pulled over his eyes with respect to the *"most serious charge ... of rape"* by his Department. The media release does not talk of any police investigation and the Minister is quoted as saying *"If intercourse took place, the charge would necessarily, because of the age of the girl, have been statutory rape."*

39. The evidence of Dr Crawford in her Clinical Examination on 27 May 1988 would be enough for the police to commence an investigation into an offence of carnal knowledge or rape under Queensland criminal law. Neither the Minister or Police had the report.⁶⁶

⁶⁵ Exhibit 251 Media Release of Hon Craig Sherrin MLA

⁶⁶ Exhibit 250 – Letter Dr Forbes and Clinical Examination Dr Crawford.



40. It is further submitted that if, however Podlick and Tomsett did receive a complaint from Annette and did not investigate it they could face criminal charges themselves for failing to carry out their statutory duties.⁶⁷

41. However, in contrast, the Departments had information in its possession which would support Annette being sexually assaulted. This information was never given to the police. The police pursuant to their oath, their common law powers and the statutory power can investigate a crime which they become aware of during the course of their duties.⁶⁸

42. Had the police received the information in possession of the Department, they would have been able to pursue a complaint of carnal knowledge.⁶⁹

43. For example, if the police would have been seized of the material in the Departmental files, the police would have acted within their powers to commence an investigation into the matter without the complainant's complaint. The police would put to the complainant the evidence that they had. If the complainant did not want to proceed any further after the police had presented the matter to the complainant, a Criminal Offence Report, outlining the evidence and what the police officer did with the complainant. The police officer would normally then obtain a signed statement off the complainant stating that she did not wish to pursue the complaint⁷⁰ or pursue the carnal knowledge investigation. Another police officer may seek support for the complainant and ensure that there is support for her before pursuing the complaint.

⁶⁷ Section 200 Queensland Criminal Code.

⁶⁸ Exhibit 359 – Policeman's Manual 4.1.

⁶⁹ Exhibit 359 – Policeman's Manual 4.331

⁷⁰ Exhibit 359 – Policeman's Manual 4.1.



44. George Nix wrote a report to Alan Pettigrew⁷¹ wherein he stated:

“on Friday Annette Harding as medically examined at the Mater Hospital.

This was arranged with the police investigating the matter and on Saturday police again interviewed Annette Harding who indicated that she did not wish to make a formal complaint.”

45. It is respectfully submitted that this statement is in error, it is in error because the police did not have Annette medically examined at the Mater Hospital. The police had no complaint at this time, they did not have the consent of Annette for a medical examination. The police if they were seized of the complaint would have attended to the Mater Hospital to ensure the continuity of the evidence that would have been taken from Annette. The continuity of evidence is an important part of a police investigation.

46. It is respectfully submitted that the Manager of JOYC would have the power to have Annette to attend upon the Mater Hospital and be medically examined with gaining her consent. The handwritten note by Senior Youth Worker, Terry Cox gives a glimpse of the power which Peter Coyne had. Dr Forbes made inquiries at JOYC as to what contraceptive were available at the Centre. A packet of Sequilar ED where available. At 8.37pm Peter Coyne phoned re approval for contraceptive pills to be given to Annette.⁷²

47. It is submitted that the correspondence is again in error because no police investigation took place because the police did not have a complaint, or did not have information enough for them to ascertain if a criminal offence had been committed. It is respectfully submitted that the matter was framed to say the police

⁷¹ Exhibit 246 – George Nix

⁷² Exhibit 249 – Terry Cox.



were investigating because there was some possibility of the matter leaking to the media.⁷³

48. Annette was isolated in JOYC.⁷⁴ Verbal abuse was levelled at her by the boys and a female.⁷⁵ JOYC was caught in a web of internal disputes and power struggles because of the disputed Management procedures and media leaks.

49. It is respectfully submitted that the sexual assault on Annette had the ability to fuel the dispute between the various fractions at JOYC. The fear of such an incident was foremost in the mind of the Director General and the Minister.⁷⁶ The entire exercise was an exercise in minimising the facts to a controllable level, as the Director General said in his correspondence to the Minister. He said “Apparently four boys interfered with one of the girls”.⁷⁷

50. We would respectfully submit that Annette, who is the complainant, holds her complaint that she was sexually assaulted whilst at JOYC. It is respectfully submitted that no other person or organisation can take that complaint from her. Annette owns that complaint. The matter was not investigated in accordance with the laws of Queensland.

Shelley Neal

51. Shelley Neal was born on 29 January 1976. Shelley was confined to JOYC on 4 April 1991. On that day an excursion was organised to take Shelley and other youths to the Wivenhoe Dam for an outing.

⁷³ Exhibit 247 – Alan Pettigrew.

⁷⁴ Exhibit 248 – Mark Freemantle.

⁷⁵ Exhibit 245 – R Pekelharing

⁷⁶ Exhibit 247 – Alan Pettigrew.

⁷⁷ Exhibit 247 – Alan Pettigrew.



52. Shelley complains that she was sexually assaulted by a member of the Staff whilst at Wivenhoe Dam.

53. Evidence was taken from Linda Delwijnen⁷⁸ and a statement which she made from the CJC investigation.⁷⁹

54. Evidence was taken from Olly Issac⁸⁰.

55. Evidence was taken from Darryn Raymond Collins⁸¹.

56. Evidence was taken from Malcolm Thomas Elliott⁸² and a statement which was made from a CJC investigation.⁸³

57. The evidence of Malcolm Elliott is that Shelley's complaint has not been placed before the police for investigation as no complaint was made to the police to investigate.

58. It is respectfully submitted that the Shelley Neal matter be referred to the police for investigation.

Conclusion and Imbalance

59. It is nearly a quarter of a century since the events at the Lower Portals. The claim that the police investigated the matter is untrue. The police had no complainant to investigate, nor did they have any evidence to put them on a path towards doing an investigation. The claim that a police investigation had taken place was to deflect any inquiries into the matter.

⁷⁸ Exhibit 264 – Linda Delwijnen.

⁷⁹ Exhibit 265 – Linda Delwijnen.

⁸⁰ Exhibit 24 – Olly Issac.

⁸¹ Exhibit 332 – Darryn Collins

⁸² Exhibit 334 – Malcolm Elliott.

⁸³ Exhibit 335 – Malcolm Elliott.



60. It is respectfully submitted that the cases of Annette and Shelley both have a similar theme and that whilst one was pre the Heiner Inquiry and the other was after the Heiner Inquiry, the continuing claim that the police investigated the offences is flawed.

61. Evidence that could have assisted the police was effectively lost due to inept practises within the Department.

62. We make no comment with respect to the Heiner Inquiry.

63. Annette and Shelley are ordinary persons who saw the State as their enemy. It was the State that closed ranks and caused them to walk the road to seek the truth as to what happened to them. Both Annette and Shelley see the State as being the offender against them. The reason is that they receive no assistance from the State as no one within the State would stand up and protect them.

64. When they were told that the Attorney-General would not fund their legal representation at the inquiry,⁸⁴ they were angry as it reinforced their views that the State was their enemy and that they would have to fight the fight alone. They viewed the Attorney-General's decision as further covering up what had happened to them.

Gordon Harris
Solicitor for Annette Harding and Shelley Neal.
3/5/2013

⁸⁴ Exhibit 348 – Gordon Harris