



Mark Speakman
Attorney General

STATEMENT

Wednesday, 18 May 2022

KATHLEEN MEGAN FOLBIGG

On my recommendation, Her Excellency, the Hon Margaret Beazley AC QC, Governor of NSW, has directed a second inquiry into the convictions of Ms Kathleen Megan Folbigg.

The Governor has appointed recently retired Chief Justice, the Hon Thomas Bathurst AC QC, to conduct the inquiry.

In 2003, Ms Folbigg was convicted of the homicides of her children Caleb, Patrick, Sarah and Laura following a trial by jury. On appeal, the Court of Criminal Appeal imposed a total sentence of 30 years' imprisonment with a non-parole period of 25 years.

In addition, this matter has seen several unsuccessful appeals to the Court of Criminal Appeal, a number of applications to the High Court, the 2018-2019 inquiry, and in relation to that inquiry's findings, a discontinued application for special leave to the High Court following a judicial review by the Court of Appeal.

The deaths of Caleb, Patrick, Sarah and Laura have caused immeasurable and continuing grief to their family and the community. I have written to Ms Folbigg's legal representatives to advise them of the decision. I have also again spoken with their father Craig Folbigg to inform him about today's decision; I am deeply sorry that yet again he and his family will have to re-visit their nightmare.

Since the inquiry in 2018-2019 conducted by the Hon Reginald Blanch AM QC, a fresh petition has sought the exercise of the Royal prerogative of mercy to grant Ms Folbigg a pardon.

The petition refers to developments in genetic science in respect of the CALM2 genetic mutation found in Sarah and Laura Folbigg. Among other grounds, the petition argues this has provided an updated cause of death for both Sarah and Laura.

Although the original 2018-2019 inquiry was aware of the mutation, there was no completed study as to the functional effects of that mutation at that time. Such a study has now been completed. Notwithstanding that Ms Folbigg has already had numerous attempts to clear her name, this new evidence, and its widespread endorsement by scientists, cannot be ignored.

However, I declined to recommend to Her Excellency that she pardon Ms Folbigg.

Ms Folbigg's representatives contend that the new scientific evidence is compelling. However Ms Folbigg has been unsuccessful in numerous public proceedings to date and there is a need for fairness and transparency to all. Against that backdrop, it would not be appropriate for the Governor now simply to grant a pardon, or (for example) for the Governor or me to receive private briefings from experts with a view to considering granting a pardon, without that evidence being scrutinised independently in a public forum. Only a transparent, public and fair inquiry can provide a just resolution of the doubt or question raised by that new evidence.

I attach the Direction for the inquiry to this statement.

I thank Mr Tim Game SC, Ms Joanna Davidson and Ms Kathleen Heath for their advice and assistance in this matter.

Ms Folbigg continues to serve her sentence of imprisonment. At the conclusion of the inquiry, Mr Bathurst will prepare a report. If he is of the opinion that there is a reasonable doubt as to Ms Folbigg's guilt, Mr Bathurst may refer the matter to the Court of Criminal Appeal for further consideration.

Given this matter will now be the subject of an independent judicial inquiry, I do not propose to provide any further comment at this time.



Direction pursuant to section 77(1)(a) of the *Crimes (Appeal and Review) Act 2001*

WHEREAS it appears that there is a doubt or question as to part of the evidence in the proceedings leading to the conviction of Kathleen Megan Folbigg on 21 May 2003 of the following offences:

1. the manslaughter of Caleb Folbigg on 20 February 1989;
2. maliciously inflicting grievous bodily harm upon Patrick Folbigg on 18 October 1990, with intent to do grievous bodily harm;
3. the murder of Patrick Folbigg on 13 February 1991;
4. the murder of Sarah Folbigg on 30 August 1993; and
5. the murder of Laura Folbigg on 1 March 1999;

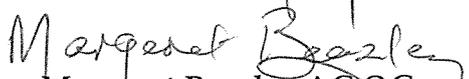
AND WHEREAS that doubt or question concerns evidence that a genetic variant (CALM2-G114R) identified in DNA samples from Sarah Folbigg and Laura Folbigg has biophysical and functional consequences that may cause cardiac arrhythmias and sudden unexpected death in young children, such consequences being the subject of research published in March 2021 following the completion in July 2019 of the previous inquiry into the said convictions directed pursuant to s 77(1)(a) of the *Crimes (Appeal and Review) Act 2001*;

PURSUANT to section 77(1)(a) of the *Crimes (Appeal and Review) Act 2001*, I direct that an inquiry be conducted into the said convictions in accordance with the provisions of Part 7 of the said Act; and

PURSUANT to section 81(1)(a) of the said Act I hereby appoint the Hon Thomas Frederick Bathurst AC QC formerly a judicial officer within the meaning of the *Judicial Officers Act 1986*, to conduct an inquiry into the said convictions, having particular regard to the consequence of the said evidence for all of the convictions referred to above, with the powers and authorities conferred on a commissioner by Division 2 of Part 2 of the *Royal Commissions Act 1923* (except for section 17).

SIGNED AT SYDNEY this

18th day of May 2022


Margaret Beazley AC QC

Her Excellency, Governor of New South Wales