

## **CHAPTER 2: SUMMARY OF THE NON-MEDICAL EVIDENCE AT TRIAL**

57. The Crown's circumstantial case at the trial comprised both medical and non-medical evidence.
58. The medical evidence at trial consisted of medical records of the children which became exhibits, as well as opinion evidence of medical experts based on those records and, for some experts, the experts' observations of the children during their life and/or at post-mortem.
59. The non-medical evidence included sworn oral evidence from a number of family members, friends, health and police witnesses who interacted with Ms Folbigg and the children at different points in time. The non-medical evidence also included a video and transcript of the electronically recorded interview between police and Ms Folbigg on 23 July 1999. Additionally, the non-medical evidence in the Crown case included various diaries authored by Ms Folbigg, discussed in Part 4 of these submissions.
60. The defence case also included non-medical evidence, namely sworn oral evidence from a number of Ms Folbigg's friends from the gym she attended at the time of Laura's death in 1999, as well as letters written by Ms Folbigg to Mr Folbigg in the course of their relationship.

### **Crown case**

61. The following lay witnesses were called by the Crown to give evidence as part of the Crown's circumstantial case.

#### **Craig Folbigg – Ms Folbigg's husband and father of the four children**

62. Mr Folbigg gave evidence about his relationship with Ms Folbigg between 1985 and 1999, about each of the children, about Ms Folbigg's relationship with each of the children, and about the circumstances of each of the children's deaths and Patrick's ALTE.
63. He explained that he met Ms Folbigg in 1985 and commenced a relationship with her after a short time. Ms Folbigg moved in with him in Newcastle in January

1986, and they were engaged in August 1986. Together they purchased a home in May 1987 and were married in September 1987.<sup>48</sup>

64. Mr Folbigg recalled that he and Ms Folbigg were both close with all of his family. He was one of eight children, with 22 nephews and nieces at the time of the trial.<sup>49</sup>
65. Mr Folbigg gave evidence that he had always been a smoker, but that Ms Folbigg never smoked. He said that when Ms Folbigg fell pregnant with Caleb she asked him not to smoke in the house. He said he then never smoked in the house again, and never smoked around any of the children in a confined space.<sup>50</sup>

### *Caleb*

66. Mr Folbigg said that following Caleb's birth on 1 February 1989, Ms Folbigg and Caleb spent about five days in hospital. He gave evidence that Ms Folbigg was happy to be a mum, though was uncomfortable with breastfeeding. He said when they returned home Caleb slept in a white bassinet in the sunroom at the front of the house, with a door between his and Ms Folbigg's bedroom into that room.<sup>51</sup>
67. Mr Folbigg recalled discussing concerns with Ms Folbigg about Caleb making a noise while drinking from the bottle, such that he'd have to break away and have a couple of breaths before starting to suck again. As a result of those discussions, Ms Folbigg took him to see Dr Springthorpe, paediatrician.<sup>52</sup> This occurred while Ms Folbigg was still in hospital and the paediatrician advised Caleb had a floppy larynx.<sup>53</sup>
68. Mr Folbigg gave evidence that Ms Folbigg was Caleb's primary carer. He recalled Caleb was a quiet baby and seemed to be a good sleeper, but also said that he was working during Caleb's 19 days of life. He said he was himself a very heavy sleeper, such that he slept through "anything that went on during the night, whether a

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<sup>48</sup> 2 April 2003 T99.24-100.4.

<sup>49</sup> 7 April 2003 T217.43-47.

<sup>50</sup> 10 April 2003 T530.24-35.

<sup>51</sup> 2 April 2003 T100.37-44.

<sup>52</sup> 2 April 2003 T101.50-102.1.

<sup>53</sup> 2 April 2003 T102.18.

truck came through the wall, or a bomb fell".<sup>54</sup> He said he used to sleep through the night when Ms Folbigg got up to feed Caleb.<sup>55</sup>

69. As to Ms Folbigg's feelings and response to the role of motherhood, Mr Folbigg thought she was "pretty happy, we were happy".<sup>56</sup> He said "I wasn't really there much, but when I was there it seemed she was going okay".<sup>57</sup> In cross-examination he confirmed that there was nothing untoward about Ms Folbigg's attitude towards Caleb when he was alive, and nothing about problems or difficulties in her before he was born, that he saw.<sup>58</sup>
70. He added though that he observed a change in Ms Folbigg's demeanour after Caleb was born, namely that things went from her being special because she was having a baby, to Caleb being the special one.<sup>59</sup> Nonetheless he accepted that other than grumpiness and tiredness from lack of sleep, she appeared calm and comfortable with her new situation and that she was diligent, as shown by the diary recording his feeding and sleeping times.<sup>60</sup>
71. Mr Folbigg recalled that on the day before Caleb's death he, Ms Folbigg and Caleb spent the day with his brother John at his home. They arrived home at 8pm with Caleb already asleep. Ms Folbigg changed him and put him in his bassinet. At approximately 10/10.30pm Ms and Mr Folbigg went to bed, and Caleb was asleep peacefully.<sup>61</sup>
72. Mr Folbigg was next woken by Ms Folbigg screaming.<sup>62</sup> He went in and Ms Folbigg was standing at the end of the bassinet screaming. Caleb was in the bassinet, and Mr Folbigg lifted him.<sup>63</sup> Caleb's lips were blue, his eyes were closed, his skin was warm to touch.<sup>64</sup> He was not breathing.<sup>65</sup> Mr Folbigg attempted to resuscitate him, and told Ms Folbigg to call an ambulance.<sup>66</sup>

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<sup>54</sup> 2 April 2003 T101.15-16.

<sup>55</sup> 2 April 2003 T101.22-24.

<sup>56</sup> 2 April 2003 T102.25.

<sup>57</sup> 2 April 2003 T102.32-33.

<sup>58</sup> 7 April 2003 T219.16-56.

<sup>59</sup> 7 April 2003 T221.53-222.50.

<sup>60</sup> 7 April 2003 T224.41-226.23, T229.45-230.2, T231.9-14.

<sup>61</sup> 2 April 2003 T103.42-45.

<sup>62</sup> 2 April 2003 T104.3-6; 7 April 2003 T246.41-45.

<sup>63</sup> 2 April 2003 T104.9-15.

<sup>64</sup> 2 April 2003 T104.25-36.

<sup>65</sup> 2 April 2003 T104.37.

<sup>66</sup> 2 April 2003 T104.40-50.

73. He said both he and Ms Folbigg grieved for Caleb.<sup>67</sup> After Caleb's death Mr Folbigg said that he "fell to pieces" whereas it appeared to him that Ms Folbigg "pretty much basically just got on with her life".<sup>68</sup> He thought that she appeared to cope much better, and noted that she went out "a bit" to nightclubs and friends' places as soon as she started back at work, approximately a few months after his death.<sup>69</sup> He accepted in cross-examination that the outings to nightclubs were "infrequent".<sup>70</sup>
74. He recalled that it was he who pressed Ms Folbigg about having another baby, because he wanted to be a father.<sup>71</sup> In cross-examination he accepted that they both wanted to have another baby.<sup>72</sup>
75. He said they were introduced to a woman from the SIDS organisation, who told them about an assumed scenario for SIDS including low socio-economic status and housing issues, so they set about doing renovations to their house.<sup>73</sup> In cross-examination Mr Folbigg agreed that Ms Folbigg assisted with these renovations and appeared happy during her pregnancy with Patrick.<sup>74</sup>

#### *Patrick – ALTE*

76. Mr Folbigg recalled that at the time of Patrick's birth, both he and Ms Folbigg were euphoric. He said Ms Folbigg stayed in hospital for approximately five days. She didn't want to breastfeed Patrick and he was given formula in a bottle. Patrick slept in a cot in a bedroom off the dining room.<sup>75</sup>
77. At the start of Patrick's life Mr Folbigg said he was very nervous. He quit his job and stayed home so as to be with him and Ms Folbigg. He observed that Ms Folbigg's attitude to motherhood was that she seemed to be enjoying it. He noted it was still Ms Folbigg who attended to Patrick during the night, while he generally was fast asleep.<sup>76</sup> Mr Folbigg did not work for what he recalled was

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<sup>67</sup> 2 April 2003 T105.54-58.

<sup>68</sup> 2 April 2003 T106.13.

<sup>69</sup> 2 April 2003 T106.12-43.

<sup>70</sup> 7 April 2003 T250.23-31.

<sup>71</sup> 2 April 2003 T106.45-50.

<sup>72</sup> 7 April 2003 T248.39-40.

<sup>73</sup> 2 April 2003 T106.52-107.11.

<sup>74</sup> 7 April 2003 T248.54-249.26.

<sup>75</sup> 2 April 2003 T107.56-58.

<sup>76</sup> 2 April 2003 T108.28-30.

approximately three months, at which point he considered Patrick was healthy and Ms Folbigg to be going well, and he took a good job.<sup>77</sup>

78. On the date of Patrick's ALTE, Mr Folbigg had been back at work for three days. He recalled that Ms Folbigg put Patrick to bed at about 8.30pm, and at about 10.30pm he went into Patrick's room and saw him in his cot, laying on his back, with a sheet and blanket over him. He noted he was still being fed at night.<sup>78</sup>
79. Next, in the early hours of the morning, Mr Folbigg was awoken by a "blood-curdling scream".<sup>79</sup> He ran down to Patrick's bedroom and saw Ms Folbigg standing at the end of cot, screaming.<sup>80</sup> He noted the covers were down towards the end of the bed, and Patrick looked like he was asleep. Mr Folbigg grabbed him out of his bed and screamed at Ms Folbigg to call the ambulance. He heard a little noise and thought he was breathing. Patrick was warm and pink. Mr Folbigg started CPR.<sup>81</sup>
80. In cross-examination Mr Folbigg agreed there was nothing in his statements to police to suggest that Ms Folbigg was not coping with Patrick prior to his ALTE. He also agreed there was nothing in his statements about the night of Patrick's ALTE being anything but normal.<sup>82</sup>

### *Patrick – death*

81. Mr Folbigg recalled that over the following two months, Patrick was in and out of hospital suffering from similar types of fits and seizures. On 21 November 1990 he was diagnosed as blind.<sup>83</sup>
82. Mr Folbigg's evidence was that this was a very difficult period for Ms Folbigg, as she had a huge amount of things to do for Patrick, "on top of all the normal mum stuff".<sup>84</sup> He considered that she didn't cope very well and lost her temper a bit with him and with Patrick. He said she got frustrated and cranky. He said that as a way of expressing this she used to growl, with her forearms out with her fists

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<sup>77</sup> 2 April 2003 T108.40-50.

<sup>78</sup> 2 April 2019 T109.38-39.

<sup>79</sup> 2 April 2003 T109.44.

<sup>80</sup> 2 April 2003 T109.44-49.

<sup>81</sup> 2 April 2003 T110.33-36.

<sup>82</sup> 7 April 2003 T254.55-255.56.

<sup>83</sup> 2 April 2003 T112.13-15.

<sup>84</sup> 2 April 2003 T112.25-26.

clenched and moving up and down.<sup>85</sup> He said this was a daily occurrence.<sup>86</sup> In cross-examination he accepted there was nothing to suggest she was in any way abusive of Patrick.<sup>87</sup>

83. It was Mr Folbigg's view that Ms Folbigg also showed that she wasn't coping by leaving Patrick with other people so that she could have some time out.<sup>88</sup> One of those people was Mr Folbigg's sister Carol Newitt, and he also learned that Ms Folbigg was leaving Patrick with a neighbour named Dianne.<sup>89</sup>
84. Mr Folbigg recalled that at some stage after Patrick's ALTE he read a diary which Ms Folbigg kept on her bedside table. He read an entry in which she said she wasn't coping, that it was all too much drama, and that he and Patrick would be better off without her; that he could bring Patrick up with his family and do it better than she could.<sup>90</sup>
85. In cross-examination Mr Folbigg denied that Ms Folbigg ever expressed to him feelings of inadequacy about her care of Patrick or discussed with him that he needed to do more to share the load of care.<sup>91</sup> He agreed her reactions of stress and temper were understandable in light of the burden placed on her, and that she was doing the best she could and meeting his needs.<sup>92</sup>
86. Mr Folbigg said he phoned his sister and asked her to speak with Ms Folbigg. The three of them sat and discussed that Ms Folbigg couldn't just leave and she ought not to. Ms Folbigg agreed to stay, and Ms Newitt said she would assist her with Patrick, which she did.<sup>93</sup> In cross-examination he agreed that his sister's assistance had the effect of Ms Folbigg appearing to settle down a bit.<sup>94</sup>

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<sup>85</sup> 2 April 2003 T112.44-54.

<sup>86</sup> 2 April 2003 T113.15-23.

<sup>87</sup> 7 April 2003 T261.44-262.9.

<sup>88</sup> 2 April 2003 T112.56-113.1.

<sup>89</sup> 2 April 2003 T113.3-10.

<sup>90</sup> 7 April 2003 T259.42-260.9.

<sup>91</sup> 7 April 2003 T260.37-48.

<sup>92</sup> 7 April 2003 T258.2-51.

<sup>93</sup> 2 April 2003 T113.12-22.

<sup>94</sup> 7 April 2003 T261.23-42.

87. In re-examination Mr Folbigg also said that Ms Folbigg was very upset that he had read her diary and made him promise he would never read another diary, so he never did, until May 1999 after Laura's death.<sup>95</sup>
88. On the day of Patrick's death, Mr Folbigg recalled getting up at about 6am and getting dressed for work. He had breakfast with Patrick and left at about 7.30am. He did not recall that he noticed anything unusual that morning but did not think he could say that he took a huge amount of notice.<sup>96</sup> In cross-examination he also agreed he had not observed any stress in Ms Folbigg, or had any arguments with her, during the days before his death.<sup>97</sup>
89. He said that at 10am that morning he received a phone call at work from Ms Folbigg, who screamed down the phone "It's happened again" and "I need you. come home".<sup>98</sup> He drove home quickly and upon running into the house saw Ms Newitt and Ms Folbigg there. He raced into Patrick's room and saw he was laying in his cot. He scooped Patrick up, put him on the lounge and commenced CPR. Patrick was floppy, warm, with blue lips. The ambulance officers then took over.<sup>99</sup>
90. Mr Folbigg said he asked Ms Folbigg a couple of days later what had happened, to which she replied that she just went in to check on him and found him how he was. He said they did not really discuss any further, and that "Kathy had a way of just cutting conversations off".<sup>100</sup>
91. Mr Folbigg recalled that he and Ms Folbigg had not been happy with the explanation given by Dr Wilkinson, that he thought Patrick may have died of an epileptic fit that he hadn't overcome, because after Christmas Patrick had been going "really, really well. Hadn't missed a beat".<sup>101</sup>
92. He said Patrick's death devastated both him and Ms Folbigg, though there were significant differences in the ways they grieved which was a cause for constant

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<sup>95</sup> 10 April 2003 T526.38-57.

<sup>96</sup> 2 April 2003 T114.50-56.

<sup>97</sup> 7 April 2003 T276.19-30.

<sup>98</sup> 2 April 2003 T115.16-17.

<sup>99</sup> 2 April 2003 T115.3-116.27.

<sup>100</sup> 2 April 2003 T116.52-53.

<sup>101</sup> 2 April 2003 T116.55-117.14.

arguments. He said that for him the world pretty much stopped and he lost his job, whereas Ms Folbigg “went back to being herself, happy go lucky”.<sup>102</sup>

93. He said that he and Ms Folbigg socialised together with friends and went to nightclubs and bought a new house.<sup>103</sup> In cross-examination he accepted that she was overcome with grief at the hospital and agreed there was no socialising by her other than with him.<sup>104</sup>
94. He recalled that in late 1991 Ms Folbigg said to him that she wanted to have another baby. He said he did not want to, and Ms Folbigg responded there was no point in being married if they were not having children. She said she would leave him if they were not going to have a family and gave him a week to think about it.<sup>105</sup> In cross-examination he agreed he had never said anything to Ms Folbigg against having another child because of concerns she wasn't a good mother.<sup>106</sup>

### *Sarah*

95. Mr Folbigg recalled that at Sarah's birth in October 1992 both he and his sister Ms Newitt were present. Ms Folbigg stayed in the hospital for a few days, and Sarah was fed formula. At home she slept in a crib in Ms and Mr Folbigg's bedroom, next to their bed. He recalled they were loaned an apnoea blanket from the SIDS organisation about two days after Sarah was born. This blanket did not have any attachments to the baby.<sup>107</sup>
96. His evidence was that Sarah snored but slept well and the snoring never caused any concern. He recalled the apnoea blanket sounded an alarm if the blanket failed to detect any movement for a set period, and it went off regularly, nearly every night. He said he didn't know if the blanket was used during the day because he was at work, but that it was used at night. He said during the night sometimes he heard it, and sometimes he got up to respond and at other times Ms Folbigg did.<sup>108</sup>

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<sup>102</sup> 2 April 2003 T117.36-37.

<sup>103</sup> 2 April 2003 T118.4-18.

<sup>104</sup> 7 April 2003 T277.5-13, T279.4-23.

<sup>105</sup> 2 April 2003 T118.20-52.

<sup>106</sup> 7 April 2003 T283.29-56.

<sup>107</sup> 2 April 2003 T119.53-120.4.

<sup>108</sup> 2 April 2003 T120.36-44.



97. Mr Folbigg recalled that hearing the alarm caused anxiety, though on no occasion was there a cause for concern as they were ultimately all false alarms. He said Ms Folbigg hated the blanket and wanted to throw it out since the start.<sup>109</sup> In cross-examination he accepted that the alarm going off caused stress to Ms Folbigg in particular because she got up and responded to the alarm, and was home in the day, which added extra pressure on her.<sup>110</sup>
98. It was Mr Folbigg's evidence that Ms Folbigg at times enjoyed motherhood with Sarah, but that there were things about it that she didn't enjoy.<sup>111</sup> He said she went back to work when Sarah was about two and a half months old, because she was "sick of being broke, sick of being stuck at home".<sup>112</sup>
99. He described Ms Folbigg as a "very rigid, regimented type of person", particularly in respect of times for Sarah going to bed, and that "she just got sort of like harder about things".<sup>113</sup> He recalled that Ms Folbigg got very frustrated with Sarah and growled from time to time, becoming very domineering towards her.<sup>114</sup> In cross-examination he said arguments over this "8:30 affair", being the time Ms Folbigg wanted Sarah to go to sleep, happened a lot.<sup>115</sup>
100. It was Mr Folbigg's view also that it didn't seem to bother Ms Folbigg having Sarah cared for by other people, and that she made arrangements for this "a huge amount of the time".<sup>116</sup> He said Ms Folbigg had ceased work in about mid-1993 after his sister's husband castigated her over missing much of Sarah's life.<sup>117</sup>
101. Mr Folbigg recalled that in the days prior to Sarah's death she had been suffering from a runny nose or cold. During the hours before Sarah's death, Mr Folbigg's evidence was that Sarah was wound up from the day, and after he ran her a bath and put her into her pyjamas Ms Folbigg took her to put her to sleep in bed. He said at this point "it all went pretty ordinary".<sup>118</sup>

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<sup>109</sup> 2 April 2003 T121.25-29, T121.53-55.

<sup>110</sup> 7 April 2003 T288.39-289.16.

<sup>111</sup> 2 April 2003 T123.3-6.

<sup>112</sup> 2 April 2003 T122.10-17; 7 April 2003 T290.25-33.

<sup>113</sup> 2 April 2003 T123.11-19.

<sup>114</sup> 2 April 2003 T123.9-28.

<sup>115</sup> 7 April 2003 T291.45-292.17.

<sup>116</sup> 2 April 2003 T123.30-35.

<sup>117</sup> 2 April 2003 T123.37-43.

<sup>118</sup> 2 April 2003 T126.1-7.

102. He was in the loungeroom and could hear Ms Folbigg in the bedroom with Sarah, who was crying and grumbling. He heard Ms Folbigg growl while trying to comfort her. He went into the bedroom and saw Ms Folbigg standing with Sarah in a one arm bear hug, patting her bottom hard with the other hand. Ms Folbigg told him to “fuck off” and said that everything was under control. He recalled saying “well, you know, for Christ’s sake it’s WWII between the two of you every time this kid’s got to go to the bedroom. If she doesn’t want to go to sleep, why make her go to sleep?”<sup>119</sup> He said Ms Folbigg told him to get out and that Sarah would sleep if she said she would.<sup>120</sup>
103. He went back into the loungeroom and could still hear that Sarah was upset. He then heard footsteps coming down the hallway. He said Ms Folbigg stopped two or three steps short of him and “threw” Sarah at him saying “you fucking deal with her” before storming off back to the bedroom. He said he had never seen Ms Folbigg do something like that before.<sup>121</sup>
104. Mr Folbigg said that Sarah fell asleep with him on the lounge, and he put her into her own bed at about 10:30/11:00pm. He put her down on her back with a blanket and a sheet.<sup>122</sup>
105. At this point, the sleep apnoea blanket had not been used for about two or three days. Mr Folbigg said they stopped using it because Ms Folbigg was reluctant to keep using it, on the basis that Sarah was fine and there was a possibility that the mattress of her new bed wouldn’t feed information down to the monitor.<sup>123</sup>
106. The next thing Mr Folbigg recalled was waking up, at 1:10am which he read on a red digital electric clock which was lit up. He looked around half-asleep half-awake, and saw that Ms Folbigg wasn’t in the bed, and Sarah wasn’t in her bed. He looked to the door and saw it was closed but could see light around the door. He said he was able to see reasonably well because the bedroom had light coming in from an outside streetlight, which came in through venetian blinds. He assumed Ms Folbigg must have been out of the room attending to Sarah, who was still being fed at night by Ms Folbigg. There was nothing unusual to him about

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<sup>119</sup> 2 April 2003 T127.34-38.

<sup>120</sup> 2 April 2003 T127.32-40.

<sup>121</sup> 2 April 2003 T127.45-128.3.

<sup>122</sup> 2 April 2003 T128.5-17.

<sup>123</sup> 2 April 2003 T126.54-127.6.

Ms Folbigg and Sarah being out of the room during the night. He went back to sleep.<sup>124</sup>

107. Mr Folbigg then was awoken by Ms Folbigg's scream. The light was on in the room and Ms Folbigg was standing at the door. Sarah was laying on her bed, on her back, with her legs and arms straight alongside her, which he thought was different to how she ordinarily slept, "crunched up".<sup>125</sup> He grabbed her off the bed and saw she was all floppy. She was warm and not breathing. He started to do CPR and screamed at Ms Folbigg to call an ambulance. Ms Folbigg was sitting in the hallway just outside the door, screaming and crying with her knees up underneath her chin.<sup>126</sup>
108. Mr Folbigg gave evidence that he tried to speak with Ms Folbigg about what happened on the morning of Sarah's death, including the fact they weren't in the room when he woke up. He recalled she said "I got up and went to the toilet. I came back, turned the light on, found her. That was that. The rest, you know". He said they did not talk much further about it.<sup>127</sup>
109. Mr Folbigg described that after Sarah's death his and Ms Folbigg's relationship "fell to pieces". He said he wasn't paying much attention to her and was still grieving about two years later. She told him he needed to go and see a grief counsellor and if he didn't then she would leave him. They separated for about 6-8 weeks before she returned home at his insistence, though they had more than one separation.<sup>128</sup>
110. Mr Folbigg was cross-examined at length about the detail that he was able to recall in relation to the events on the evening before Sarah's death. He agreed his first statement to police in 1999 did not include any reference to Ms Folbigg slapping Sarah's bottom. He maintained he had told the truth about what he remembered on this issue, and said:

*You remember things more clearly when you're given more time and less stressful situations to remember them. So I'm sorry I didn't say it that day,*

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<sup>124</sup> 2 April 2003 T131.21-30.

<sup>125</sup> 2 April 2003 T131.47-56; 3 April 2003 T150.17-52.

<sup>126</sup> 2 April 2003 T131.35-45.

<sup>127</sup> 2 April 2003 T135.15-23.

<sup>128</sup> 2 April 2003 T136.42-49.

*but that was a horrible thing and day, and over the period of time since then I remembered that being the case.*<sup>129</sup>

111. As to his account in oral evidence about Ms Folbigg throwing Sarah, he said he had originally said “threw” to police but then changed it in order to “soften” and “lessen the blow”, but still “impart the importance of what had happened”.<sup>130</sup> He maintained that he told police she threw the baby at him, and in respect of his recorded conversation with Ms Folbigg on the listening device in which he denied this, said he was “covering my arse what I was telling her”.<sup>131</sup> When it was suggested to him that it didn’t make sense that he was editing in order to “soften the blow”, he said he had already made the “threw” statement to police and that it was apparent to him that they would still carry on investigating Laura’s and the other children’s deaths, and so it did make sense.<sup>132</sup>
112. In relation to his account in oral evidence that Sarah and Ms Folbigg were not in their beds when he woke at 1:10am, he said that in his original statement to police on 19 May he said this, but because of the “ramifications” for Ms Folbigg which became apparent to him between 19 and 23 May, in circumstances where he was still in love with her, he then qualified his position with uncertainty to Detective Sergeant Ryan.<sup>133</sup> He also said he never thought to bring up that information to anybody sooner because he never had any suspicions as to Ms Folbigg’s involvement in anything until after Laura died.<sup>134</sup>

### *Laura*

113. Mr Folbigg recalled that in May 1996 Ms Folbigg told him that while everything in their life was wonderful, having another baby would round it off. His reaction was one of shock, as he thought they had already agreed to not having more children. He initially said no, and she continued to bring it up a few times per week.<sup>135</sup>
114. He said he overlooked at the time something that she’d said, namely “we were more mature, more patient people, and, like, older and wiser”. He said he told her

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<sup>129</sup> 7 April 2003 T295.11-15.

<sup>130</sup> 8 April 2003 T303.25-26.

<sup>131</sup> 8 April 2003 T324.27-32.

<sup>132</sup> 8 April 2003 T303.23-32.

<sup>133</sup> 8 April 2003 T342.50-343.55, T346.31-47.

<sup>134</sup> 8 April 2003 T376.20-31.

<sup>135</sup> 3 April 2003 T151.25-34, T151.48-49, T152.44-45.

to wake up to herself, querying what that had to do with it as nobody had been able to say what happened to the children other than in one instance SIDS but nobody could tell them what SIDS was.<sup>136</sup>

115. He recalled he telephoned Professor Hilton and was put in contact with Dr Seton who welcomed them into the sleep study and assistance program and told them about the corometrics sleep monitor.<sup>137</sup>
116. Mr Folbigg recalled that upon her arrival in August 1997 Laura was breastfed as the hospital was “fairly stringent on that”. He said she slept in a bassinet in the bedroom next to their bed and was taken to Westmead for 3-4 days as an inpatient at about one week for extensive tests and sleep studies.<sup>138</sup>
117. In relation to the corometrics monitor, Mr Folbigg’s evidence was that he and Ms Folbigg were told to plug the sensors onto Laura’s chest whenever she was asleep, day or night. He said the monitor was used every time Laura went to sleep when he was home at night. He said it came to his attention after about 2-3 months that Ms Folbigg was not using the monitor through the day time. When he asked her about this, she said “I keep my eye on her and she’ll be fine”. He said that wasn’t what they had been told, to which she replied that it wasn’t him at home putting up with the machine, which he acknowledged emitted false alarms, and that she just wanted to have a normal baby.<sup>139</sup>
118. In cross-examination Mr Folbigg accepted dealing with the false alarms was stressful for Ms Folbigg. He also acknowledged that at times he didn’t feel he had done as much as he should have in assisting in the day to day care of Laura.<sup>140</sup>
119. Mr Folbigg said that March 1998 Ms Folbigg’s non-use of the monitor during the day had not changed. He felt he couldn’t talk to Ms Folbigg about it so he wrote a letter to Dr Seton. That letter, in fact addressed to Margaret Tanner a nurse in Dr Seton’s clinic, was tendered and made Exhibit E. In it, Mr Folbigg wrote “I feel

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<sup>136</sup> 3 April 2003 T153.3-21.

<sup>137</sup> 3 April 2003 T153.24-52.

<sup>138</sup> 3 April 2003 T154.46-58.

<sup>139</sup> 3 April 2003 T156.55-157.9.

<sup>140</sup> 3 April 2003 T398.53-56.

that Kathy finds it all tedious and frustrating and would probably rather not use it at all, merely entrusting Laura's survival to fate".<sup>141</sup>

120. As to Ms Folbigg's attitude to motherhood with Laura, Mr Folbigg thought that she was happy being a mum, but that she would also get frustrated and cranky every day. This was directed at him and at Laura, for not doing what she was told. He said this started to get worse when Laura started walking, around 11 months old.<sup>142</sup>
121. He said at this stage his and Ms Folbigg's relationship had also "fairly much packed it in" such that they were mostly sleeping in separate rooms. He described the relationship as cordial and polite if he kept his mouth shut and didn't aggravate or intimidate Ms Folbigg. He said that towards the end of Laura's life Ms Folbigg was going out with her girlfriends nearly weekly, and going to the gym daily and whichever nights she could.<sup>143</sup> In cross-examination he accepted that the only time when Ms Folbigg left Laura with others was when she went to the gym in the evening, and the usual arrangement of him returning home in time from work was not possible.<sup>144</sup>
122. Mr Folbigg recalled that about a fortnight before Laura's death Ms Folbigg had written him a letter in which she said she wanted to break up the marriage.<sup>145</sup> In cross-examination Mr Folbigg accepted that in the letter Ms Folbigg described him as an oppressive and depressing person and talked about leaving him and taking Laura with her.<sup>146</sup>
123. He gave evidence that they talked about things and she agreed to give it another go. He agreed in cross-examination that he said he would do more to assist her if she stayed.<sup>147</sup> He said he used to get cranky with Ms Folbigg for leaving Laura places when she went to the gym, and Ms Folbigg said to him that part of her problem was she never had enough time. It was at this point that Laura's sleeping arrangement changed and she started sleeping in a single bed in her own room.<sup>148</sup>

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<sup>141</sup> 3 April 2003 T159.2-5.

<sup>142</sup> 3 April 2003 T162.15-22.

<sup>143</sup> 3 April 2003 T162.50-163.1.

<sup>144</sup> 9 April 2003 T416.8-34.

<sup>145</sup> 9 April 2003 T163.9-11, T164.2-5.

<sup>146</sup> 9 April 2003 T400.45-50, T405.19-21.

<sup>147</sup> 9 April 2003 T404.56-58.

<sup>148</sup> 3 April 2003 T165.19-21.

124. Mr Folbigg recalled that on the Friday evening before Laura's death on the Monday, Ms Folbigg went out on a girls night. In re-examination a diary entry to that effect was tendered as Exhibit S.<sup>149</sup> On the Saturday, he went out and did various things which Ms Folbigg didn't attend and didn't want Laura to attend because she would become wound up. When he arrived home that night Laura was already in bed, a bit before her usual bed time. Ms Folbigg warned him against waking her up.<sup>150</sup>
125. The next day, Sunday, they had friends over for a BBQ. He recalled that Laura was "full of beans", running around and swimming in the pool. He noticed something was off between Laura and Ms Folbigg, as it appeared they were avoiding contact. He asked Ms Folbigg about it, and said that she told him "Oh, she's got the shits with me... It's probably over what I did to her last night... I lost it with her."<sup>151</sup> She said that just before he had gotten home the night before she had spun around to tell Laura to stop whinging and moaning, and (inadvertently) knocked her down and screamed at her. That night, both Mr and Ms Folbigg played with Laura and Ms Folbigg put her to bed.<sup>152</sup>
126. On the Monday morning, the day of Laura's death, Mr Folbigg's evidence was that he got up with her around 6:20am and then Ms Folbigg got up around 6:45am. Laura was "clingy, very subdued, whinging". She had picked up that Mr Folbigg was going to work and became very agitated and upset. He observed that Ms Folbigg was losing patience, and heard her growl from another room. He walked down the hallway and saw Ms Folbigg with Laura in the highchair, with both of Laura's hands pinned down while Ms Folbigg tried to feed her cereal.<sup>153</sup>
127. Ms Folbigg told him to "fuck off" and said "she's only like this when you're around. You do this to her. You mollycoddle her and sook her up too much". He said Ms Folbigg grabbed Laura and pulled her out of the chair, plonking her on the ground and saying "go to your fucking father".<sup>154</sup> She screamed "I can't handle her when she's like this". By this point Laura was "hysterical, shaking and sobbing". Mr Folbigg took Laura into the bedroom, then Ms Folbigg came in and said "Give me that baby... You give me that baby and get ready for work. Get out. You do

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<sup>149</sup> 10 April 2003 T529.32-33.

<sup>150</sup> 3 April 2003 T168.21-169.22.

<sup>151</sup> 3 April 2003 T171.21-25.

<sup>152</sup> 3 April 2003 T171.44-50.

<sup>153</sup> 3 April 2003 T172.32-36.

<sup>154</sup> 3 April 2003 T172.51-58.

this. This is your fault.” He left for work and Laura was sitting in the family room watching television.<sup>155</sup>

128. It was Mr Folbigg’s evidence that, like with Sarah, in the months prior to Laura’s death Ms Folbigg was growling on a daily basis. He said the causes of this were frustrations at Laura not having dinner at the right time, or going to bed when Ms Folbigg wanted her to, as well as things that he did and his attitude.<sup>156</sup>
129. At about 8:30am at work Mr Folbigg received a telephone call from Ms Folbigg. She sounded “very chipper” and wanted to apologise for having lost her temper that morning. She said she wanted to talk about their different parenting methods. She said Laura was fine, but agreed to come and have morning tea with him and did after attending the gym, around 10:30am. At about 11:30am he recalled Ms Folbigg said “I better get buggerlugs home. She’s due for a sleep”, and that Laura was resistant to leaving with her.<sup>157</sup>
130. Mr Folbigg recalled that at about 12:00pm he was on the phone when a staff member bolted in to his office and virtually screamed at him to hang up and get to the hospital because there was something wrong with Laura. At the hospital he met Ms Folbigg. When he asked her what happened she replied “I just went in and she was just laying there”.<sup>158</sup> She went on to say that Laura had fallen asleep while driving home. She took her out of the car, walked up the hallway and took her shoes off before laying her down on her bed. She then went out to play with the dog, cleaned up the verandah and put the washing out. She said she heard Laura cough and splutter via the monitor but didn’t check straight away. She finished what she was doing and then went in to check on her and found her. She said it was between five to 10 minutes after hearing the coughing that she went to check.<sup>159</sup>
131. Mr Folbigg said that when he arrived home from the hospital he noticed that the hand piece for the monitor which could be carried around mobile was plugged into the wall in the family room. He said one could not have heard the monitor in

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<sup>155</sup> 3 April 2003 T172.45-173.34.

<sup>156</sup> 3 April 2003 T173.41-50, T174.1-5.

<sup>157</sup> 3 April 2003 T174.35-40, T175.46-55.

<sup>158</sup> 3 April 2003 T176.55-56.

<sup>159</sup> 3 April 2004 T177.13-17.



that position from the yard where the clothesline was. He said the wall position was where the monitor was either being charged or unused.<sup>160</sup>

132. In cross-examination it was suggested to Mr Folbigg that his version of events intentionally sought to put a negative light on Ms Folbigg's behaviour when what in fact occurred were normal domestic situations. It was pointed out to him that he hadn't told police of the detail of the last morning of Laura's life until December 2002. He responded by saying that he hadn't been given an opportunity to talk in terms like that since May 1999.<sup>161</sup> He denied attempting to paint Ms Folbigg in a sinister manner and said he "merely wanted everybody to understand [her] aggression; [her] gruff nature".<sup>162</sup>

### *After Laura's death*

133. It was Mr Folbigg's evidence that Ms Folbigg packed away every photo of every child on the night of Laura's death. He said their relationship deteriorated further thereafter. He was taking anti-depressants. About six weeks after Laura's death Ms Folbigg moved into a flat, saying she couldn't deal with her own grief and wasn't prepared to carry him and let him pull her down. She said she just wanted to be concerned for herself.<sup>163</sup> In cross-examination Mr Folbigg described that Ms Folbigg "never let anything out"<sup>164</sup> and "never told you much at all".<sup>165</sup>
134. When being cross-examined about an instance after Laura's death when Ms Folbigg was in the bath crying, Mr Folbigg said he thought it had been about Laura but that later Ms Folbigg told him "I was crying because I'm trapped here, cause I don't want to be here and I'm trapped here."<sup>166</sup>
135. In early May 1999 during the weeks after Ms Folbigg left the home, Mr Folbigg decided to tidy up and located a range of personal items belonging to Ms Folbigg. He asked her what to do with her things, and she told him to throw them in the bin as she didn't want them.<sup>167</sup>

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<sup>160</sup> 3 April 2004 T178.9-23.

<sup>161</sup> 9 April 2003 T422.6-7.

<sup>162</sup> 9 April 2003 T430.20-25.

<sup>163</sup> 3 April 2003 T179.47-48.

<sup>164</sup> 7 April 2003 T248.7.

<sup>165</sup> 7 April 2003 T249.58-250.1.

<sup>166</sup> 8 April 2003 T311.35-50.

<sup>167</sup> 3 April 2003 T179.50-58, T180.1-9.

136. He said he came across a diary in one of Ms Folbigg's bedside tables. He read some of the entries and what he read made him want to vomit. He said that prior to reading that diary he "had the odd suspicion", particularly by reference to Ms Folbigg and Sarah being out of the room prior to her death, and his observation of the monitor on the wall and Laura's shoes on the futon on the day of Laura's death. But he said he had nowhere to go with it and couldn't get his head around it.<sup>168</sup>
137. Mr Folbigg's evidence was that he felt sick reading the diary and didn't know what to do with it, so he rang Detective Sergeant Ryan and asked to meet him.<sup>169</sup> In re-examination Mr Folbigg clarified that it was the entries about Ms Folbigg's attitudes towards the children that had upset him. He said he had never seen before in Ms Folbigg, or experienced or witnessed, those attitudes prior to reading the diary entries.<sup>170</sup>
138. Upon meeting Detective Sergeant Ryan he told him about the diary, but Detective Sergeant Ryan wouldn't take it unless he delivered it to the station. He said he took the diary to the police on 19 May 1999 when he attended the police station and spoke with police further.<sup>171</sup>
139. Mr Folbigg's evidence at the trial was that when he met with police on 19 May 1999 he gave an account orally about the circumstances of Sarah's death, and told the truth in that account. He said when he later returned on 23 May he changed some things about the account concerning Sarah.<sup>172</sup>
140. His explanation for this was that after speaking to police on 19 May he had been to see Ms Folbigg at her flat and told her that he had been to police. He mentioned the diary and told her that he had read some horrible things and given it to police. He said that from the next day onwards they started to have more friendlier contact, and then about a month later in mid-June she returned to the

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<sup>168</sup> 3 April 2003 T180.45-53.

<sup>169</sup> 3 April 2003 T181.10-11, T181.16-18.

<sup>170</sup> 10 April 2003 T524.14-18.

<sup>171</sup> 3 April 2003 T181.20-23, T181.53-58.

<sup>172</sup> 3 April 2003 T184.19-31.

matrimonial home.<sup>173</sup> They separated on a final basis about 12 months later in June 2000.<sup>174</sup>

141. In cross-examination Mr Folbigg said that in his first discussion with police he tried as best he could to give as much detail as possible. He said, “after I had read those diary entries, certain things about my life in some ways made sense to me then and I expressed all that to the police”.<sup>175</sup>
142. In cross-examination it was put to him that Ms Folbigg never told him to do anything but go and tell the truth to police. He said he understood this to mean “her truth”, that she was a good loving mother, and that the children were always neat and tidy and clean and fed.<sup>176</sup>
143. Mr Folbigg denied any revenge motivation for going to the police in May 1999 while separated from Ms Folbigg. He said he was “devastated” that she had left him. He said he lied to the police in his signed statement dated 23 May 1999 out of “concern”<sup>177</sup>, and to suit his objective of life with her, with peace and harmony at home. He said he was in love with her and was blind.<sup>178</sup>
144. In re-examination he said further that when he spoke with Ms Folbigg between 19 and 23 May, he had made an accusation towards her and felt “like a mongrel” afterwards because she had said to him “How could you say those things about me. You know I loved them. And, you know, you saw how much I loved those babies... You’ve got to tell the truth... You know I loved those kids”.<sup>179</sup> He said he had seen how she loved them, so he went back to Detective Sergeant Ryan and asked him to “rewind back through his machine” so he could change things.<sup>180</sup>
145. On the voir dire, Mr Folbigg confirmed he had previously assisted Ms Folbigg to make inquiries about her natural parents, and she found out that her father had murdered her mother by stabbing her 27 times. He confirmed he had read the diary entry with the words “I’m my father’s daughter” and had asked Ms Folbigg

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<sup>173</sup> 3 April 2003 T183.5-7.

<sup>174</sup> 3 April 2003 T184.4-9.

<sup>175</sup> 7 April 2003 T216.40-41.

<sup>176</sup> 8 April 2003 T355.17-20, T355.57-356.24.

<sup>177</sup> 7 April 2003 T240.45-47.

<sup>178</sup> 7 April 2003 T244.11-15, T304.1-3.

<sup>179</sup> 10 April 2003 T522.10-19.

<sup>180</sup> 10 April 2003 T522.16-19.

about this. He said Ms Folbigg told him her father was, in her eyes, a loser and she was as well.<sup>181</sup>

146. When a listening device conversation dated 26 July 1999 was put to Mr Folbigg in cross-examination, in which he said that Detective Ryan had “come and planted some bullshit in my head when I was at me lowest point when Kath had left me”, Mr Folbigg explained:

*Detective Ryan came to see me at that time in my life and expressed to me the possibilities of what my wife could possibly have done, because it was evident to him I guess that I couldn't accept what she may have done and through what Detective Ryan said to me, helped me to come to grasp with those possibilities... by the time this conversation took place [Ms Folbigg] and I were back together... I had made the decision to myself that, as long as she didn't know that I was just spending whatever time she had left in the house getting to know who she was... hence conversations like that arose with people who were very good friends of hers.<sup>182</sup>*

### **Ms Folbigg's account of the children's deaths given in her record of interview with police on 23 July 1999**

147. Following a ruling of the trial judge determining that answers given by Ms Folbigg about the diary entry dated 14 October 1996 in which she said “I'm my father's daughter” were not to be admitted into evidence, the Crown indicated it did not propose to lead the interview in the Crown case.<sup>183</sup> Ultimately however, on the basis of unfairness because this was a change in position from before the ruling, the Crown did lead the interview, edited to remove those particular answers.<sup>184</sup>
148. Detective Sergeant Ryan gave evidence that he approached Ms Folbigg after reading and considering the contents of the diaries provided to him by Mr Folbigg in May 1999.<sup>185</sup> He attended Ms Folbigg's home in the morning of 23 July 1999.<sup>186</sup>

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<sup>181</sup> 3 April 2003 T190.52-191.7, T191.32-48.

<sup>182</sup> 8 April 2003 T304.33-46.

<sup>183</sup> 17 April 2003 T837.30-51.

<sup>184</sup> Trial Exhibit AH, Nine video tapes of interview between Detective Senior Constable Bernard Ryan and Kathleen Folbigg (23 July 1999); Exhibit E, ERISP of Kathleen Folbigg.

<sup>185</sup> See from paragraph 226 of these submissions.

149. Ms Folbigg agreed to attend the police station for an interview and drove herself there. When Detective Sergeant Ryan arrived at the police station, Mr Folbigg was present also. She and Mr Folbigg had reconciled following their separation after Laura's death, during which time Mr Folbigg had read her diary and provided it to police. Ms Folbigg was aware that he had done so. Detective Sergeant Ryan explained that Mr Folbigg could not be present during the interview and he left. Ms Folbigg again agreed to be interviewed and declined to have anyone else attend.<sup>187</sup>
150. The interview commenced at 9:26am and concluded at 5:40pm, with breaks throughout the day. Ms Folbigg was informed that police were making inquiries in relation to the death of Caleb, Patrick Sarah and Laura Folbigg.<sup>188</sup> She was informed she was not under arrest and was free to come and go from the interview at any time.<sup>189</sup> She agreed that at her home that morning Detective Sergeant Ryan asked her to come to the police station "to be interviewed about the deaths of [her] children".<sup>190</sup>
151. The interview commenced with Detective Ryan asking open questions about each child's birth and the circumstances of their death. In response Ms Folbigg gave very lengthy answers taking up multiple pages of transcript, with few interruptions by police.<sup>191</sup>
152. Police then asked Ms Folbigg a series of questions about Mr Folbigg's statement to police regarding each of the children's deaths and Ms Folbigg's relationship with the children.<sup>192</sup> Ms Folbigg said she was aware of the statement and that Mr Folbigg had spoken to her about it "in bits and pieces". She said he hadn't said exactly what was in the statement.<sup>193</sup>

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<sup>186</sup> 28 April 2003 T962.49-58, T963.1-16.

<sup>187</sup> 28 April 2003 T963.25-58, T964.1-11.

<sup>188</sup> Exhibit E, ERISP of Kathleen Folbigg Q11-12.

<sup>189</sup> Exhibit E, ERISP of Kathleen Folbigg Q17-18.

<sup>190</sup> Exhibit E, ERISP of Kathleen Folbigg Q30.

<sup>191</sup> Exhibit E, ERISP of Kathleen Folbigg Q31-140 (Caleb); Q141-259 (Patrick); Q260-327 (Sarah); Q328-379 (Laura).

<sup>192</sup> Exhibit E, ERISP of Kathleen Folbigg Q380-440 (Caleb); Q441-512 (Patrick); Q513-784 (Sarah); Q785-878 (Laura); Q879-914 (all children).

<sup>193</sup> Exhibit E, ERISP of Kathleen Folbigg Q385.

153. Before asking Ms Folbigg's questions from Mr Folbigg's statement, she was told she was not obliged to answer any questions unless she wished to do so and that if she did the answers may be used in evidence (cautioned).<sup>194</sup>
154. Police generally read Mr Folbigg's statement to her and asked for her response and asked follow up questions pointing out apparent inconsistencies between his account and her account, and her account given during the course of the interview.
155. During the course of asking questions in relation to Caleb and Sarah, police also read to Ms Folbigg diary entries referring to Caleb and to Sarah, from the diaries provided to them by Mr Folbigg in May 1999. Police also read to Ms Folbigg handwritten letters from her to Mr Folbigg on various dates, which he had also provided to police. Police asked Ms Folbigg, generally in an open manner, what she meant by the various diary entries and statements in her letters.

## Caleb

156. In relation to Caleb Ms Folbigg said generally that she did not remember that much and couldn't say that anything was out of the ordinary on the day of his death. She said she didn't tend to hang on to dates, times, places, peoples name. She said that all she remembered was walking into the bedroom and doing a check like she used to, following his early morning feed which had been a bit difficult, and taken about half an hour.<sup>195</sup>
157. She said she remembered waking up for no particular reason, because she didn't need to go to the toilet. She thought to herself, why am I awake, I better check Caleb and see if anything's with him, even though he wasn't making any noises.<sup>196</sup> She said that she "scooped" Caleb up upon finding him not breathing, and that after that it was all a blur.<sup>197</sup>
158. She said she couldn't remember what time she had last put Caleb to bed on the night of his death,<sup>198</sup> and said that given the time of year if she had put any

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<sup>194</sup> Exhibit E, ERISP of Kathleen Folbigg Q383.

<sup>195</sup> Exhibit E, ERISP of Kathleen Folbigg Q37, Q103, Q104, Q124, Q132-133.

<sup>196</sup> Exhibit E, ERISP of Kathleen Folbigg Q130.

<sup>197</sup> Exhibit E, ERISP of Kathleen Folbigg Q104, Q107-108.

<sup>198</sup> Exhibit E, ERISP of Kathleen Folbigg Q73, Q85.

bedding on him it would have only been something light like a sheet.<sup>199</sup> She said that Caleb didn't have sniffles or colds, but noted he had a feeding problem.<sup>200</sup>

159. Ms Folbigg said that Mr Folbigg did not get up and tend to Caleb at all, and that "you could let a bomb off under Craig and he would stay asleep".<sup>201</sup> She agreed she was very tired at that it wasn't an easy time.<sup>202</sup>
160. Ms Folbigg observed that she tried to have a sort of routine with Caleb, as with all the children.<sup>203</sup> She later denied that she tried to have him, or any of the other children, settled in bed by a particular time at night.<sup>204</sup>
161. When asked questions about Mr Folbigg's statement regarding Caleb, Ms Folbigg said he could be right that it was him not her who picked up Caleb, and that she didn't specifically remember.<sup>205</sup>
162. When asked about the 19 February 1989 diary entry in which she wrote "Finally asleep!!", she said this might have meant Caleb was a bit restless. When asked about the time entry of 2:00am, she agreed it appeared that he was having trouble going to sleep that night at that time, and that she seemed to have her times out with the 1:00am time she told the police.<sup>206</sup>
163. She said the only significance of the exclamation marks was that if he was having trouble and she was pleased he was asleep it meant that she could go to bed, but she said she didn't recall him having the trouble that seemed to be presented in the diary entry.<sup>207</sup>

## Patrick – ALTE

164. Ms Folbigg said that Patrick was not anticipated but she and Mr Folbigg were extremely happy.<sup>208</sup> She said that Mr Folbigg was a bit more involved with

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<sup>199</sup> Exhibit E, ERISP of Kathleen Folbigg Q96.

<sup>200</sup> Exhibit E, ERISP of Kathleen Folbigg Q38.

<sup>201</sup> Exhibit E, ERISP of Kathleen Folbigg Q199.

<sup>202</sup> Exhibit E, ERISP of Kathleen Folbigg Q127.

<sup>203</sup> Exhibit E, ERISP of Kathleen Folbigg Q37.

<sup>204</sup> Exhibit E, ERISP of Kathleen Folbigg Q117.

<sup>205</sup> Exhibit E, ERISP of Kathleen Folbigg Q403-404.

<sup>206</sup> Exhibit E, ERISP of Kathleen Folbigg Q412, Q415-416, Q424, Q426.

<sup>207</sup> Exhibit E, ERISP of Kathleen Folbigg Q436-437.

<sup>208</sup> Exhibit E, ERISP of Kathleen Folbigg Q142.

Patrick.<sup>209</sup> She said by the time he reached close to three months old he was only waking up probably once, had gotten into a routine sleeping, and had no problems with breathing or with health in general.<sup>210</sup>

165. Ms Folbigg said that on the night of Patrick's ALTE she thought she had done his feed around the midnight or 1:00am mark for about three quarters of an hour, everything went well and she put him back to bed and went back to bed herself. She said it was as with Caleb, a case of her finding herself awake for some reason or other, and she got up and thought I need to go to the toilet I'll check on him on my way past. She said she was listening for his breathing and noticed that it was laboured. She said she flung the light on and went into action from there.<sup>211</sup>
166. She said she grabbed and scooped Patrick up, and had him in her arms by the time Craig woke up.<sup>212</sup> She couldn't recall whether she rang the ambulance or Craig did.<sup>213</sup>
167. She said that from October through to Christmas time she and Mr Folbigg were in and out of hospital with Patrick, trying to control his fits and then going through physiotherapy and trying to teach him how to keep up with normal development. She said the follow up appointments were attended by her.<sup>214</sup> She said that on Craig's birthday around 21 November 1990 they were told that Patrick was blind, which meant the physiotherapy and appointments all took another turn.<sup>215</sup>
168. Ms Folbigg said it was hard work, but that she and Mr Folbigg were just so relieved that he had survived.<sup>216</sup> She described herself as being "on auto-pilot", and said she received a lot of family support including from Mr Folbigg's sister Carol.<sup>217</sup> She said she and Mr Folbigg started discussing special schooling for Patrick, and were being optimistic and thinking about the future.<sup>218</sup>

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<sup>209</sup> Exhibit E, ERISP of Kathleen Folbigg Q142.

<sup>210</sup> Exhibit E, ERISP of Kathleen Folbigg Q142.

<sup>211</sup> Exhibit E, ERISP of Kathleen Folbigg Q149, Q172, Q186, Q189.

<sup>212</sup> Exhibit E, ERISP of Kathleen Folbigg Q191, Q195-198.

<sup>213</sup> Exhibit E, ERISP of Kathleen Folbigg Q149.

<sup>214</sup> Exhibit E, ERISP of Kathleen Folbigg Q149.

<sup>215</sup> Exhibit E, ERISP of Kathleen Folbigg Q149.

<sup>216</sup> Exhibit E, ERISP of Kathleen Folbigg Q149.

<sup>217</sup> Exhibit E, ERISP of Kathleen Folbigg Q205-206.

<sup>218</sup> Exhibit E, ERISP of Kathleen Folbigg Q156.



169. When asked questions about Mr Folbigg's statement regarding Patrick, Ms Folbigg said she thought she picked him up but again accepted it was a possibility that it was Mr Folbigg.<sup>219</sup>
170. She agreed with Mr Folbigg's statement that the marriage was strained somewhat after the ALTE. She said 99% of her time was looking after Patrick, and even the animals probably were ahead of Mr Folbigg on the ladder.<sup>220</sup> She considered that he was the sort of man that required someone to devote most of their time to him.<sup>221</sup>

### **Patrick – death**

171. Ms Folbigg said that on the day of Patrick's death he woke up around 5:30 or 6:00am and had breakfast with Mr Folbigg.<sup>222</sup> She said she preferred to give him breakfast a little later but Mr Folbigg liked to spend time with him so eventually that was the routine and she had to do that.<sup>223</sup>
172. She said Mr Folbigg left for work, and that nothing struck her that the day was any sort of different to any other.<sup>224</sup> She recalled putting him down for a bit of a morning nap at about 10:30am. She said she would usually hang out the washing during this time, but she didn't really remember. She said she recalled walking into the room but couldn't recall if this was to see if he was alright or to put washing away. She said he was flat on his back which made her look twice because she used to always lay him on his side and he stayed there. She said her first thought when she saw him was that he was having another fit.<sup>225</sup>
173. Ms Folbigg said in respect of Patrick's death and that day that she might have "just blocked it". At that point she asked to take a break.<sup>226</sup> She went on to say that on that day Patrick was "the same as he always was", "a pretty happy sort of kid" who hadn't registered he had a problem.<sup>227</sup> She said he was happy 90% of the

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<sup>219</sup> Exhibit E, ERISP of Kathleen Folbigg Q445.

<sup>220</sup> Exhibit E, ERISP of Kathleen Folbigg Q454.

<sup>221</sup> Exhibit E, ERISP of Kathleen Folbigg Q455.

<sup>222</sup> Exhibit E, ERISP of Kathleen Folbigg Q218.

<sup>223</sup> Exhibit E, ERISP of Kathleen Folbigg Q218.

<sup>224</sup> Exhibit E, ERISP of Kathleen Folbigg Q222.

<sup>225</sup> Exhibit E, ERISP of Kathleen Folbigg Q223.

<sup>226</sup> Exhibit E, ERISP of Kathleen Folbigg Q224.

<sup>227</sup> Exhibit E, ERISP of Kathleen Folbigg Q237.

time, and was a “very determined baby”.<sup>228</sup> She said that he used to “run out of energy” at around 10:00am and would start getting a little on the grumpy side, so he would have a feed and go off to bed.<sup>229</sup>

174. When asked what she could tell police about Craig finding a diary of her sometime after Patrick was diagnosed as blind in November 1990, she said that she used to write in diaries as a sort of vent or release. She said she had learned not to do this, because she and Mr Folbigg had an altercation after she sprung him reading one of her diaries, which she took as an invasion of her space, even though she thought there wasn’t anything in it that should have upset him too much.<sup>230</sup> It was at that point that she went on to tell police that she had disposed of three diaries on Mother’s Day that year, being 9 May 1999 (discussed further in Part 4 of these submissions).<sup>231</sup>
175. When asked again about an entry read by Mr Folbigg after Patrick was diagnosed as blind, referring to her considering leaving them both, Ms Folbigg said she was sort of suffering, as she had no time for herself, and her reaction was to want to “do a runner” from the situation. She said this came from spending so much time looking after Patrick and not being able to spend any time looking after Craig or herself.<sup>232</sup> She said leaving would have been a fleeting thought.<sup>233</sup>
176. When asked about Mr Folbigg’s description of her as suffering from depression while caring for Patrick, Ms Folbigg did not agree. She said she recalled being in a “down sort of mood” but contrasted that with the moods she experienced around the time of the interview which she would “class as a depression”. She said Mr Folbigg had “a tendency to over analyse severely”.<sup>234</sup>
177. When asked if there were times that she got angry or frustrated after Patrick’s ALTE she said it was just part of parenting, but that there wasn’t an increase in the frustration level. She said when she did get frustrated it was usually towards Craig

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<sup>228</sup> Exhibit E, ERISP of Kathleen Folbigg Q239.

<sup>229</sup> Exhibit E, ERISP of Kathleen Folbigg Q242.

<sup>230</sup> Exhibit E, ERISP of Kathleen Folbigg Q459.

<sup>231</sup> Exhibit E, ERISP of Kathleen Folbigg Q459-463.

<sup>232</sup> Exhibit E, ERISP of Kathleen Folbigg Q466.

<sup>233</sup> Exhibit E, ERISP of Kathleen Folbigg Q473-474.

<sup>234</sup> Exhibit E, ERISP of Kathleen Folbigg Q468.

because she felt she was doing everything herself and did not get frustrated with Patrick.<sup>235</sup>

## Sarah

178. Ms Folbigg told police that Sarah was “planned”, following lots of discussions between her and Craig. She said the doctors assured them they would help, and keep an eye on her.<sup>236</sup> She said she didn’t really remember day to day with Sarah, except that she was “a fairly good kid”, and got nicknamed the “catnapper” because she would not sleep for any longer than 15-20 minutes at a time, and three hours during night if lucky.<sup>237</sup> She thought this was when she developed “a real bad broken sleep habit, from her”.<sup>238</sup> She said she was a healthy baby.<sup>239</sup>
179. Ms Folbigg described that she used to think that partly the reason why Sarah wouldn’t go to sleep happily and easily was that Mr Folbigg used to rev her up that much that she decided she wanted to keep playing and not go to bed.<sup>240</sup> When asked how this made her feel, she said it used to annoy her a little because Sarah would probably be grouchy the next day if she didn’t get sleep.<sup>241</sup>
180. She said at the stage of Laura’s death they had just decided to put her sleeping in a single bed rather than a cot, given she slept best in their bed.<sup>242</sup> She said they decided to put the bed in their room as a way of monitoring her, because they couldn’t figure out a way to have the sleep apnoea mat on the bed.<sup>243</sup> She said the night of Sarah’s death was her first night without the mat.<sup>244</sup>
181. When asked whether she had received any advice as to how long to use the sleeping mat, she responded that they had actually had it longer than what was recommended, which she said was six months.<sup>245</sup>

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<sup>235</sup> Exhibit E, ERISP of Kathleen Folbigg Q481-484.

<sup>236</sup> Exhibit E, ERISP of Kathleen Folbigg Q261.

<sup>237</sup> Exhibit E, ERISP of Kathleen Folbigg Q261.

<sup>238</sup> Exhibit E, ERISP of Kathleen Folbigg Q261.

<sup>239</sup> Exhibit E, ERISP of Kathleen Folbigg Q261.

<sup>240</sup> Exhibit E, ERISP of Kathleen Folbigg Q261, Q285.

<sup>241</sup> Exhibit E, ERISP of Kathleen Folbigg Q287.

<sup>242</sup> Exhibit E, ERISP of Kathleen Folbigg Q265.

<sup>243</sup> Exhibit E, ERISP of Kathleen Folbigg Q321.

<sup>244</sup> Exhibit E, ERISP of Kathleen Folbigg Q321.

<sup>245</sup> Exhibit E, ERISP of Kathleen Folbigg Q327.

182. She said she was trying to get Sarah to go to bed between 6:00 and 8:00pm, even for a bit of a sleep knowing full well she wouldn't have stayed there.<sup>246</sup> She said she put Sarah to bed and she actually slept for a couple of hours, before Sarah "decided to get up and have a bit more of a party". At that stage Ms Folbigg went to bed herself and left Craig with Sarah. She said she slept for a while, and Craig put Sarah to bed, or she went out and said "that's enough, it's time for bed".<sup>247</sup>
183. Ms Folbigg said from there the only thing she remembered was actually finding Sarah. She said she got up to go to the toilet and glanced over and saw her lump in the bed. When she walked back in she took another look and she hadn't moved. She said what caught her attention was that she was flat on her back and one of her arms was hanging out, so she went over to make sure she wasn't cold. At that point she noticed that she wasn't hearing any breathing sounds. She said she didn't even bother with turning on the light.<sup>248</sup>
184. She said she couldn't remember if she had her or if Craig had her, but they ended up in the lounge room and Craig attempted CPR. She couldn't remember if Sarah was pronounced dead at the house or the hospital and said the time after that was "just pretty much a blur".<sup>249</sup> She said the only vivid thing which stuck in her mind was "the fantastic day we had the day before". She said the only other thing was that she had a cold or flu with a runny nose and the sniffles as was normal around that age.<sup>250</sup>
185. Ms Folbigg reflected that "because of her age, we weren't relaxing, we were still paranoid, but because she was older than what Patrick was we thought we were gunna manage to keep her."<sup>251</sup>
186. When asked about Craig's statement to police that she had approached him to be a mother again, she agreed she had, and said:

*sure, having Sarah wasn't an attempt to replace or anything like that, it was determination probably on my part to succeed. At that particular time in life I was feeling like I'd failed, so the suggestion... was me wanting to have another*

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<sup>246</sup> Exhibit E, ERISP of Kathleen Folbigg Q265.

<sup>247</sup> Exhibit E, ERISP of Kathleen Folbigg Q268.

<sup>248</sup> Exhibit E, ERISP of Kathleen Folbigg Q269, Q308-317.

<sup>249</sup> Exhibit E, ERISP of Kathleen Folbigg Q269.

<sup>250</sup> Exhibit E, ERISP of Kathleen Folbigg Q270, Q280.

<sup>251</sup> Exhibit E, ERISP of Kathleen Folbigg Q270.

*child and succeed at being a mother sort of thing. It wasn't, I don't think there was anything else behind it.*<sup>252</sup>

187. When told that police had spoken to Craig “at length about the four children, but in particular the death of Sarah”, and that he said she was stressed constantly caring for all the children, Ms Folbigg said she recalled “becomin’ probably a little bit more stressed with Sarah because she was such a short sleeper”.<sup>253</sup> She also said that with Patrick there was reasons as to why he was needing constant care, whereas with Sarah there was really nothing wrong with her other than she didn’t like to go to sleep and wanted to play all the time.<sup>254</sup>
188. When asked about Craig’s statement that the night before Sarah died they had words about Sarah, she first said she did not recall this. She then said it was “the usual” – “a battle of the wills” as described to her by Craig once. She said she used to get a bit stressed and a bit on the snappy side and then sort of give up and go to bed to leave Sarah to do what she wanted. She said there were “probably” battling wills that night, as it was a regular thing.<sup>255</sup> She said she “probably” made an angry growling noise that night as suggested by Craig.<sup>256</sup>
189. She said further though that she would “become frustrated but never angry at her”.<sup>257</sup> She said she would always end up reasoning to herself as she went to bed herself that Sarah was a baby and it was illogical to her.<sup>258</sup>
190. She said she didn’t recall having a conversation with Craig as she was trying to put Sarah to bed.<sup>259</sup> When Craig’s version of the conversation was put to her, she again said that she did not recall it, and specifically said she didn’t recall saying that Sarah would go to sleep when she said so.<sup>260</sup> She denied Mr Folbigg’s version that she “threw” Sarah at him, but recalled “giving” Sarah to him and saying she was going to bed.<sup>261</sup>

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<sup>252</sup> Exhibit E, ERISP of Kathleen Folbigg Q516-517.

<sup>253</sup> Exhibit E, ERISP of Kathleen Folbigg Q520-521.

<sup>254</sup> Exhibit E, ERISP of Kathleen Folbigg Q521.

<sup>255</sup> Exhibit E, ERISP of Kathleen Folbigg Q525.

<sup>256</sup> Exhibit E, ERISP of Kathleen Folbigg Q527.

<sup>257</sup> Exhibit E, ERISP of Kathleen Folbigg Q525.

<sup>258</sup> Exhibit E, ERISP of Kathleen Folbigg Q525.

<sup>259</sup> Exhibit E, ERISP of Kathleen Folbigg Q528-529.

<sup>260</sup> Exhibit E, ERISP of Kathleen Folbigg Q533.

<sup>261</sup> Exhibit E, ERISP of Kathleen Folbigg Q535-536.

191. Ms Folbigg said she couldn't explain the inconsistency between Mr Folbigg's version and her recall of the night until his version had been read to her, which was of not having too much trouble with Sarah.<sup>262</sup> She also said that with her children she chose to remember "all the good bits", not the "difficulty or the hard bits". She said specifically that sitting in the interview trying to recall whether or not the children gave her a hard time the night before they died, it was probably a case of her choosing not to remember it.<sup>263</sup>
192. When Mr Folbigg's account that he woke up at 1:00am in the morning Sarah died and saw that neither of them were in bed, the door was closed and there was a light on somewhere else inside the house was put to Ms Folbigg, she emphatically denied this saying "That is incorrect. He actually, no that's incorrect. Sarah never left the bedroom, she was in the bedroom the whole time".<sup>264</sup>
193. When police asked whether she understood the significance of Mr Folbigg's account, she said "Yep, but that's not how it was. She never left the bed, she was in the bed, and I did shut the door, yes, but I didn't turn any lights on... As I said, I just remember that when I finally went over to the bed to uncover and find her and I've yelled at Craig the lights were on".<sup>265</sup> She agreed it was normal practice for her to wake up with Sarah if she was stirring in the night, shut the bedroom door and take her into another part of the house with the light on.<sup>266</sup> She maintained that on the night of her death, Sarah "stayed in bed".<sup>267</sup>
194. Later in the course of the interview police referred to Ms Folbigg's language of "I went to find her and uncover her" and asked whether she knew what she was going to find. She replied, "No. I just don't know why I used the word find."<sup>268</sup>

## Laura

195. Ms Folbigg said that it was not an easy decision to have Laura and she and Mr Folbigg spent 12 months trying to figure out what support was available and whether they would proceed.<sup>269</sup>

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<sup>262</sup> Exhibit E, ERISP of Kathleen Folbigg Q539.

<sup>263</sup> Exhibit E, ERISP of Kathleen Folbigg Q539.

<sup>264</sup> Exhibit E, ERISP of Kathleen Folbigg Q543.

<sup>265</sup> Exhibit E, ERISP of Kathleen Folbigg Q546.

<sup>266</sup> Exhibit E, ERISP of Kathleen Folbigg Q549-551.

<sup>267</sup> Exhibit E, ERISP of Kathleen Folbigg Q552.

<sup>268</sup> Exhibit E, ERISP of Kathleen Folbigg Q781-782.

196. Following her birth, she slept in a bassinette beside the bed, and spent an overnight stay in the hospital for sleep studies. She said she was “a good, sound sleeper in between her feeds”, and they thought “there was no sort of dramas and she was very, more of a sedate, relaxed baby”.<sup>270</sup>
197. She said the monitor that was provided by Dr Seton had electrodes to be plugged in, and “there was no question about that, it was on every time she slept, even if it was only for a 15 minute nap”. She recalled the alarm was quite sensitive and ear-piercing.<sup>271</sup> She said she didn’t think they started to lessen the use of the monitor until Ms Tanner and Dr Seaton said they could, around the six month mark. She said she started talking over with Craig starting not to use the monitor in the day. She said this was more her decision than his, a form of reluctant agreement, because she was the one that was always jumping up to the alarms.<sup>272</sup>
198. Ms Folbigg described that even from birth Laura would only wake up every three or four hours, so she wasn’t a catnapper, and she wouldn’t feed every hour, so she was “a really good, good baby. There was no, no sort of trouble with her at all”.<sup>273</sup>
199. She said during the first 12 months there had been no problems other than sniffles a couple of times in the first cold season, but nothing ever serious and it didn’t last very long.<sup>274</sup> She said that “always with her, if she had the sniffles of any kind or even coughed just once Craig and I would go to the doctors”.<sup>275</sup>
200. Ms Folbigg said she thought they had become a bit complacent towards Laura’s second birthday. She said she remembered the day of Laura’s death a lot better than the others, probably because the bonding between her and Laura was far better than with the other three children. She said they were really enjoying getting out of the baby bit that was so frightening and into more of the toddler child sort of thing, where she was semi-talking and could ask for what she wanted.<sup>276</sup>

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<sup>269</sup> Exhibit E, ERISP of Kathleen Folbigg Q329.

<sup>270</sup> Exhibit E, ERISP of Kathleen Folbigg Q333.

<sup>271</sup> Exhibit E, ERISP of Kathleen Folbigg Q333.

<sup>272</sup> Exhibit E, ERISP of Kathleen Folbigg Q333.

<sup>273</sup> Exhibit E, ERISP of Kathleen Folbigg Q333.

<sup>274</sup> Exhibit E, ERISP of Kathleen Folbigg Q333.

<sup>275</sup> Exhibit E, ERISP of Kathleen Folbigg Q333.

<sup>276</sup> Exhibit E, ERISP of Kathleen Folbigg Q333.

201. Ms Folbigg said on the morning of Laura's death they went to the gym as they usually did, and that probably by 11:00am Laura was asleep because she had had a big morning. She said she usually hung washing out at that point, and out of habit always checked on her. She said she checked every 15 or 20 minutes usually and did that that morning. She recalled that Laura was flat on her back, whereas she always placed Laura down on her sides.<sup>277</sup> She said she didn't pay attention to anything else other than she may have been a bit pale, grabbed her up and ran out to the kitchen breakfast bar and started CPR.<sup>278</sup>
202. She added that after the gym class she said to her friends "I won't stay for coffee today she's a bit, a bit on the feral side". She said Laura had fallen asleep in the car at about 11:00am on the way home, and that she used to take her shoes off while walking up the hallway when carrying her asleep from the car into bed but otherwise leave her with what she had on.<sup>279</sup>
203. She also added that after she had put Sarah to bed she had gone outside to check on the dog and thought that she left the monitor piece in the kitchen because sometimes having it on her was annoying. She said after she located the dog she went back inside and walked up the hallway, thinking she would check on Laura.<sup>280</sup> She said it took her about 10 minutes to locate the dog and 15 or 20 minutes between leaving and return to Sarah.<sup>281</sup>
204. Later in the interview, after having been through the various 1996-1997 diary entries, police asked Ms Folbigg questions about Mr Folbigg's statement concerning Laura. She agreed with his description that in February, the month before her death, their marriage was going through a fairly rough patch.<sup>282</sup>
205. Police showed Ms Folbigg a letter written by her which Mr Folbigg said she handed to him in the middle of February 1999, about two weeks before Laura died. Ms Folbigg said she sort of recalled handing it to him, and that she had started to think that maybe he and Laura would be better off if she wasn't on the scene, as she had with Patrick. She agreed that at that time she was considering

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<sup>277</sup> Exhibit E, ERISP of Kathleen Folbigg Q333.

<sup>278</sup> Exhibit E, ERISP of Kathleen Folbigg Q333.

<sup>279</sup> Exhibit E, ERISP of Kathleen Folbigg Q357, Q359.

<sup>280</sup> Exhibit E, ERISP of Kathleen Folbigg Q365.

<sup>281</sup> Exhibit E, ERISP of Kathleen Folbigg Q376.

<sup>282</sup> Exhibit E, ERISP of Kathleen Folbigg Q788.



leaving the home and not taking Laura with her.<sup>283</sup> She explained it wasn't to do with Laura, but rather because of issues between her and Mr Folbigg.<sup>284</sup>

206. When Mr Folbigg's version of the argument between them on the morning of Laura's death was put to her, Ms Folbigg agreed that she had said the words "She knows that she can get away with anything with you. You sook her up too much." and "Well go to your bloody father then". She said she was more angry at Mr Folbigg than angry at her.<sup>285</sup> She said Laura was crying because she wouldn't let her out of the high chair, because she really wanted her to have breakfast.<sup>286</sup>
207. She said she thought she had said to Mr Folbigg "I can't handle it when she's crying all the time", but said the crying all the time rarely lasted that long and it wasn't a thing she did often, but only ever did so when Mr Folbigg was around.<sup>287</sup> She said she didn't remember any other part of the argument, but said Laura definitely would have been crying as "she always used to cry more if I got upset and both of us were havin' bad vibes or whatever between the two of us".<sup>288</sup>
208. Ms Folbigg then said "I remember the argument. I remember getting upset and it was all purely with Craig. I wasn't upset with Laura". She appeared to accept that Laura was "visibly scared" as described by Mr Folbigg, "probably because I was a bit more vocal than usual. If I had screamed, which I don't remember doing, if I'd screamed it would have been the first time she'd ever heard me doing that".<sup>289</sup>
209. Police also asked Ms Folbigg about inconsistencies between her version to them on that day, and the version she provided to Detective Sergeant Ryan on the day of Laura's death.
210. As to her omission during the interview about attending Craig's work in the morning, she said "it just slipped my mind that I went there".<sup>290</sup>
211. As to her omission on the date of Laura's death that she had to feed the dogs and hang the washing out between the time Laura was asleep and the time she

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<sup>283</sup> Exhibit E, ERISP of Kathleen Folbigg Q793-975.

<sup>284</sup> Exhibit E, ERISP of Kathleen Folbigg Q796.

<sup>285</sup> Exhibit E, ERISP of Kathleen Folbigg Q799-801.

<sup>286</sup> Exhibit E, ERISP of Kathleen Folbigg Q801.

<sup>287</sup> Exhibit E, ERISP of Kathleen Folbigg Q804.

<sup>288</sup> Exhibit E, ERISP of Kathleen Folbigg Q807.

<sup>289</sup> Exhibit E, ERISP of Kathleen Folbigg Q811-813.

<sup>290</sup> Exhibit E, ERISP of Kathleen Folbigg Q822-824.

checked on her, she said “when you asked me what I do of a morning my general response to that was it would have been housework and then I have remembered that I went out to find my, find my dog”.<sup>291</sup>

212. As to her omission during the interview that when she put Laura to bed she heard her coughing she said, “I had forgotten about her coughing and just forgot that she had a cold”.<sup>292</sup>
213. As to Craig’s account of her report to him of Laura’s death that she went to feed the dog and heard Laura coughing on the monitor, she said she didn’t remember a conversation with him.<sup>293</sup>
214. After having put to Ms Folbigg Mr Folbigg’s version of events about the circumstances of Sarah’s death, police asked Ms Folbigg a series of questions about the 1996-1997 diary which he had provided to them in May 1999. The contents of the interview relating to Ms Folbigg’s diaries are set out in Part 4 of these submissions.<sup>294</sup>

### **Carol Newitt – Mr Folbigg’s sister**

215. Ms Newitt was Mr Folbigg’s sister. She gave evidence that she had very close contact with Mr Folbigg during the early years of his marriage to Ms Folbigg, including during the years in which the children were born and died.<sup>295</sup>
216. She gave evidence about the assistance she provided to Ms Folbigg in caring for Patrick after his ALTE in October 1990. She said she spoke to Ms Folbigg and offered assistance after Mr Folbigg told her something about her intentions, and that Ms Folbigg agreed to stay with him as a result. She said at times Ms Folbigg would come over to her home in the daytime and walk in and give Patrick to her saying “you look after him. He is good for you and I can’t get him to shut up”.<sup>296</sup>

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<sup>291</sup> Exhibit E, ERISP of Kathleen Folbigg Q834.

<sup>292</sup> Exhibit E, ERISP of Kathleen Folbigg Q835-836.

<sup>293</sup> Exhibit E, ERISP of Kathleen Folbigg Q842.

<sup>294</sup> Exhibit E, ERISP of Kathleen Folbigg Q579-778.

<sup>295</sup> 23 April 2003 T891.58-892.10.

<sup>296</sup> 23 April 2003 T893.29-35.

217. She considered that both Ms and Mr Folbigg were very dedicated parents to Patrick, and that it got Ms Folbigg “down like it would get anybody else down”, but she thought her difficulties appeared to pass.<sup>297</sup>
218. Ms Newitt described her attendance on the day of Patrick’s death. She said she received a phone call from Ms Folbigg at about 10:00am saying “it had happened again”. It was a five to eight minute drive from her home to Ms and Mr Folbigg’s home.<sup>298</sup>
219. When she arrived, Ms Folbigg was sitting on the lounge directly in front of the door with her elbows on her knees, her head down, crying. Ms Newitt saw Patrick was in his cot in another room, with the sides of the cot up. She recalled Ms Folbigg said to her “Don’t pick him up” but clarified in cross-examination that all Ms Folbigg in fact said was “no”.<sup>299</sup>
220. Ms Newitt gave evidence that none of the children showed any signs of failing to thrive, and none appeared to have constantly recurring infections. She was herself a mother of four children.<sup>300</sup>
221. Ms Newitt said she observed Ms Folbigg to be crying and very upset at both Caleb’s and Patrick’s deaths. She said she grew apart from Ms and Mr Folbigg somewhat after Sarah died so did not make close observations after that, and also that they lived further apart when Laura was alive.<sup>301</sup>

### **Leah Bown – Ms Folbigg’s foster sister**

222. Ms Bown gave evidence of a very close relationship with Ms Folbigg, having known her since she was three years old and maintained a lot of contact as adults. She said she had more contact with Laura than the other children and regarded Laura as a granddaughter.<sup>302</sup>
223. She recalled Christmas in 1998 when Mr and Ms Folbigg brought Laura to Melbourne at age 17 months. She said Ms Folbigg was not getting much sleep and had lost her temper with Laura in the high chair by pulling her out by her arm,

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<sup>297</sup> 23 April 2003 T899.35-38.

<sup>298</sup> 23 April 2003 T894.1-24.

<sup>299</sup> 23 April 2003 T900.38-50.

<sup>300</sup> 23 April 2003 T897.3-9.

<sup>301</sup> 23 April 2003 T897.52-55, T902.54-56, T903.43-904.8.

<sup>302</sup> 16 April 2003 T768.28-41.

which Ms Bown thought was uncalled for. She recalled also on Christmas Eve that Ms Folbigg had shown “over the top” anger when Laura did not want to go to sleep. She said she was surprised because she had not seen this side of Ms Folbigg before.<sup>303</sup>

224. Ms Bown also recalled an earlier occasion when Laura was five months old and she was visiting at the Folbigg home. She was inside with a migraine while all other adults were outside, and heard an alarm go off. She said she told Ms Folbigg who said it was probably the baby monitor and just shrugged her shoulders.<sup>304</sup>
225. When challenged that her police statement about these events was tempered compared with her oral evidence, she said she thought at the time of giving the statement that police were conducting a “witch hunt” and she was very angry at them for considering Ms Folbigg capable of what was alleged.<sup>305</sup>
226. Ms Bown agreed that Ms Folbigg was very happy to have each of her children and was devastated by their deaths. She agreed in cross-examination that Ms Folbigg had reported to her that each of the children (except Caleb) had been a “good sleeper” and a “good eater”.<sup>306</sup>
227. Ms Bown denied any contact with Mr Folbigg in the two years before the trial and denied any discussion with him about statements to police.<sup>307</sup>

### **Senior Constable Steven Saunders – police officer who spoke with Ms and Mr Folbigg on occasion of Sarah’s death**

228. Senior Constable Steven Saunders worked as a police officer and attended Ms and Mr Folbigg’s home at approximately 2:45am on the date of Sarah’s death. He noted both parents appeared distressed and the father was nursing the child. He said he was told that a sleep monitor had been used until the previous week, and that the child had not displayed any signs of illness other than having suffered a

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<sup>303</sup> 16 April 2003 T770.35-58, T771.1-12.

<sup>304</sup> 16 April 2003 T774.10-58, T775.1-26.

<sup>305</sup> 16 April 2003 T792.14-18.

<sup>306</sup> 16 April 2003 T783.23-30, T784.30-38, T785.10-17, T788.4-9.

<sup>307</sup> 16 April 2003 T801.14-18.

cold or flu type virus. He was told this was treated by Dr Marley, with medication prescribed but the course not completed.<sup>308</sup>

229. Saunders gave evidence that the father, Mr Folbigg, told him that the child had been put to sleep at about 9:00pm in a single bed in the parents' bedroom, that parents went to sleep and the mother woke at 12:00 or 12:30am and heard the child turn over in its sleep, and that the mother again woke about 1:00am to go to toilet and on her return to the bedroom was unable to hear the child breathing. He read from his statement in which he had written that the mother had woken at 1:00am to go to the toilet.<sup>309</sup>
230. Saunders was asked about his statement in the report to the Coroner which he prepared, which stated the mother got up to go to the toilet at 1:30am. He was unable to explain the discrepancy between the report and his statement but considered it more likely to be 1:00am given that information was provided to him by the attending ambulance officer.<sup>310</sup>

### **Margaret Tanner – clinical nurse who interacted with Ms and Mr Folbigg during Laura's life for sleep monitor use**

231. Ms Tanner worked as a clinical nurse at the Sleep Disorders Unit at the Royal Alexandra Hospital where Ms and Mr Folbigg attended with Laura for sleep management shortly after she was born.<sup>311</sup>
232. Ms Tanner made a number of observations about Ms Folbigg during the early attendances at the unit. She considered that Ms Folbigg seemed detached from Laura as though she did not want to get close to her and did not consider her to be overprotective.<sup>312</sup>
233. Ms Tanner also made observations about the use of the sleep monitor provided for use with Laura in subsequent months. She gave evidence that the instruction provided to Ms and Mr Folbigg about the monitor was that it was to be used for all sleep periods for about 12 months (until August 1998), with reassessment to be

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<sup>308</sup> 11 April 2003 T573.30-50, T574.16-28.

<sup>309</sup> 11 April 2003 T574.58-575.2.

<sup>310</sup> 11 April 2003 T579.41-580.7.

<sup>311</sup> 15 April 2003 T671.16-30, T674.29-33.

<sup>312</sup> 15 April 2003 T676.22-30.

performed over time and use to be discontinued if the sleep studies were normal after 12 months.<sup>313</sup>

234. Ms Tanner attended to the periodic downloading of the monitor data at the unit. She observed that initially the monitor was used fairly well for the first two months after Laura's birth (September-October 1998). She said it then "dwindled off", being used at night time but not being used routinely in the day time. She noted that it was only used on the occasional Sunday or Monday during the day, and additionally for about an eight week period during December 1997-February 1998.<sup>314</sup>

### **Deborah Grace – neighbour to Ms and Mr Folbigg**

235. Ms Grace was a neighbour to Ms and Mr Folbigg during Laura's lifetime. She gave evidence of an event approximately eight days before Laura's death, when Ms Folbigg brought Laura to her home. She observed that Laura was in a fine mood, not being silly or naughty, but Ms Folbigg said "You're being silly. There's no nonsense like that, we are going home", and then walked straight out the door with Laura. She recalled attending the Folbigg home the day after Laura's death and observing "no emotion whatsoever" in Ms Folbigg.<sup>315</sup>

### **Melissa Smith – neighbour to Ms and Mr Folbigg who cared at times for Laura**

236. Ms Smith was a neighbour to Ms and Mr Folbigg during Laura's lifetime. Ms Folbigg had told her after Laura's birth that she would be placed on a sleep monitor. She started to babysit Laura when she was between 10 weeks and three months old. She recalled doing so two times before Laura was 11 months old. She was not provided with a monitor and recalled babysitting Laura for periods of about two hours, during which Laura went to sleep being nursed in her arms as she wouldn't put her in the bedroom and didn't like to leave her anywhere.<sup>316</sup>

237. Ms Smith recalled that when Laura was 11 months old and Ms Folbigg asked her to look after Laura while she went to the gym, she (Ms Smith) asked if she could mind her at Ms Folbigg's home so she could be placed on the monitor, which was

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<sup>313</sup> 15 April 2003 T677.13-16, T685.53-58.

<sup>314</sup> 15 April 2003 T678.22-55, T679.1-3, T679.16-49.

<sup>315</sup> 16 April 2003 T803.51-804.16, T805.1-7.

<sup>316</sup> 16 April 2003 T811.57-812.56.

done. She said she didn't observe any breathing difficulties with Laura and observed a healthy and happy child who appeared to sleep well. She said she saw Ms Folbigg subsequent to Laura's death and thought she did not appear to be affected by Laura's death.<sup>317</sup>

### **Barbara Unicomb – neighbour to Ms Smith**

238. Ms Unicomb was a direct neighbour to Ms Smith. She first remembered attending Ms Smith's home and seeing Laura there in her care when she was about three months old. She said there was no apnoea blanket attached to Laura, and no such device left at Ms Smith's home. She said she saw Laura in Ms Folbigg's company sometimes and thought she was a good mother.<sup>318</sup>

### **Karen Hall – friend of Ms and Mr Folbigg who cared at times for Laura**

239. Ms Hall was a friend to both Ms and Mr Folbigg, having met Mr Folbigg in 1994 while working at the same car dealership. She gave evidence that she started sometimes looking after Laura when she was about two months old, both in her own mobile home and at the Folbigg home. She said she was aware of the three prior children's deaths and was concerned to keep an eye on Laura.<sup>319</sup>

240. The monitor was not able to be used at Ms Hall's home, and she said there was a mutual decision for Ms Hall not to have care of Laura when she needed to sleep until she was a bit older. When she minded Laura at the Folbigg home the monitor was on, which she clarified was always at night. She said later Laura always slept on the lounge when with her, and occasionally she nursed her when she went to sleep.<sup>320</sup>

241. Ms Hall recalled a time when Laura was about 12 months old and went to sleep on the lounge. She was out of the room for two to three minutes and returned to find she could not hear or feel Laura breathing. She scooped her up and put her on the floor, at which point Laura startled awake immediately. She said when she told Ms Folbigg, she responded not to worry too much because Laura slept deeply and

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<sup>317</sup> 16 April 2003 T813.3-814.2.

<sup>318</sup> 16 April 2003 T808.56-809.2, T809.15-34, T810.10-16.

<sup>319</sup> 23 April 2003 T885.10-886.1, T886.13-32.

<sup>320</sup> 23 April 2003 T886.39-887.13.

it was probably just sleeping, though she promised she would put the monitor on when she went home. She generally observed Ms Folbigg to be alert to Laura.<sup>321</sup>

### **Kerrie Anderson – gym *crèche* worker at time of Laura’s death**

242. Ms Anderson gave evidence that she first met Ms Folbigg when Laura was only a few weeks old. She recalled that Ms Folbigg came to the gym frequently over the next 18 months or so, usually for an hour or two, during which time Ms Anderson cared for Laura in the *crèche*. She said that as Laura became older, she started coming in daily. She also described that when Laura was younger, Ms Folbigg would check on her during the class, then as she got older she would just stay in the class. Ms Folbigg had told Ms Anderson that she had lost previous children.<sup>322</sup>
243. Ms Anderson recalled that on the day of Laura’s death, towards the end of the class Laura appeared to be getting tired. She heard Ms Folbigg say to Laura that she wouldn’t be staying for a coffee because she (Laura) just ran around. She also heard her say that she wanted to take Laura home for a sleep. She thought Ms Folbigg seemed like her normal, friendly self.<sup>323</sup>

### **Detective Sergeant Bernard Ryan – detective in charge of investigation**

244. Detective Sergeant Ryan gave evidence about his conduct of the police investigation after the occasion of Laura’s death.<sup>324</sup>
245. He said he attended the hospital shortly after Laura’s death and took an account from Ms Folbigg which he recounted as follows:

*She woke up at 6:20am this morning. She was in a bad mood. Craig went to work and we had breakfast. We went to the gym and then we went to see Craig at work for morning tea. She went to sleep in the car on the way home, so I put her in bed when we got home. I heard her coughing and did not think much of it. I went to check on her about five minutes later and*

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<sup>321</sup> 23 April 2003 T887.25-888.47, T889.19-33, T890.44-46.

<sup>322</sup> 24 April 2003 T919.6-36, T921.51-922.2.

<sup>323</sup> 24 April 2003 T920.30-39, T920.57-921.14, T923.35-39, T924.15-17.

<sup>324</sup> 28 April 2003 T955-967; 1 May 2003 T1084-1096.



*saw that she wasn't breathing. I took her to the breakfast bar and did CPR and rang 000.*<sup>325</sup>

246. He said he asked Ms Folbigg why Laura was in a bad mood, to which she replied that she had had a cold for about a week. Ms Folbigg told him she left the gym at 10:30am and arrived home at about 11:00am, after attending Mr Folbigg's work. She told him she heard Laura coughing about half an hour after putting her down to bed and then found her laying on her back, face white.<sup>326</sup>
247. Later on the day of Laura's death Detective Sergeant Ryan went to the Folbigg house and searched and photographed the room. He saw and took photographs of pillows on the bed which had four small circular stains.<sup>327</sup> He observed in the lounge room on the lounge white Teletubby sandals and a baby's bottle, and a baby monitor nearby.<sup>328</sup>
248. Detective Sergeant Ryan then gave evidence about his meetings with Mr Folbigg some months later. He gave evidence that he met with Mr Folbigg on 14 May 1999 at Mr Folbigg's home, at which time he understood that Ms Folbigg had moved out. Mr Folbigg told him about the existence of a diary, but did not give it to him at that point.<sup>329</sup>
249. Then on 19 May 1999 Mr Folbigg attended the detectives' office at Singleton Police station and brought with him two diaries (the 1989 diary and the 1996-1997 diary), together with a number of other documents including hand-written letters). Detective Sergeant Ryan said that on that day he commenced taking a type written statement from Mr Folbigg. He said he asked a series of questions in an attempt to allow a free account, with clarifying questions also asked. He said he did not complete the statement on that day and arranged for Mr Folbigg to come back on 23 May 1999.<sup>330</sup>
250. The Detective Sergeant's evidence was that on 23 May 1999 Mr Folbigg returned to the police station and told him he had not told the truth in relation to a number of issues on 14 and 19 May 1999. Mr Folbigg said he had resumed his relationship

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<sup>325</sup> 28 April 2003 T1353.50-1354.1.

<sup>326</sup> 28 April 2003 T956.8-20.

<sup>327</sup> Trial Exhibit AE, Photographs of Laura's bedroom and stained pillow; Trial Exhibit AF, Report of Virginia Friedman (29 November 1999).

<sup>328</sup> 28 April 2003 T958.51-959.42.

<sup>329</sup> 28 April 2003 T960.8-49.

<sup>330</sup> 28 April 2003 T961.1-962.3.

with Ms Folbigg and supported her. The interview continued and the statement, with changes, was concluded.<sup>331</sup>

251. The Detective Sergeant then read the contents of the two diaries provided by Mr Folbigg very carefully. He said that as a result of what he read, and what he was told by Mr Folbigg, on 23 July 1999 he returned to the Folbigg home. There he met Ms Folbigg, who agreed voluntarily to an interview with him.<sup>332</sup>
252. Ms Folbigg drove herself to the police station and was seen by the Detective Sergeant speaking on her mobile phone. Detective Sergeant Ryan passed the nearby motor dealership where Mr Folbigg worked and saw him standing on the footpath speaking on a mobile phone. A short time later he arrived at the police station and saw both Mr and Ms Folbigg there. He explained that Mr Folbigg could not be present during the interview, and he left. Ms Folbigg agreed to be interviewed and declined to have anyone else attend.<sup>333</sup>
253. After the interview concluded, Detective Sergeant Ryan informed Ms Folbigg police were going to execute a search warrant at the flat where she had been living. He said “we are looking for other diaries which relate to the death of your children. Do you have any more diaries?” She replied, “I’ve just started a new diary and it’s up at the house”. At approximately 6:30pm the flat was searched and police took possession of a number of items (including the 1992 diary).<sup>334</sup>
254. Then at 7:15pm that evening, Detective Sergeant Ryan attended Ms and Mr Folbigg’s home at Millard Close to execute a search warrant there. He gave evidence that he said to Ms Folbigg “what we are actually doing here is that we are here to look for diaries, like we did at the last flat. Are there any diaries here?”, to which he said she replied, “yeah, one that I bought yesterday”. He observed her then walk into main bedroom, remove a personal diary (the 1999 diary) and hand it to another officer.<sup>335</sup>
255. The Detective Sergeant gave evidence that a short time later Sergeant Gralton found another personal diary in the main bedroom. He took Ms Folbigg into the

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<sup>331</sup> 28 April 2003 T962.10-44.

<sup>332</sup> 28 April 2003 T962.49-58, T963.1-16.

<sup>333</sup> 28 April 2003 T963.25-58, T964.1-11.

<sup>334</sup> 28 April 2003 T965.7-28.

<sup>335</sup> 28 April 2003 T965.30-58, T966.1-10.

bedroom and asked her if she'd like to make a comment about it. She said "I didn't know it was here. I thought it was gone".<sup>336</sup>

256. The following year on 19 April 2001 Detective Sergeant Ryan went to Mr Folbigg's workplace address and arrested him for the offence of hindering an investigation. Mr Folbigg then participated in an electronically recorded interview (the contents of which was not before the jury, and he was released without charge). Later that day he went to another address in Singleton and arrested Ms Folbigg in relation to the murder of her four children.<sup>337</sup>

## Defence case

### Jan Bull – Ms Folbigg's gym instructor at time of Laura's death

257. Ms Bull gave evidence that she met Ms Folbigg at the gym when Laura had just started walking. She said a lot of people in the morning classes at the gym had children, and there was a *crèche* to care for them during the classes. She observed that Laura and Ms Folbigg appeared to have a good bond, and she thought Ms Folbigg was a good mother. She confirmed she had never seen Ms Folbigg and Laura together outside of the gym environment.<sup>338</sup>
258. Ms Bull recalled that on the morning of Laura's death when they were at the gym she remarked to Ms Folbigg that Laura didn't seem herself, in that she didn't seem as bright and bubbly as normal. Ms Folbigg told her she was going to take her home and put her down for a nap.<sup>339</sup>
259. She gave evidence that she attended Ms Folbigg's home the day after Laura's death, and attended at the funeral, and observed Ms Folbigg to be very upset on both occasions. Ms Bull said that together with others, she encouraged Ms Folbigg to go back to the gym quickly after Laura's death.<sup>340</sup>

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<sup>336</sup> 28 April 2003 T966.20-35.

<sup>337</sup> 1 May 2003 T1086.53-58, T1087.1-25.

<sup>338</sup> 7 May 2003 T1184.23-1185.15, T1187.57-1188.2.

<sup>339</sup> 7 May 2003 T1185.37-54.

<sup>340</sup> 7 May 2003 T1186.12-29.

260. When asked whether Ms Folbigg had told her about her interactions with Laura the night before and that morning, Ms Bull said no and that that behaviour didn't sound like anything she had ever seen Ms Folbigg do.<sup>341</sup>

### **Debbie Goodchild – Ms Folbigg's gym friend at time of Laura's death**

261. Ms Goodchild gave evidence that she met Ms Folbigg at the gym when Laura was about 12 months old. She said she and Ms Folbigg saw each other three to four times per week at the classes. Ms Goodchild also had a child, aged two, who attended the *crèche* at the gym.<sup>342</sup>
262. Ms Goodchild recalled that on occasions she went to Ms Folbigg's house. Her impression was that Ms Folbigg and Laura had a good relationship. She said she never saw any demonstration of fear in Laura, or Ms Folbigg losing control of her temper. She gave evidence that when she attended Ms Folbigg's home in the days and week or so after Laura's death she was always very upset.<sup>343</sup>
263. She was cross-examined extensively about whether Ms Folbigg reported to her any of the kinds of things recorded in her diaries. She said Ms Folbigg had never reported such things to her, and said she had no knowledge of any stress or problems Ms Folbigg had.<sup>344</sup>

### **Judith Patterson – Ms Folbigg's gym friend at time of Laura's death**

264. Ms Patterson gave evidence that she had gotten to know Ms Folbigg at the gym when Laura was a few months old. She said she and Ms Folbigg attended at each other's homes, as well as other gym friends' homes. She observed that Laura was a happy little girl who got along fine with Ms Folbigg.<sup>345</sup>
265. Ms Patterson said she babysat Laura when she was more than 12 months old and Ms Folbigg went back to work. She said that Laura never slept at her house while she babysat her. She attended on the day of Laura's wake and observed Ms Folbigg to be variously hysterical, looking sedated, and later smiling when reminiscing about Laura. Ms Patterson also gave evidence that Ms Folbigg did not

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<sup>341</sup> 7 May 2003 T1192.32-58, T1193.1-28.

<sup>342</sup> 8 May 2003 T1282.46-1282.10.

<sup>343</sup> 8 May 2003 T1282.26-44, T1283.57-1284.24.

<sup>344</sup> 8 May 2003 T1285.22-1287.14.

<sup>345</sup> 8 May 2003 T1287.44-52, T1288.19-40.

discuss any emotional issues with her, such as her marriage, or her frustrations with Laura, or being stressed.<sup>346</sup>

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<sup>346</sup> 8 May 2003 T1289.15-22, T1290.7-45, T1291.4-8, T1291.13-16, T1291.33-57.