



## **Inquiry into the convictions of Kathleen Megan Folbigg**

### **PART 4**

## **CHAPTER 9: SUBMISSIONS ON MS FOLBIGG'S DIARY ENTRIES, AND HER POSSESSION AND DISPOSSESSION OF THE DIARIES**

### **Crown Case at trial**

1. The Crown case at trial relied significantly on the interpretation of entries made by Ms Folbigg in journals and calendars between 1989 and 1999 ("the diaries"). The Crown prosecutor submitted to the jury that the diaries were the strongest evidence the jury could possibly have for Ms Folbigg's guilt.<sup>1</sup>
2. It was the Crown case regarding the contents of Ms Folbigg's diaries that:
  - a. she never thought anybody would ever read them, the entries were only for herself;<sup>2</sup>
  - b. they did not have one entry of the kind one would expect from a person who had cruelly lost three children to natural causes;<sup>3</sup> and
  - c. they contained repeated ramblings about her tiredness, and her frustrations with the restrictions placed on her by having children.<sup>4</sup>
3. The Crown prosecutor acknowledged to the jury that in parts of her diaries Ms Folbigg expressed joy at having her children, and suggested that Ms Folbigg's "flashes of anger, resentment, bitterness and hatred" were not matters she thought all of the time.<sup>5</sup>

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<sup>1</sup> 13 May 2003 T1372.54-56.

<sup>2</sup> 13 May 2003 T1366.30-35.

<sup>3</sup> 13 May 2003 T1366.50-55.

<sup>4</sup> 13 May 2003 T1367.10-15.

<sup>5</sup> 13 May 2003 T1376.3-43.

4. It was also the Crown case that the explanations Ms Folbigg gave to police during her interview on 23 July 1999, about entries in a diary dated 1996-1997, were “unbelievable” and “unsatisfactory”.<sup>6</sup>
5. The Crown case included evidence about Ms Folbigg having disposed of some diaries at some point between Laura’s death in March 1999 and police conducting a search warrant at on her home on 23 July 1999. Evidence available at the time of the trial but not before the jury about Ms Folbigg’s possession and dispossession of the diaries is now before the Inquiry.

## Ms Folbigg’s account of the diaries in interview with police on 23 July 1999

6. In assessing Ms Folbigg’s evidence in the Inquiry, it is necessary for the Judicial Officer to have regard to the evidence at the trial which related to the contents of the diary entries. That evidence comprised oral testimony of lay witnesses including Mr Folbigg as well as family and friends of Ms Folbigg (which is summarised earlier in these submissions), and Ms Folbigg’s account provided to police during a record of interview on 23 July 1999.
7. Ms Folbigg’s account of the diaries entries during the interview is summarised below.<sup>7</sup> Her account of the events surrounding each of the children’s deaths is summarised earlier in these submissions.
8. She gave the following explanations of the thinking and sentiments behind the words in her entries:

*“Ready this time”:<sup>8</sup> I was more confident that this time it would have been, being ready this time meant that I could get myself in the right frame of mind and be able to learn to accept all the help that people were gunna offer and probably handle it a bit better.<sup>9</sup>*

*“Lose control like last times”:<sup>10</sup> The frustration that I felt with Sarah every now and then, the frustration that I felt with Patrick. These were never frustrations that was detrimental to the kids in any way, it was*

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<sup>6</sup> 13 May 2003 T1369.10, T1370.11.

<sup>7</sup> The record of the interview was edited to remove questions and answers in relation to part of an entry dated 14 October 1996, discussed below.

<sup>8</sup> Exhibit AZ, Diaries tender bundle, p 70.

<sup>9</sup> Exhibit E, ERISP of Kathleen Folbigg Q596.

<sup>10</sup> Exhibit AZ, Diaries tender bundle, p 70.

*usually directed at myself or Craig. And I meant keep in control as in not keeping control as such, but sort of keeping control and learning to voice an objection or voice if I've got a problem. Instead of trying to handle everything myself.*<sup>11</sup>

*"learnt my lesson this time":<sup>12</sup> As in the frustration area I was probably thinking of more there. Not to let the frustration get the better of me and learning to actually talk and communicate more.*<sup>13</sup>

*"if anything does happen":<sup>14</sup> I was referring to if fate was cruel and it happened again.*<sup>15</sup>

*"try my hardest this time":<sup>16</sup> Because I felt the last few times that, I had the opinion that I obviously hadn't tried hard enough. There was something that I could have done or hadn't done and should have, so that statement was that I felt I needed just to try to pay more attention and not miss anything.*<sup>17</sup>

*"Even though I am responsible it's all right":<sup>18</sup> I was still carrying around the thought that I could have done more or should have done more. So the word responsible in there sort of refers to that, my thoughts of I didn't try enough or didn't do something, I should have done something.*<sup>19</sup>

*"my mistakes and terrible thinking":<sup>20</sup> Just the frustrations that I might have felt with Pat, and the occasional battles of will that I would have had with Sarah. To me that, looking back at the time I thought that was a terrible way of thinking. I kept telling myself that that shouldn't have happened.*<sup>21</sup>

*"I think losing my temper stage and being frustrated with everything has passed":<sup>22</sup> to me losing your temper is well, totally losin' it. I'd*

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<sup>11</sup> Exhibit E, ERISP of Kathleen Folbigg Q597.

<sup>12</sup> Exhibit AZ, Diaries tender bundle, p 70.

<sup>13</sup> Exhibit E, ERISP of Kathleen Folbigg Q599.

<sup>14</sup> Exhibit AZ, Diaries tender bundle, pp 82-83.

<sup>15</sup> Exhibit E, ERISP of Kathleen Folbigg Q603.

<sup>16</sup> Exhibit AZ, Diaries tender bundle, pp 82-83.

<sup>17</sup> Exhibit E, ERISP of Kathleen Folbigg Q604.

<sup>18</sup> Exhibit AZ, Diaries tender bundle, pp 82-83.

<sup>19</sup> Exhibit E, ERISP of Kathleen Folbigg Q610.

<sup>20</sup> Exhibit AZ, Diaries tender bundle, pp 102-103.

<sup>21</sup> Exhibit E, ERISP of Kathleen Folbigg Q642.

<sup>22</sup> Exhibit AZ, Diaries tender bundle, pp 102-103.

*regard losing your temper as sort of smashing things or throwing things or doin' something.*<sup>23</sup>

*"I worry that my next child will suffer my psychological mood swings like the others did":<sup>24</sup> Just as in a mood swing like I used to get, and mood swings still referring to something that by this stage I'd just decided that it shouldn't happen, and that was the frustration levels and the stress levels... and probably partly blamin' myself because the fact that I should have just been really mellow and just them do what they want. I started to think maybe I should have just been one of these mothers that let them do whatever they please and go from there... you know, your child picks up when you're upset about something or not happy about something... I sort of meant when they get upset in return.*<sup>25</sup>

*"Rather than answer being as before":<sup>26</sup> I don't think I really meant it as that, I sort of think I mean I would have found it easier if the frustrations have cropped back in the same as they had with Patrick or Sarah.*<sup>27</sup>

*"Battling wills and sleep deprivation were the causes last time":<sup>28</sup> one of the things I always wondered but never got any answers either way for was whether trying to get her to go to bed and trying to have some sort of normal thing and battling wills with her every now and then wasn't responsible for tiring her out to the point where she decided not to bother to wake up one morning.*<sup>29</sup>

*"Stress made me do terrible things":<sup>30</sup> Yeah, as in have an angry thought here or there... So I sort of decided that stress must have been the trigger for all that and we sort of knew all this stress was coming, we were pre-prepared for all the stress that come with Laura, so it was a case of being prepared for all that and hopefully I wouldn't you know, get the odd angry thought or be frustrated and go from there.*<sup>31</sup>

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<sup>23</sup> Exhibit E, ERISP of Kathleen Folbigg Q657.

<sup>24</sup> Exhibit AZ, Diaries tender bundle, p 107.

<sup>25</sup> Exhibit E, ERISP of Kathleen Folbigg Q661-662.

<sup>26</sup> Exhibit AZ, Diaries tender bundle, pp 111-112.

<sup>27</sup> Exhibit E, ERISP of Kathleen Folbigg Q675.

<sup>28</sup> Exhibit AZ, Diaries tender bundle, pp 111-112.

<sup>29</sup> Exhibit E, ERISP of Kathleen Folbigg Q684.

<sup>30</sup> Exhibit AZ, Diaries tender bundle, pp 114-115.

<sup>31</sup> Exhibit E, ERISP of Kathleen Folbigg Q702.

“scared of being alone with the baby”:<sup>32</sup> *I had pretty much decided that since these terrible things kept happening when I was by myself I didn’t want to be by myself.*<sup>33</sup>

9. Explanations of this nature were repeated in the same or similar terms as Ms Folbigg was taken through various entries from the 1996-1997 diary.
10. In relation to the explanation of wondering whether battling wills was not responsible for tiring Sarah out to the point of her not waking up one morning, Ms Folbigg said she thought she and Mr Folbigg had brought this up with Dr Seton, but she could not remember and then that she could be getting herself confused.<sup>34</sup>
11. When asked whether she really believed that attempting to get Sarah into some sort of routine caused her death she said, “I did for a while yeah, because you start to doubt everything that you’ve done”.<sup>35</sup>
12. Ms Folbigg was asked about an entry where she wrote: “I really needed him to wake up and take over from me that night. This time I have already decided that if I ever feel that way again I’m going to wake him up”. She first explained:

*Probably because I had so much trouble waking him up sometimes. It was, you know, third yell or whatever before he would sort of wake up. I don’t think I was referring to any particular one of the three kids, just that his general lack of stirring.*<sup>36</sup>

13. She then agreed that entry was referring to the night of Sarah’s death, and said “cause I might have been feelin’ a little bit stressed and a little bit tired that mornin’ and it probably would have been good if... I’m not reading that and perceiving it as two linked sentences”. She then said:

*I might have meant just in general mothering care or whatever. Why couldn’t he have woken up and gone to the toilet and checked on her himself, you know... I can’t explain the take over.*<sup>37</sup>

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<sup>32</sup> Exhibit AZ, Diaries tender bundle, p 126.

<sup>33</sup> Exhibit E, ERISP of Kathleen Folbigg Q726.

<sup>34</sup> Exhibit E, ERISP of Kathleen Folbigg Q687-693.

<sup>35</sup> Exhibit E, ERISP of Kathleen Folbigg Q695.

<sup>36</sup> Exhibit E, ERISP of Kathleen Folbigg Q755.

<sup>37</sup> Exhibit E, ERISP of Kathleen Folbigg Q762-766.

14. Near the conclusion of the interview Ms Folbigg was asked a series of questions about her attendance at a clairvoyant, and about her beliefs in things such as destiny.

15. She said the clairvoyant referred to in her diary, whom she attended before Laura was born and who referred to Sarah having “accepted”, was at a “sort of fair thing on every now and then” with “clairvoyants from one end of the place to the other”.<sup>38</sup> She said she used to believe that everybody had a destiny, but not anymore.<sup>39</sup>

16. Ms Folbigg said she couldn’t explain the deaths of her four children. She said:

*So I’m not religious, I don’t think of it like that. Fate and how you [sic] life runs and destinies and all that sort of business, occasionally I wonder whether, whether there is a possibility of those sort of things. It probably correlates with me going to clairvoyants and that sort of thing. Trying to get some sort of sense as to whether there is somethin’ else goin’ on.*<sup>40</sup>

## Ms Folbigg’s account of the diaries in evidence in the Inquiry in 2019

17. In her sworn evidence in the Inquiry, Ms Folbigg answered questions about diary entries of which police were unaware and about which she had not been asked during the police interview on 23 July 1999. She also answered further questions about the 1989 and 1996-1997 diaries which she had discussed during the police interview. In addition, she answered questions concerning her possession and dispossession of the diaries, based on evidence which police similarly did not have at the time of the interview.

### The purpose of the diaries

18. Ms Folbigg gave evidence that she kept diaries on and off her whole life since she was a teenager.<sup>41</sup> While she said she did not write in them “all the time

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<sup>38</sup> Exhibit E, ERISP of Kathleen Folbigg Q872-876.

<sup>39</sup> Exhibit E, ERISP of Kathleen Folbigg Q878.

<sup>40</sup> Exhibit E, ERISP of Kathleen Folbigg Q879.

<sup>41</sup> Transcript of the Inquiry, 29 April 2019 T622.18; 1 May 2019 T806.30.

regularly”,<sup>42</sup> she agreed she had probably kept a diary, or at least part of a diary, most years.<sup>43</sup>

19. Ms Folbigg said she considered her diaries an intimate friend and confidant, and that she was sincere in what she wrote in them.<sup>44</sup> She explained:

*A. My, my diaries are a pouring out of every fear, every thought - negative, positive - every emotion, anything that was concerning me, anything at all, they were all poured into this diary. They were a way for me - as has been explained, I used those diaries as a friend and a confidant and, if you're having a discussion with your friend and confidant, are you expecting that friend and confidant to then go around telling everybody about it? You don't. So, I'm not expecting that people are going to be reading my diaries...*

*Q. And because it was your confidant, you felt free to divulge the deepest secrets of your mind?*

*A. I felt alone, I felt lonely, I had limited people to talk to - or I felt that I had limited people to talk to. These diaries were something that I could empty my head, get rid of emotions, try to figure out what was going on, how to figure out where I was going with life and they are - that's all they are. There's--*

*Q. Put it down on paper and get rid of the guilt in your head?*

*A. Put it down on paper and get rid of all the emotions and thoughts that were rallying around in my head, yes.<sup>45</sup>*

## **Meaning of entries suggesting frustration, loss of temper and control**

20. The following diary entries and corresponding evidence given by Ms Folbigg in the Inquiry about those entries are a sample of Ms Folbigg's contended for interpretation of entries which on a plain reading suggest frustration, and a loss of temper and control on her part, such that she could have proceeded in the moment of that loss of control to smother the children.

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<sup>42</sup> Transcript of the Inquiry, 29 April 2019 T622.26.

<sup>43</sup> Transcript of the Inquiry, 1 May 2019 T798.30-37.

<sup>44</sup> Transcript of the Inquiry, 30 April 2019 T699.50-700.13.

<sup>45</sup> Transcript of the Inquiry, 30 April 2019 T727.5-44.

**25 October 1997 – 10 pm Sat nite**

*Just watched video of Sarah, little upsetting, but she did some funny things. Made us laugh, think John was a little upset but he hid it well. I looked at it, but have to be honest & say I cherish Laura more, I miss her yes, but am not sad that Laura is here & she isn't. Is that a bad way to think, don't know. I think I am more patient with Laura. I take the time to figure what is rong [sic] now instead of just snapping my cog. Also she is a far more agreeable child & is easily... most of the time... Laura has definite feminine features, they are chalk & cheese. And truthfully just as well. Wouldn't of [sic] handled another one like Sarah. She saved her life by being different.*<sup>46</sup>

Q. You go on to say, "I think I am more patient with Laura". You see that?

A. Yes.

Q. Does that mean you were less patient with Sarah?

A. That is reflective to me always thinking I'd done something wrong.

Q. Yes, well, whether it is or not, it seems to be saying that you were more patient with Laura than you were with Sarah?

A. Because at the time, I believed that, yes.

Q. You say, "I take the time to figure out what is wrong now, instead of just snapping my cog"?

A. Yes.

Q. What did you mean by "snapping" your "cog"?

A. "Snapping my cog", to me, could have been simply as even showing a slight frustration.

Q. Well, could it have been more than "a slight frustration"?

A. No.

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<sup>46</sup> Exhibit AZ, Diaries tender bundle, p 226.



Q. Was there ever a time when you say that you almost purposely dropped Sarah on the floor?

A. I didn't believe that that was Sarah, I thought you were referring to Laura there. Are you referring to Laura or are you referring to Sarah?

Q. Sarah.

A. Sarah. I don't recall saying that..(not transcribable)..--

Q. You don't recall. But you think you might have said it about Laura?

A. Mm.<sup>47</sup>

### **3 November 1997 – Monday arvo – 6pm**

*Why is it when Im so tired Im feeling sick — shitty I cant sleep very depressed with myself at the moment. Feeling deprived of my freedom. I know that's the price that you pay for having a baby, but Ide [sic] not be human if it didnt get me down a little every now and then. It's because my release & enjoyment of the gyms been taken away I have to take her with me most times now, which means I can't enjoy myself & turn off like I usually do because she's there & I worry about her.*

*Someone's awake got to go. Lost it with her earlier. Left her crying in our bedroom & had to walk out - that feeling was happening. And I think it was because I had to clear my head & priotise [sic]. As I've done in here now. I love her I really do I don't want anything to happen.<sup>48</sup>*

Q. Something inside you?

A. Yes, of me not being able to figure out what it was that she wanted, she was upset and crying and I couldn't figure out why and the crying had become an all-day thing and incessant and losing it and leaving her on the floor in the bedroom was an exasperated frustrated feeling where I couldn't figure out what it was she wanted and I walked out

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<sup>47</sup> Transcript of the Inquiry, 29 April 2019 T636.9-39.

<sup>48</sup> Exhibit AZ, Diaries tender bundle, pp 229-230.

*thinking okay let's go outside, let's prioritise, breathe and I can maybe help this child.*

*Q. So you succeeded there, because you did love Laura and you didn't want anything to happen to her?*

*A. Yes.*

*Q. You walked away and left her so that nothing bad would happen to her?*

*A. No, that's not correct.*

*Q. But you said "That feeling was happening"?*

*A. Yes, my upset feeling--*

*Q. "That feeling"?*

*A. --of not being able to figure out what my child wanted and how I could help her.*

*Q. It was that feeling that you had hoped before Laura's birth to be able to identify when it was growing within you?*

*A. No.*

*Q. Growing inside you?*

*A. No.*

*Q. In your head?*

*A. That comment in that diary is in reference to a particular episode where I was struggling, not understanding how I could help her, wasn't meeting her needs I got frustrated like every other mother would to leave her to it for a minute, came back in and helped solve the problem.*

*Q. You say you lost it with her, did you have some angry demonstration with her, did you--*

*A. No.*

*Q. --shout at her or--*

A. No I simply walked in and put her on the floor.

Q. What does "lost it" mean?

A. Control of myself, I'm talking about myself there, not--

Q. What about "lost it with her"?

A. Well I did because I couldn't figure out what was going on, I had a frustrated moment with her, I couldn't figure out why she was crying so much, so "lost it" is in reference to me, okay I'm not handling this and you're not handling this, let's just put you here and I'll go out and figure it out and we'll come back and we'll fix this.

Q. Well she doesn't have to handle anything, she's only a baby isn't she?

A. Absolutely.

Q. So "lost it with her", did you shout at her?

A. No I'm not recalling that no.

Q. Did you growl at her?

A. No.<sup>49</sup>

### **28 January 1998 – Wednesday 5:30pm**

Very depressed with myself, angry & upset. I've done it. I lost it with her. I yelled at her so angrily that it scared her, she hasn't stopped crying. Got so bad I nearly purposely dropped her on the floor & left her. I restrained enough to put her on the floor & walk away. Went to my room & left her to cry. Was gone probably only 5 mins but it seemed like a lifetime. I feel like the worst mother on this earth. Scared that she'll leave me now. Like Sarah did. I knew I was short tempered & cruel sometimes to her & she left. With a bit of help. I don't want that to ever happen again. I actually seem to have a bond with Laura It cant happen again. I'm ashamed of myself. I can't tell Craig about it because he'll worry about leaving her with me. Only seems to happen

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<sup>49</sup> Transcript of the Inquiry, 30 April 2019 T755.28-756.37.

*if I'm too tired her moaning, bored, wingy sound, drives me up the wall. I truly can't wait until she's old enough to tell me what she wants.*<sup>50</sup>

*Q. So you're expressing this idea or thought that because you were short tempered and cruel to her, to Sarah, that she left this world?*

*A. Yes, that's how weird my belief had gotten.*

*Q. What, she decided that she wanted to go into another world because she couldn't put up with your short temperedness and cruelty towards her, is that it?*

*A. Cruelty, the word cruelty, I need to also clarify that to me that's like if you leave your child to cry for too long, I figured that and deemed that as being cruel. I'm not talking cruel as in a cruel physical action on anything. Short tempered, yes, it goes with being frustrated. If you're frustrated you get a little short tempered.*

*Q. So you weren't using those terms in any - just a sort of minimal kind of way in the way you've described--*

*A. Yes.*

*Q. --short tempered and cruel?*

*A. Yes.*

*Q. But it was enough in your mind for her to get the idea, "Look, I don't want to be around this mother anymore, I'll simply die." Is that what you're trying to say?*

*A. Because by the time, by the time Laura came around that's where most of my thoughts were. They were dark and they weren't very pleasant...*

*Q. Then you say "with a bit of help", do you see that?*

*A. Yes.*

*Q. So you're saying there that you were that bit of help?*

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<sup>50</sup> Exhibit AZ, Diaries tender bundle, p 258.

A. No, I'm saying that God, higher power, or another decision, or even my children Sarah deciding that she didn't want to say [sic] was the bit of help, not me.<sup>51</sup>

...

Q. "She'll leave me now like Sarah did." And there you, "I knew I was short-tempered and cruel sometimes to her and she left with a bit of help."

A. Because I thought, as I stated, I've already stated short-tempered and cruel could mean a variety of different things.

Q. I was going to ask you that; what did it mean with Sarah? How did you express your short-temperedness and cruelty to Sarah?

A. In being frustrated with her and not handling why she was crying or not being able to go to sleep.

Q. What cruel things did you say or do to her?

A. Not cruel as in inflicting harm in any way. I'm not talking by, cruel as in leaving them alone to, so you'd walk away or cruel as in not meeting their needs or cruel as in not understanding how to fix something and it, to me it all meant the same thing.

Q. "Cruel" is a very strong word for you isn't it?

A. Yes. It's a strong word I use in there yes.

Q. What did you do to Sarah?

A. I didn't do anything to Sarah.

Q. When you were short-tempered and cruel with her?

A. I didn't do anything to her.

Q. Well, you say, "I knew I was short-tempered and cruel sometimes to her." "To her"?

A. Yes, I was short-tempered. I was irritable. I was cranky.

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<sup>51</sup> Transcript of the Inquiry, 29 April 2019 T669.13-50.

*Q. And cruel?*

*A. Not as in an action. No.*

*Q. "And she left with a bit of help." You mean she died don't you?*

*A. She died, yes.*

*Q. "Bit of help"?*

*A. From God, fate or something else. Not me.<sup>52</sup>*

...

*Q. "I actually seem to have a bond with Laura", which suggests clearly, doesn't it, that you didn't have a bond with Sarah?*

*A. No. It doesn't suggest clearly at all. It's, it's stating that I've got a bond with Laura.*

*Q. "I actually seem to have a bond with Laura." There's an air of incredulity there that you can hardly believe yourself that you have struck up a bond with that child doesn't it?*

*A. Yes, I suppose so.*

*Q. Because you didn't have that bond with the others?*

*A. I've already been through all this as to how my bonds were created or not created with all three children.*

*Q. You didn't have any did you?*

*A. Not with, probably not with the last three no.*

*Q. Or a maternal instinct at all, did you?*

*A. I wouldn't say not at all but--*

*Q. Not until you had Laura did you?*

*A. Okay. Fine, I agree.*

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<sup>52</sup> Transcript of the Inquiry, 30 April 2019 T769.17-770.3.

Q. "It can't happen again. I'm ashamed of myself. I can't tell Craig about it because he'll worry about leaving her with me."

A. Yes. It can't happen again. I don't want anything like that to happen again. I was ashamed of myself as in being a failure as a mother and not thinking I was good enough at this job.<sup>53</sup>

**6 March 1998 - Friday nite 10pm**

Laura not well, really got on my nerves today, snapped & got really angry, but not nearly as bad as I used to get.<sup>54</sup>

Q. What did you do when you snapped?

A. I didn't do anything.

Q. What do you mean that you snapped when Laura got on your nerves?

A. I was just annoyed and angry with myself for not being able to handle the situation and figure out what was wrong.

Q. What, you got really angry? How did it manifest itself?

A. It didn't manifest itself in any way. It was just a feeling and an emotion I was having.

Q. How did you feel when you snapped?

A. I don't know.

Q. You got really angry that day but, "not nearly as bad as you used to get"?

A. Yes.

Q. Laura was at that stage about eight months old?

A. Yes. Yes.<sup>55</sup>

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<sup>53</sup> Transcript of the Inquiry, 30 April 2019 T770.29-771.6.

<sup>54</sup> Exhibit AZ, Diaries tender bundle, p 264.

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Q. When you say, "not nearly as bad as you used to get", what used to happen when you used to get angry?

A. I used to allow them to cry in a room by themselves for a while.

Q. That's not too bad is it? Everyone does that.

A. That's correct but in my belief and view at the time, which was extreme, doing that as far as I was concerned was not a good thing to do.

Q. You snapped and got really angry but, "not nearly as bad" as you used to get?

A. Because I thought I was handling things a little bit better.<sup>56</sup>

## Meaning of entries suggesting Ms Folbigg caused the deaths of Caleb, Patrick and Sarah

21. The following diary entries and corresponding evidence given by Ms Folbigg in the Inquiry about those entries are a sample of Ms Folbigg's contended for interpretation of diary entries which on a plain reading suggest that she was acknowledging that she was responsible, in the sense of causing, the deaths of Caleb, Patrick and Sarah.

### **4 December 1996 – Thurs 4:30am**

*I'm ready this time. But have already decided if I get any feelings of jealousy or anger to much I will leave Craig & baby, rather than answer being as before. Silly but will be the only way I will cope. I think support & not being afraid to ask for it will be a major plus. Also - I have & will change my attitude & try earnestly not to let anything stress me to the max. I will do things to pamper myself regularly & just deal with things. If I have a clingy baby, then so be it. A cat napper so be it. That will be when I will ask help & sleep whenever I can. To keep myself in a decent mood. I know now that battling wills and sleep*

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<sup>55</sup> Transcript of the Inquiry, 30 April 2019 T771.35-772.3.

<sup>56</sup> Transcript of the Inquiry, 30 April 2019 T772.12-22.



depravasion [sic] were the causes last time. Fish I've got help they are relaxing to watch its quite funny.<sup>57</sup>

Q. So just when you'd finally - did you ever experience this with Sarah during her life, that just when you'd finally got off to sleep she'd wake up again?

A. Yes, quite often.

Q. It put you under enormous pressure?

A. Yes, I would say so.

Q. Enormous stress?

A. Yes.

Q. Such that you snapped?

A. No.

Q. Such that you snapped your cog?

A. No.

Q. This "snap the cog" you say has got nothing to do with losing control and doing something, is that right?

A. Not to my child, no.

Q. Not to your child?

A. Snap--

Q. Did you lose control and do anything physically to yourself at the time you snapped a cog?

A. No.<sup>58</sup>

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<sup>57</sup> Exhibit AZ, Diaries tender bundle, pp 111-112.

<sup>58</sup> Transcript of the Inquiry, 29 April 2019 T649.21-46.

Q. You've referred to "battling wills and sleep deprivation" that were the causes last time. Is that right? Is that what you said in your diary entry, "battling wills and sleep deprivation were the causes last time"?<sup>59</sup>

...

Q. So causes of what?

A. Causes of the deaths. I'm, I'm reaching and searching for any reason or cause of death.

Q. Sleep deprivation, that's something that you suffered from, particularly with Sarah, correct?

A. Yes.

Q. It can put or would put or did put you under enormous pressure?

A. At times, yes.

Q. Such that you could snap your cog?

A. Not at Sarah.

Q. Not at Sarah?

A. Not at Sarah, no.

Q. Even though you were battling wills with Sarah, is that right?

A. My frustration levels and snapping cogs is the word you like to keep using, was more directed at my feelings of not having enough support at the time, that I felt like I was doing everything myself and deprivation, my sleep deprivation wasn't helping that situation. It was exasperating it.

Q. But you accept that sleep deprivation for an extended period with a child who you've said that you battled wills with at times, correct?

A. Yes.

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<sup>59</sup> Transcript of the Inquiry, 29 April 2019 T650.18-20.

*Q. Could put you under enormous pressure and did, is that right?*

*A. Yes, I've never denied that.*

*Q. Such that you might lose control of your actions and hurt the child?*

*A. No.*

*Q. Did you ever have any feelings like that, even close to that?*

*A. No, no, not at all.*

*Q. I suggest that what the concept or idea that you are describing in that entry is being placed under such stress that you snapped and were a danger to your children. What do you say?*

*A. I say no to that.*<sup>60</sup>

...

*Q. You've said now if you feel jealousy or anger you'd just leave Craig and the baby, right?*

*A. Jealousy is referring to - they're two separate thoughts there. They're broken up by the word "or", okay. Jealousy is referring to, it was a recollection of how Patrick was, even though I cared for him all the time, he was more Craig's boy, Sarah was my girl, and Laura ended up being my girl. The jealousy refers to that. It's not a jealousy as in me being jealous of my children. I was never ever jealous as such of my children.*

*Q. Is the word "jealousy" in relation to you, feeling jealous?*

*A. No, the word "jealousy" is a, is a reflection as the difference in, between the children, and how, you know, you can have a daddy's girl, you can have a mummy's girl. It's a, it's a different reference. Then it's broken by the word "or" and "anger too much", well as I said I didn't back then differentiate between frustration, anger, annoyance. It was all the same to me.*

*Q. But where does jealousy come into that explanation? I just don't understand that.*

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<sup>60</sup> Transcript of the Inquiry, 29 April 2019 T650.34-651.23.

A. As I say, if I had any feelings of the jealousy as in just with, you know, was this child going to be more Craig's or more mine, you know, and to – if it fell into any sort of frustration or an anger situation, then yes, I felt that I would leave Craig and leave the baby with Craig. Again it's another fleeting thought. These are not set in stone. They were never set in stone. All my thoughts were just random thoughts.

Q. But do you accept that it was a feeling of jealousy that you had?

A. Not jealousy as in a jealousy that I would do anything about. It's a fleeting, it's a fleeting thought.

Q. You would do something about it. You'd leave Craig and the baby.

A. But I never did.

Q. You see, I want to get - to try to understand what you've said in your diary. You say that if you had any feelings of jealousy, too much that you'd leave Craig and the baby.

A. Jealousy is also--

Q. Is that right?

A. Jealousy is also as I said, it's, it's, it was a reflective thought. It, it, it wasn't connected to the next phrase.<sup>61</sup>

...

Q. Well, you knew it, didn't you? You knew it was your dreadful moods, rather than keeping in a decent mood, that caused the deaths?

A. No, the – these diaries are me continually searching and asking and questioning. Statements such as those in them are me grasping and grappling with answers that I'm – that I'm trying to get. And when you take it from the point of view that I'm constantly blaming myself, yes, I had in my head a belief that my moods affected everything, they affected my children, my children then died and decided they didn't wish to be with me anymore. It was quite a warped view as to how I was thinking and is evident in the diaries and to how I'm writing them.

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<sup>61</sup> Transcript of the Inquiry, 29 April 2019 T651.37-652.29.

*Q. Because you know, don't you, that children, babies, don't decide whether or not to live?*

*A. At that stage in my life, I did not know that. At that stage in my life, I was doubting everything and highly stressed, and worried that here I am about to – you know, I'm going off on another tangent and I'm having another child, and my concerns were always – almost paranoia in the point, that I'm, I'm trying to make sure that Laura survives, Laura is successful, we're a family unit and my life goes the way I wish it to go.<sup>62</sup>*

...

*JUDICIAL OFFICER: Just before you do that.*

*Q. In that particular line, "I know that battling wills and sleep deprivation were the causes last time", when you used the word "the causes" what did you mean, the causes of what?*

*A. My belief at the time, your Honour, was it was all linked and related, my frustration and my inability to be a successful parent, I had belief that, you know, it was a wrong belief and a warped belief, but I had a belief that my children had decided they weren't staying with me anymore, and I did not understand why.*

*Q. So when you say "were the causes last time", the causes of?*

*A. The causes of their – yeah, the causes of them dying. They woke up and decided to never wake up again.*

*Q. So--*

*A. Like they'd sleep and decided never to wake up again.*

*Q. --it would read then on that basis, "I know now that battling wills and sleep deprivation were the causes of their deaths"?*

*A. In some respect to me, yes that's what I believed at the time.*

*JUDICIAL OFFICER: Yes, thank you.<sup>63</sup>*

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<sup>62</sup> Transcript of the Inquiry, 30 April 2019 T719.7-27.

<sup>63</sup> Transcript of the Inquiry, 30 April 2019 T719.5-27.

Q. Rather than, "answer being as before", you're referring to you having killed the babies. That's correct isn't it?

A. No, it's not. The words as to, "answer as before" is I never wanted to be put in the position where I, where I walked in and found one.<sup>64</sup>

...

JUDICIAL OFFICER

Q. Just while we're dealing with that particular passage, in the diary entry of 4 December 1996, you've written, "rather than answer being as before", could you explain to me what was the answer before that you're referring to?

A. "Rather than answer to before", is a separate thought again and it is a very dark thought and it's I didn't want to answer as in being the one to discover my children, I didn't want to do that again your Honour.

CUNNEEN SC

Q. That wasn't the answer, that wasn't an answer because when you're saying "Rather than answer being as before", you're talking about how you answered your feelings of jealousy and anger before aren't you?

A. No, my diaries are quite - as I've said before, they can be random and I can turn from one thought to another in a split second. I can be discussing how well - I'm having coffee and a relationship with Craig in one sentence and, within a full stop, I can be going into something that's quite deep and dark, so--<sup>65</sup>

**4 February 1997 – 3:30am**

*Still can't sleep. Seem to be thinking of Patrick & Sarah & Caleb. Makes me seriously wonder whether [sic] I'm stupid or doing the right thing by having this baby. My guilt of how responsible I feel for them all, haunts*

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<sup>64</sup> Transcript of the Inquiry, 29 April 2019 T654.1-5.

<sup>65</sup> Transcript of Inquiry, 30 April 2019 T714.1-16.

me, my fear of it happening again, haunts me. My fear of Craig & I surviving it if it did, haunts me as well. I wonder wether [sic] having this one, wasn't just a determination on my behalf to get it right & not be defeated by me totally inadequate feelings about myself. What sort of mother am I, have I been – a terrible one, that's what it boils down too – that's how I feel & that is what I think I am trying to conquer with this baby. To prove that there is nothing rong [sic] with me, if other women can do it, so can I. Is that a wrong reason to have a baby. Yes I think so, but it's too late to realise now. I'm sure with the support I'm going to ask for I'll get through. What scares me most will be when I'm alone with the baby. How do I overcome that? Defeat that?<sup>66</sup>

Q. Is it the case that the time that you were the most scared about was when you were alone with the baby?

A. Yes. And that's purely because when I found the children I was always alone.

Q. Were you?

A. I felt I was.

Q. But were you?

A. Technically no.

Q. Physically were you alone?

A. A couple of times Craig was there yes.

Q. Two out of the four babies' deaths, Craig was asleep in the house as well with you was he not?

A. Asleep, so therefore alone.

Q. You had been asleep as well had you not?

A. Yes.

Q. When the baby died?

A. Yes.

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<sup>66</sup> Exhibit AZ, Diaries tender bundle, p 126.

*Q. Because you weren't awake when the baby died were you?*

*A. No.*

*Q. You were in the same position as Craig?*

*A. Yes, but--*

*Q. Both of you asleep?*

*A. He wasn't the one that found them. I was.*

*Q. What you are expressing in that entry is great fear of being awake and alone with the baby, what do you say about that?*

*A. I agree with that purely on the point that I was the one that always found them.*

*Q. What you are saying is that the time of greatest danger to the baby is when you were with them. That's what you're saying isn't it?*

*A. No.*

*Q. That's what scared you the most. Is that right?*

*A. No.*

*Q. Because you'd snap a cog?*

*A. No.*

*Q. And because that's what you'd done before when you were alone with the babies that had already died, isn't that correct?*

*A. No.*

*Q. Isn't that the thought you're expressing in that diary at that point?*

*A. No. I'm expressing my fear. That's all it is.*

*Q. You were expressing a fear of being alone with the baby. That's what you're frightened of?*



A. I'm expressing the fear that I was scared to death of finding my child not alive.<sup>67</sup>

**16 May 1997 – 2:00am**

*I think that she will be a great help in preventing me from stressing out as much as I've done in the past. Night time & early morning such as these will be the worst for me, that's when wishing someone else was awake with me will happen. Purely because of what happened before. Craig says he will stress & worry but he still seems to sleep OK every night & did with Sarah. I really needed him to wake up that morning and take over from me. This time I've already decided if I ever feel that way again I'm going to wake him up... I also have selfish reasons. I'd oke [sic] my last amount of private own time to myself. To just do what I want.*<sup>68</sup>

Q. "I really needed him to wake up that morning and take over from me", so are you referring to that morning when Sarah died?

A. I'm referring to the early morning, as in the day and just the thoughts that I felt like Craig did sleep too easily through a lot and that I just felt like he could've helped out more.

Q. But you see it's a cry of desperation almost isn't it?

A. (No verbal reply)

Q. Understand what I'm getting at?

A. I understand what you're getting at, yes.

Q. But you're feeling that you desperately needed him to wake up that morning and take over from you, and you're referring to the morning, the time that Sarah died aren't you?

A. I don't believe I am, I believe I'm being more general.

Q. Well what else can it mean?

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<sup>67</sup> Transcript of the Inquiry, 29 April 2019 T655.30-656.38.

<sup>68</sup> Exhibit AZ, Diaries tender bundle, pp 162-163.

*A. That because of the sleep deprivation and being exhausted and tired, that I just felt I needed more help and I wasn't getting it.*

*Q. "Wake up that morning", what is "that", isn't that the morning that Sarah died?*

*A. It may have been.*

*Q. Well it is isn't it, that's what you're referring to?*

*A. I'm not, I'm not a hundred per cent clear on that.*

*Q. "I really needed him to wake up", let's just go back a bit, "Says he will stress and worry, but he still seems to sleep okay every night and did with Sarah, I really needed him to wake up that morning and take over from me", well clearly you're referring to the time that Sarah died aren't you?*

*A. I may have been, I'm not a hundred per cent clear.*

*Q. And you are saying that you were awake, "I really needed him to wake up that morning and take over from me", well that means you were awake, doesn't it?*

*A. I'm still not a hundred per cent clear that I'm referring to that morning that she died there in that reference. I'm still--*

*Q. You see--*

*A. I believed and felt then that I wasn't getting the support that I thought I wanted and yes I was having a frustration with how easily I think Craig could sleep, compared to me and that I needed care and help with Sarah.*

*Q. You were awake with Sarah that morning, weren't you?*

*A. If I was caring for her then yes I most likely was.*

*Q. And that was the morning she died wasn't it?*

*A. I can't say with any clarity on that.*

*Q. And you were saying there that you were awake when Sarah died, aren't you?*

A. No.

Q. *That's what it means doesn't it?*

A. *No it doesn't.*

Q. *And you're trying to give it a different meaning I suggest to you, what do you say?*

A. *No, it doesn't mean that at all.*

Q. *Because that's not what – you haven't told the police or – you say that you went to Sarah and she was dead and that you weren't awake at the time, the actual time she died, that's what your position is isn't it?*

A. Yes.

Q. *But I suggest to you that this diary entry demonstrates something different to that?*

A. *I'm not agreeing with that.*<sup>69</sup>

...

JUDICIAL OFFICER

Q. *Can I just ask you this. In that passage that's been read out to you, it says you wish that somebody would wake up that morning and "take over from me" which tends, seems to indicate you want them to take over from you?*

A. *The care, yes, the general care of my child, yes.*

Q. *But is your explanation for this passage that you wanted somebody to be there when the baby was found to have died?*

A. *Yes, because by this stage your Honour I had an absolute fear of that. I never wanted to go through that again.*

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<sup>69</sup> Transcript of the Inquiry, 29 April 2019 T657.5-658.24.

Q. But what I'm pointing out, that you're saying you wanted somebody to take over from you, which seems inconsistent with just having somebody there to be there when you found the dead baby.

A. I'm, I'm not sure I understand the difference, your Honour. I'm still saying that I didn't wish to be alone in either situation.<sup>70</sup>

**6 July 1997 – fri nite 9:30pm [Error– should be 6 June]**

From now on though I'm sure his attention & focus will change from me to his child & so it should. I couldn't see that before. I was very selfish when it came to Craig's attention. Hopefully this time we have both learned how to share it but still manage to keep a little something aside for just each other. We will see. I hope I can say to him hey, this is our personal time just you & me, baby not included maybe if I remember to Pamper him, he'll remember me eg, put bub to sleep & have dinner with him, do a bath for him & I etc. Always hug & kiss him with love & intent affection, Cards, notes etc. listen to him. Not let baby totally dominnee [sic] my emotions & feelings. Maybe then he will see when, stress of it is getting to be too much & save me from ever feeling like I did before, during my dark moods. Hopefully preparing myself will mean the end of my dark moods, or at least the ability to see it coming & say to him or someone hey, help I'm getting overwhelmed, help me out. That will be the key to this babies survival. It surely will. But, enough dwelling, things are different this time. It will all work out for sure.<sup>71</sup>

Q. Well you were hoping that if you treat him even better than before, he will help you when the stress of it all is getting too much and save you from feeling like you did before during your dark moods?

A. Yes.

Q. And the dark moods were what led to the killing of your children?

A. My dark mood is as I've stated before, when I say dark mood I'm referring to when I'm depressed.

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<sup>70</sup> Transcript of the Inquiry, 30 April 2019 T732.15-31.

<sup>71</sup> Exhibit AZ, Diaries tender bundle, p 182.

*Q. And well didn't these dark moods come on you without warning, with very little warning and even surprise you?*

*A. Occasionally yes.*

*Q. And they shocked you and you were shocked at what they brought about after they had passed, isn't that right?*

*A. No I'm not going to agree with that, that they shocked me.*

*Q. Well you go on to say, "Hopefully preparing myself will mean the end of my dark moods or at least the ability to see it coming and say to him or someone, hey help I'm getting overwhelmed here, help me out"?*

*A. Yes, as in I'm getting depressed and that I will require help at that time.*

*Q. You don't say depressed, even though you do say depressed a lot of times in the journal, you don't say that here do you?*

*A. My reference to a dark mood is a reference to depression.*

*Q. This is worse than that I'd suggest to you, this is a dark and murderous mood?*

*A. No.*

*Q. Because then you say, "That will be the key to this baby's survival, it surely will"?*

*A. As in reference to me being, if I'm not as depressed I can give 120% to my child and her needs, then yes that is what that's referring to.*

*Q. The key to survival, the one thing that keeps baby alive that means doesn't it?*

*A. It's an extreme way of thinking about it but my diary is full of extreme thoughts, they're not, at times not even making sense to myself, so--*

*Q. Madam you always made sense to yourself in these journals didn't you?*

A. *Not all the time no.*

Q. *There was no point--*

A. *There's many a time I've said in my journal, that's rather silly or along those lines, realising and accepting that I've just said something that is totally silly.*

Q. *You may have looked back in hindsight years before and thought that things were silly, in hindsight, that may have happened, correct?*

A. *Yes, of course.*

Q. *But when you were writing these entries, you were being very sincere with yourself I'd suggest, for how you felt at that time?*

A. *Yes okay.*

Q. *And you knew that the key to the baby's survival, the one thing that it was essential to do, was to have someone help you see the dark moods coming, someone to be with you to identify that, what do you say?*

A. *Someone to help me at the time when I'm feeling depressed and lonely and unsure of myself, then yes I would've liked that.*

Q. *But there's nothing indefinite about this, "That will be the key to this baby's survival, it surely will", is there?*

A. *I'm convincing myself there that whatever I'm doing in my preparation for this is going to work and Laura will survive and everything will be well.<sup>72</sup>*

**25 August 1997 – Monday nite 8:30pm**

*Scary feelings, I've realised I actually love her & have bonded with her, wish to protect her etc. Maternal instinct, is what they call it. I now know I never had it with the others. Monitor is a good idea. Nothing can happen without the monitor knowing & since I'm not game*

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<sup>72</sup> Transcript of the Inquiry, 30 April 2019 T737.16-738.30.

*enough to not plug it in, because they'd want to know why I hadn't. Everything will be fine this time.*<sup>73</sup>

...

*Q. May we go to the 25th, and then your little baby Laura arrives in August.*

*A. Mm-hmm.*

*Q. 1997, and may we go to 25 August 1997. You say in the second paragraph there, "Scary feelings. I've realised I actually love her and have bonded with her, wish to protect her et cetera. Maternal instinct is what they call it. I now know I never had it with the others."*

*A. It was, it was a scary feeling. I had – Caleb I was a first time mother so I was struggling with did I bond or not? Patrick was – I had bonded with him and then was so intent on his survival and day to day care that I didn't really think of much else. Sarah I was restrained in my bonding with her because I'd already lost Caleb and Patrick, but I did in the end, and with Laura, yes, I was feeling an immediate bond with her and it was the first time that I'd felt that.*

*Q. In fact you say not only did you – you don't say there, "I know my maternal instinct didn't arrive for several weeks or months after the others", you say "I know now I never had it with the others".*

*A. Because the feeling was extremely strong with Laura so I just merely commented in there that I didn't believe I had it with the others.*<sup>74</sup>

### **25 October 1997 – 10 pm Sat nite**

*Just watched video of Sarah, little upsetting, but she did some funny things. Made us laugh, think John was a little upset but he hid it well. I looked at it, but have to be honest & say I cherish Laura more, I miss her yes, but am not sad that Laura is here & she isn't. Is that a bad way to think, don't know. I think I am more patient with Laura. I take the time to figure what is rong [sic] now instead of just snapping my coq.*

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<sup>73</sup> Exhibit AZ, Diaries tender bundle, p 220.

<sup>74</sup> Transcript of the Inquiry, 30 April 2019 T747.9-27.

Also she is a far more agreeable child & is easily... most of the time. Not sure how Craig feels about Sarah now. Know that even though he tried, he loves Laura just as hard – wasn't prepared for that. Thought he could remain stand offish, but couldn't. I think Laura is beautiful compared to Sarah — she was cute but Laura has a special look about her. Her slight difference in looks gives her a beautiful face, not just pretty, cute & cuddly, gorgeous & beautiful. Well so far anyway. Looking at the video, Sarah was boyish looking. Laura has definite feminine features, they are chalk & cheese. And truthfully just as well. Wouldn't of [sic] handled another one like Sarah. She saved her life by being different.<sup>75</sup>

Q. Aren't you saying there that if Laura had been like Sarah you wouldn't have handled it?

A. "Wouldn't have handled another one like Sarah", refers to Sarah in particular and I'm also, at the same time, reflecting the different style in parenting which, which I was trying to do. Sarah, I felt at the time that, I didn't handle very well. I was constantly doubting my ability as a mother. It was a constant thought.

Q. You say that Laura "saved her life by being different" to Sarah, is that right?

A. Yes, and that alludes to just the difference in my children. But it's simply just the difference in their characters and how they were.

Q. Because you had difficulties with Sarah, didn't you?

A. I had a sleeping issue with Sarah, yes.

Q. You felt that you were sleep-deprived with Sarah?

A. At times, yes.

Q. And that you had a "battle of wills" with Sarah, I think you've described?

A. "Battle of wills" was a term that was used by someone else, but, yes.

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<sup>75</sup> Exhibit AZ, Diaries tender bundle, p 226.



*Q. It was a term that you have used in your diaries?*

*A. After it was mentioned by someone else that they thought that's what it was, yes.*

*Q. But it's a term that you wrote down in relation to your relationship with Sarah, that it was a battle of wills between you. That is correct, isn't it?*

*A. It's a belief I had at the time, yes.*

*Q. So, at the times that you were having a battle of wills with Sarah, were those the times when you "snapped your cog"?*

*A. No.*

*Q. Not--*

*A. No, not all, no.*

*Q. Not at all?*

*A. I wouldn't say not at all but, no.*

*Q. Was there ever a time when you were sleep-deprived and battling wills with Sarah that you "snapped your cog" as you refer to?*

*A. As in, being frustrated with her lack of sleep of routine, then, yes.*

*Q. Well, see, frustration is something that probably goes on in your mind, isn't it? It's a state of mind, is it not?*

*A. Frustration? Yes, yeah.*

*Q. "Snapping your cog" suggests some kind of action, doesn't it?*

*A. Not to me.*

*Q. Doesn't it suggest losing control?*

*A. It's a loss of control, yes. "Frustration", "loss of control", "anger", "snapping cog", all these references I don't differentiate between.*

*Q. But they're not one in the same concept, are they?*

*A. I believed at the time they were.*

Q. You see, what we're talking about is the meaning of your use of words in these diaries, isn't it?

A. If you like, yes.

Q. And what I'm suggesting to you is that there's a distinction between feeling frustrated and snapping your cog. What do you say about that? They're different concepts, is the point I'm trying to put to you. What do you say about that?

A. At the time, I didn't believe – I didn't differentiate between them. If I was slightly frustrated, that equalled me being out of control in some fashion, which equalled me snapping my cog. There was no differentiation for me.

Q. I suggest to you that you used the term "snapping your cog" as a mitigating term for something that you had done to Sarah in order to stop her living. What do you say about that?

A. No, I won't agree with that at all.<sup>76</sup>

### **9 November 1997 – Sunday nite 8.45pm**

*Craig was pretty drunk Friday nite [sic]; In his drunken stupor he admitted that he's not really happy. There's a problem with his security level with me & he has a morbid fear about Laura - he well I know theres nothing wrong with her. Nothing out of ordinary any way. Because it was me not them. Think I handle her fits of crying better than I did with Sarah – I've learnt to... getting to me, to walk away & breath in for a while myself. It helps me cope & figure out how to help her. With Sarah all I wanted was her to shut up. And one day she did.<sup>77</sup>*

Q. May we move on to 9 November please, on 9 November 97 you're talking about Craig, you say "There's a problem with his security level with me and he has a morbid fear about Laura", so far have I read it properly?

A. Yes, security level as in our relationship and our marriage.

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<sup>76</sup> Transcript of the Inquiry, 29 April 2019 T637.24-638.50.

<sup>77</sup> Exhibit AZ, Diaries tender bundle, p 231.

*Q. And you're saying there that Craig has a morbid fear about Laura, does that mean that Craig is constantly worried about Laura's health and wellbeing, in view of what has happened with other children?*

*A. Yes, same as me yes.*

*Q. But you say "me, well I know there's nothing wrong with her", that's right isn't it?*

*A. (No verbal reply)*

*Q. "Me, well I know there's nothing wrong with her."*

*A. Well I did know at the time there was nothing wrong with her, she was a very healthy baby.*

*Q. "Nothing out of ordinary anyway" and then you say "Because it was me not them"?*

*A. Because again I always constantly blamed myself for everything and took the responsibility and onus of responsibility on the fact that I'd lost the last three as my inability and failure as a mother.*

*Q. Here is perhaps the clearest expression of the truth of what happened to your first three babies in any event, because Laura was still living at this stage, you are saying there that you know that there is nothing wrong with Laura and that Craig really doesn't need to have this fear about her, aren't you?*

*A. No, I would never presume to think that I should tell Craig he shouldn't have a feeling of any sort.*

*Q. You're saying, we didn't say, we have a morbid fear about Laura, you said "He has a morbid fear about Laura"?*

*A. An observation yes.*

*Q. So he on the one hand has a morbid fear, "Me" meaning yourself, "Well I know there's nothing wrong with her"?*

*A. In an attempt to try and ease his fear, yes.*

*Q. No, you are making the distinction, like the chalk and cheese distinction, that Craig, because he thinks his children are liable to die*

*suddenly of natural causes, has a morbid fear about his fourth child, you on the other hand know there's nothing wrong with her, that's what you're saying isn't it?*

*A. Because it's what I desperately wanted, for there to be nothing wrong with her.*

*Q. You're saying there's nothing wrong with her because it was "me not them"?*

*A. Two separate thoughts, one--*

*Q. In the same paragraph?*

*A. I do it all the time yes in the same paragraph, one is where I'm noting there is nothing wrong with my child, at that particular time she's very healthy, I had hope for a future with her, the second thought I'm always blaming myself for everything, so if anything was to go wrong I would've instantly blamed myself anyway because I was her mother.*

*Q. But that paragraph says "Craig is worried about Laura dying suddenly, I, on the other hand, know that she won't, because" in relation to the other children, it was me who killed them not them, that died?*

*A. No.*

*Q. That's what that means, very plainly isn't it?*

*A. No it's not very plain at all, no.*

*Q. It is very clear in the context of these journals isn't it?*

*A. No.*

*Q. "It was me, not them"?*

*A. I always thought it was me, always blamed myself.<sup>78</sup>*

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<sup>78</sup> Transcript of the Inquiry, 30 April 2019 T756.42-758.11.

22. During the course of examination by her counsel Ms Folbigg was asked where her view that her mood would impact upon others including her children had come from. She said:

*Your Honour my own upbringing was I, even as a child, if my mood affected my mother there was a response to that, there was a consequence to that, so I therefore grew up believing that I had to always keep any negative or emotions or moods in check because I didn't wish to inflict on other people and I never wanted to burden other people and I had learned that if I did so there was always a consequence of some sort to that.*<sup>79</sup>

### **Meaning of entry “obviously I’m my father’s daughter”**

23. Ms Folbigg was asked in the Inquiry about the words “obviously I’m my father’s daughter” written the following entry dated 14 October 1996.

**14 October 1996 – Monday 9:00am**

*Children thing still isn't happening. Thinking of forgetting the idea. Nature, fate and the man upstairs have decided I don't get the 4<sup>th</sup> chance. And rightly so I suppose. I would like to make all my mistakes & terrible thinking be converted and mean something though. Plus, I'm ready to continue my family time now. Obviously, I'm my father's daughter. But I think losing my temper stage & being frustrated with everything has passed. I now just let things happen and go with the flow. An attitude I should have had with all my children if given the chance. I'll have it with the next one.*<sup>80</sup>

24. Ms Folbigg was asked about the words during her interview with police on 23 July 1999, and suggested it meant she was “a loser of some kind”. She also agreed during the interview there was a link between the entry and losing her temper.<sup>81</sup>
25. At the trial, the words from the entry itself and the answers during the interview were excluded, pursuant to a determination by the trial judge that while the

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<sup>79</sup> Transcript of the Inquiry, 1 May 2019 T789.20-25.

<sup>80</sup> Exhibit AZ, Diaries tender bundle, pp 177-178.

<sup>81</sup> 1 April 2003 T18.1-10; Exhibit E, ERISP of Kathleen Folbigg Q657.

probative value of the evidence as explained by the Crown was substantial, it did not outweigh the danger of unfair prejudice to Ms Folbigg before the jury.<sup>82</sup>

26. In her evidence in the Inquiry Ms Folbigg gave the following explanation:

*Q. We got to the stage, I'll just refresh your memory, the sentence before that was, "Plus, I'm ready to continue my family now. Obviously, I'm my father's daughter but I think losing my temper stage and being frustrated with everything has passed." You were asked about that in your original interview, about what you meant by, "Obviously, I'm my father's daughter." Do you remember that?*

*A. Yes.*

*Q. At 644 and 656 you said it meant to you that, "My father is just like a big total loser." 656, "Thinking I was a loser of some kind, just a passing thought." Do you accept that they're the answers that you gave?*

*A. Yes.*

*Q. As to what you were referring to when you said obviously you're your father's daughter?*

*A. Yes, I believed and thought at the time that my father's actions ruined my life and my life never seemed to go right from there. And it was a thought of, along the lines of sins of the father being on the daughter. Was I paying the price?*

*Q. What was the sin of your father?*

*A. My father killed my mother.*

*Q. You thought the sin of the father might come through to the daughter?*

*A. I believed at the time, yes that the, as I said by the, writing these diaries in preparation for Laura, everything was very dark and every thought was very dark and I blamed my father a lot for most of my life just going wrong.*

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<sup>82</sup> 3 April 2003 T189.17-25, T195.35-48.

*Q. But you see, what you're talking about there, there are three concepts there. You're talking about being ready to continue your family. Then you say, "Obviously, I'm my father's daughter" and then you say, "But, I think losing my temper stage and being frustrated with everything has passed." So, you're saying there aren't you, that you think you're ready to have another family because the losing your temper stage and being frustrated has passed. Is that right?*

*A. No, number one is I thought I might have been ready to have another family. The second thought is about my father and how my life never went right after that. And the temper and frustration bit was me lamenting and desperately trying to seek answers and trying to control and make sure that everything went right and this attempt at having another child went the way it was supposed to.*

*Q. But you see, your father and you knew this at the time, had killed your mother?*

*A. Yes.*

*Q. Your understanding was that he'd killed her as a result of losing his temper?*

*A. Yes.*

*Q. What you're saying there is that you're ready because you won't lose your temper anymore like your father lost his temper and killed your mother. That's what you're saying aren't you?*

*A. No.*

*Q. You see, I put it to you that this reference to you just meant your father was a loser, doesn't make any sense at all in the context in which you say that, "Obviously I'm my father's daughter." What do you say?*

*A. That there are two separate thoughts there. I'm ready for my family now and then I've randomly thought because of thinking of family I've randomly thought because of my father, how life has gone all wrong. And then I've jumped back to going back to did the sins of my father visit on me as in me being frustrated in any way whatsoever and then my inability to control absolutely everything in my life at the time. I*

*have to make sure. I was preparing and had to make sure that all went well.*

*Q. What you're putting in those three sentences is that not that your father is a loser but that he was a killer and he killed when he was angry and that you're concerned about that quality in you. What do you say?*

*A. No. My, thoughts of my father rarely entered my head. That would have been one of the few times that it ever did. I disregarded him 90% of my life. But here I am preparing after three failures at being a mother, failures at, and me believing that I'd failed and lost control and couldn't handle anything, severely doubting my abilities. Here I am preparing to have another child and my father happened to pop into my head and I reflected on that.<sup>83</sup>*

## **Meaning of entries referring to Laura being “warned” and the “fate” of her siblings**

***15 December 1997 – Mon nite 10:14pm***

*Caz sent a beautiful Angel & Tedy for Laura. Both her & Craig are convinced that Lauras soul is not her own, by the looks of it. Me well Im sure she met everyone & they've told her, don't be a bad or sickly kid. Mum may you know crack it. They've warned her - good. But she's still her own little person & will always be — must stop calling her Sarah. She's most definitely not her.<sup>84</sup>*

*Q. So, this is where you're talking about Laura having, what, before her birth, met her siblings somewhere?*

*A. Yes, a belief, yes.*

*Q. And they told her, "Don't be a loud of sickly kid because mum may, you know, crack it"?*

*A. "Crack it", is not cope with it, not be able to handle that. It would be upsetting.*

*Q. "They've warned her. Good"?*

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<sup>83</sup> Transcript of the Inquiry, 29 April 2019 T672.21-673.45.

<sup>84</sup> Exhibit AZ, Diaries tender bundle, p 242.



*A. In reference to me believing that they've had a bit of a conversation.*

*Q. Well, warning is a strong conversation, isn't it?*

*A. No, not really. I'm simply stating, you know, they may have said to her, you know--*

*Q. We're warning you, don't be loud, don't be sickly or mum will crack it with you, and you'll end up here with us?*

*A. No, not at all.*

*Q. Of course, that's what it means, isn't it?*

*A. No.*

*Q. Craig and this kind lady gave the gift, "They think that she's a lovely soul". You, "Me, well, I'm sure she met everyone, and they've told her 'Don't be a loud or sickly kid. Mum may"--*

*A. Well, that's incorrect because the--*

*Q. --"crack it"?*

*A. That's incorrect, because I even said in the diary that they'd met everyone and I'm agreeing with that.*

*Q. They warned her about you?*

*A. No, that's not what I'm saying at all.*

*Q. Well, it is, it's precisely what you're saying. You're admitting to yourself, in your journal, that your previous children may have warned this one. It might be a joke, but it is a reflection of what happened, that if your other children were to meet this one who was still living, they'd warn her not to be loud or sickly, or she'd up dead like them?*

*A. No, not at all.*

*Q. It's all it can possibly mean, isn't it?*

*A. No.<sup>85</sup>*

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<sup>85</sup> Transcript of the Inquiry, 30 April 2019 T763.22-763.15.

**31 December 1997 – New Years Eve– 11pm**

*Getting Laura to be next year ought to be fun, She'll realise a Party is going on. And that will be it. Wonder if the battle of the wills will start with her & I then. We'll actually get to see. She's a fairly good natured baby – Thank goodness, it has saved her from the fate of her siblings. I think she was warned.<sup>86</sup>*

*Q. You associate the death of her three siblings at times when you were stressed out?*

*A. No.*

*Q. You don't?*

*A. No.*

*Q. At times when you may have lost control?*

*A. No.*

*Q. You don't?*

*A. No.*

*Q. Not at all?*

*A. In a metaphysical way, in a--*

*Q. Well, no – all right--*

*A. Yeah.*

*Q. --what do you mean by "metaphysical"?*

*A. I mean, the next sentence in that is "I think she was warned", which I – you're – I'm gathering you're going to ask about.*

*Q. Well, let's just explore that.*

*A. It's all connected.*

---

<sup>86</sup> Exhibit AZ, Diaries tender bundle, p 246.

*Q. Hang on, do you believe in the metaphysical?*

*A. I've always believed that there is a spiritual or something else going on, fate, karma, destiny.*

*Q. So, you're saying there then that, she's good because some higher being has warned her that if she's not good she'll lose her life?*

*A. No, I'm, I'm merely thinking to myself that, you know, this goes back to – right back to the, the clairvoyant sort of thing, where I'm thinking, did the other children have little chats to her, was she – you know, there was a discussion about whether Laura's soul was even her own, at one point, between us and other family members.*

*Q. So, did the other dead children have a discussion with the live one, Laura? Is that what you just said then?*

*A. It's, it's a thought of which I had, yes.*

*Q. And did you believe it?*

*A. At the time, yes.*

*Q. And so, what, they told her to be good and she'd live, is that how one interprets that?*

*A. No, I, I, take that as though they told her if, if she was good, mum would be okay and mum wouldn't stress as much.*

*Q. Mum wouldn't get angry and snap her cog--*

*A. No--*

*Q. --is that what you meant?*

*A. No, I'm generalising, it's – no.*

*Q. What I'm putting to you is that, you knew you'd got angry with your children, the three children that died, before you wrote this. What do you say?*

*A. I believed and felt that my moods at any given time affected my children, yes. I believed, as far out there as it is, that whatever bad*

*mood I might have been in was a negative thing I was putting onto my children and I didn't like it.*

*Q. And because you were in a bad mood, in some way that led to their death, but you can't really say how or why?*

*A. That's right, I'm always searching for why. It never stops.<sup>87</sup>*

...

*Q. What are you giving there, as the reason why she has not met the fate of her siblings?*

*A. I'm not giving any reason.*

*Q. Well you are, aren't you? That "She's a fairly good natured baby, thank goodness".*

*A. That's not a reason as such.*

*Q. You say it in terms, "She's a fairly good natured baby, thank goodness, it has saved her from the fate of her siblings."*

*A. Because again it goes to my extreme view and my extreme belief that something else had taken the other three of my children.<sup>88</sup>*

...

*Q. "I think she was warned", there's the warning again.*

*A. And as discussed previously, the warning is we were talking about Sarah's soul not being her own and the children all talking to each other.<sup>89</sup>*

...

*JUDICIAL OFFICER*

*A. It's--*

*Q. Can you explain to me what you were saying?*

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<sup>87</sup> Transcript of the Inquiry, 29 April 2019 T663.50-664.14.

<sup>88</sup> Transcript of the Inquiry, 30 April 2019 T765.43-766.4.

<sup>89</sup> Transcript of the Inquiry, 30 April 2019 T766.23-25.

A. That sentence your Honour is where I switched from, I've been talking about comparing my children; how easy one is to the other and then I switched and said "she saved her life by being different" as in the thought of my beliefs when it came to a spiritual belief or clairvoyant sort of belief and that the children would have spoken to each other and, and all that sort of thing and but yes, Sarah, Laura being a bit different could, could save her life. I'm meaning could save her life, not that it did save her life because it didn't.

Q. I'm sorry, I'm not familiar with the clairvoyant beliefs or what you're talking about. Can you explain it to me in some way?

A. At the time, when writing these because I was searching for questions so hard and always wanting to know why I had a belief that fate, karma, God, a spiritual thing going on that there was another reason as to why all this was happening. And when I went to a clairvoyant, which was mentioned in the last 24 hours, that clairvoyant gave me the peace that my children and Sarah were happy and it was a belief that just was ingrained in me; that there was other things going on beyond my control and all the answers that I was seeking all the time, "she saved her life by being different" is my hope and dream that Laura being different would have saved her life but in the end it didn't.

Q. Are you saying to me that you believe that there was some supernatural power that took the other three children away from you and you were concerned that that same supernatural power would take Laura away from you, and that she saved her life by being different?

A. Yes.

Q. On that basis?

A. Yes, along those lines, yes your Honour.<sup>90</sup>

...

Q. Is that the view that you hold today, that some supernatural power took your first three children away?

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<sup>90</sup> Transcript of the Inquiry, 30 April 2019 T752.5-35.

A. Yes.

Q. You hold that view today?

A. Yes, I had no answers as to why my - I have survived my children and outlived my children, I was constantly trying to search for that answer.

Q. But you can understand that there is a difference between not having any answers and coming upon as an answer, a supernatural power?

A. As, as your Honour was trying to, I thought your Honour was trying to understand the meaning of what I was trying to get across, the word supernatural I'm certainly not saying some ghost or entity or whatever came down and took my children, I'm saying that it follows along as a basis of trying to put together all the mystical and spiritual beliefs I had at the time and I still have now.

Q. So you still hold the view that some supernatural power took all of your children, or just the first three?

A. No, all of them.<sup>91</sup>

## Other diary entries

27. Some of the other extracts from Ms Folbigg's diary entries before the Inquiry are as follows:

### **3 June 1990 – the date of Patrick's birth**

*This was the day that Patrick Allen David Folbigg was born. I had mixed feelings this day wether [sic] or not I was going to cope as a mother or whether [sic] I was going to get stressed out like I did last time. I often regret Caleb and Patrick, only because your life changes so much, and maybe I'm not a person that likes change. But we will see?*

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<sup>91</sup> Transcript of the Inquiry, 1 May 2019 T805.9-28.

**18 June 1996 – Tues 10:21am**

*I'm ready this time and I'll have help & support this time. When I think I'm going to lose control like last times, I'll just hand baby over to someone else. Not feel so totally alone. Getting back into my exercise after will help my state of mind & sleeping whenever possible as well. I have learnt my lesson this time.*

**22 June 1996 – Sat**

*In my most dangerous mood, I'm not nice to be around & always want to be anywhere, but where I am.*

**21 July 1996 – 10:43pm**

*I'm going to try my hardest this time. If anything does happen, I'll just leave and try and let Craig go in peace & start again.*

**26 August 1996 – 9:30am**

*Went to Clairvoant [sic] last week – so did Craig. I always believed there is more going on than just human nature. I seem content now because I now know that even though I'm responsible. It's alright. She accepts and is happy their [sic]. I've always felt her strongly. And now I know why. She is with me. I think my mother is too.*

**8 September 1996 – Sunday arvo**

*And I have enough friends now, not to loose [sic] it like before.*

**11 September 1996 – Tuesday nite 8:30pm**

*Feeling inadequate because I'm not pregnant yet. Feel as though it's my fault. Think its [sic] deserved after everything that's happened.*

*I suppose I deserve never to have kids again.*

**1 January 1997 – 9:30pm**

*I know that that was the main reason for all my stress before & stress made me do terrible things.*

**17 February 1997 – 9:50am**

*One day it will leave. The others did, but this one's not going in the same fashion. This time I'm prepared and know what signals to watch out for in myself, changes in mood etc.*

**2 April 1997 – Monday morn 9.15**

*I think this baby deserves everything I can give her. Concoiding [sic] I really gave nothing to the others. I think even my feelings towards this one are already deeper. Shame, but that's the way it is.*

**26 June 1997 – Thursday nite 9:30pm**

*With the other 3 I never bothered to think of school & teenage years. Maybe because I always knew they'd never get there.*

**20 July 1997 – Sunday nite 9:30pm**

*Problem was with the other 3 kids – felt I didn't deserve to be extended & that I was condemning them to life with me – that feeling has changed – so this time all is well & well it will go.*

**29 October 1997 – Wed nite 9.48pm**

*Would be great to see Lea's face, but also scary, because it's a little to similar to what we did with Sarah. But Laura's different. Totally she doesn't push my Button anywhere near the extent she did. Which is good for her is all I can say.*

**8 November 1997 – Monday night 10pm (error made by Ms Folbigg – should be 8 December)**

*Lost it with Laura a couple of times.*

*Much [sic] try to release my stress somehow. I'm starting to take it out on her. Bad move. Bad things & thoughts happen when that happen. It will never happen again.*



**4 January 1998 – 10:49pm**

*We watched her video. Made me realise how much I love Laura & cherish her like I never did the others.*

**1 April 1998 – Wednesday 10:50pm**

*Thought to myself today difference with Sarah... to Laura, with Laura I am now ready to share my life, I definitely wasn't before.*

## The evidence of possession and dispossession of the diaries

28. The chronology of events as to how police came to be in possession of the diaries, as well as Ms Folbigg's account of the dispossession of other diaries from during the 1989-1999 period, is as follows.
29. Two diaries were initially provided to police voluntarily by Mr Folbigg on 19 May 1999. This occurred a few days after he first approached police on 14 May 1999.<sup>92</sup> The two diaries provided to police by Mr Folbigg in May 1999 consisted of entries between 1 February – 1 March 1989 (tendered in the trial as Exhibit L and one single entry from 20 February 1989 as Exhibit AK) and 4 June 1996 to 5 June 1997 (tendered in the trial as part of Exhibit J).
30. Mr Folbigg gave evidence at the trial that Ms Folbigg left the matrimonial home and moved into a flat in mid-April 1999, about six weeks or so after Laura's death on 1 March 1999. He understood this move meant the marriage was over. He said that a few weeks after Ms Folbigg moved out, he decided to tidy up her belongings. He said Ms Folbigg had told him in early May 1999 he could throw her things in the bin because she didn't want them.<sup>93</sup>
31. During the course of tidying up Mr Folbigg located a diary inside one of Ms Folbigg's bedside tables. He recalled having seen her writing in the diary years prior. He read some of the diary and described his reaction as follows, "I didn't know what to do with the diary. It frightened me. It worried me. It sickened me, and so I rang Detective Bernie Ryan."<sup>94</sup>

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<sup>92</sup> 28 April 2003 T960.36-49.

<sup>93</sup> 3 April 2003 T179.50-180.9.

<sup>94</sup> 10 April 2003 T523.56-524.7.

32. In re-examination at the trial Mr Folbigg confirmed it was the contents of the diary relating to Ms Folbigg's attitude towards the children which he had read prior to providing the diary to police.<sup>95</sup>
33. Mr Folbigg gave evidence at the trial that shortly after attending on police on 19 May 1999, he met with Ms Folbigg and informed her that he had spoken to police and provided them with a diary that he had found. He said there was a discussion about the contents of the diary, and that after this discussion her attitude towards him changed in the sense of becoming more friendly. He said about one month after this discussion Ms Folbigg returned to the matrimonial home and the relationship resumed until they separated on a final basis in June 2000.<sup>96</sup>
34. Detective Senior Constable Ryan gave evidence at the trial that on 23 May 1999 Mr Folbigg met again with police. Mr Folbigg informed police he had resumed his relationship with Ms Folbigg and supported her. He also changed the information he had told police on 14 and 19 May 1999.<sup>97</sup>
35. On 16 July 1999 a listening device at the matrimonial home had been activated. The listening device recorded the following events which were not part of the evidence before the jury but were tendered into evidence in the Inquiry.
36. On 22 July 1999 at 10:15pm, the evening before Ms Folbigg's interview with police, the listening device recorded a conversation between Mr and Ms Folbigg in which Ms Folbigg was recorded as saying:

*I just thought I'd tell you that even though I'm writin' in this diary I've decided that if you want to read it you can... being getting in the habit of writing in the diary and then not tell you about it.*<sup>98</sup>

37. Detective Senior Constable Ryan gave evidence at the trial that having read carefully the 1996-1997 diary and considered what Mr Folbigg had told police, on 23 July 1999 he sought to speak to Ms Folbigg about the deaths of the children. That day, he attended the matrimonial home and invited Ms Folbigg to participate in an electronically recorded interview at the Singleton police station, which she agreed to.<sup>99</sup> Mr Folbigg initially attended the police station with her.<sup>100</sup>

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<sup>95</sup> 3 April 2003 T180.28-181.11.

<sup>96</sup> 3 April 2003 T181-183.

<sup>97</sup> 28 April 2003 T962.10-44.

<sup>98</sup> Exhibit AZ, Diaries tender bundle, p 295.

<sup>99</sup> 28 April 2003 T963.5-29.

<sup>100</sup> 28 April 2003 T963.45-50.

The recorded video and transcript of the interview were tendered as Exhibits AH and AJ respectively in the trial.

38. During the course of the interview, Ms Folbigg was asked a number of questions about specific entries in the 1996-1997 diary provided to police by Mr Folbigg. Her responses to those questions are discussed above.

39. Ms Folbigg was also asked about the existence of any other diaries. She informed police she had disposed of three other diaries on Mother's Day that year, being Sunday 9 May 1999. She said:

*So it was probably only, to be truthful, Mothers' Day this year I decided not to write in them any more, so yeah. 'Cause I had written in a few and on Mothers' Day this year I sort of pulled one out to have a look and I've flicked back at what I'd written and pretty much decided that life's pretty crappy and I shouldn't be writing' it down and reminding myself of all these things, and I just got rid of them all. So, and I haven't written one since... They were thrown away in the bin, probably dumped by now as far as I know.<sup>101</sup>*

40. Ms Folbigg suggested to police there were other diaries also, which had likely been lost in the course of moving house multiple times.<sup>102</sup>

41. Later in the interview, when asked again about Mother's Day that year, Ms Folbigg said:

*Mother's Day was just depressing, and I tried to make it as normal as possible without paying attention to it. And I was gonna write in my diary again and sort of let loose but I sort of flicked back a few pages and was sort of readin' things that I had written and got the shits with my life and got the shits with writin' in all in here and sort of thought how stupid is this, I should be talking to Craig, not writing in a bloody book and I just threw them all and decided I'd never write in them again.<sup>103</sup>*

42. When asked whether she had destroyed or thrown away the diaries after Mr Folbigg told her he had given a diary to police, Ms Folbigg said:

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<sup>101</sup> Exhibit E, ERISP of Kathleen Folbigg Q459-462.

<sup>102</sup> Exhibit E, ERISP of Kathleen Folbigg Q463.

<sup>103</sup> Exhibit E, ERISP of Kathleen Folbigg Q853.

*No, he didn't tell, it was after that 'cause he told me that he had given you a diary and he said the [sic] he told you he saw one on my night stand and I said, Well I haven't got it any more, and I told him that I had gotten rid of it that day, so Mother's Day.*<sup>104</sup>

43. After the interview concluded, police informed Ms Folbigg they were going to execute search warrants on the matrimonial home and the flat where Ms Folbigg had been residing before returning to live in the matrimonial home after Mr Folbigg first approached police.<sup>105</sup> Police asked Ms Folbigg "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".<sup>106</sup> During the course of the interview Ms Folbigg had told police that all that remained at the flat address was furniture.<sup>107</sup>
44. The jury heard that two search warrants were executed that evening. The first warrant was executed at the flat. There police located and seized a number of items.<sup>108</sup> The jury was not expressly told, but one of the items seized included a diary. The diary was not described to the jury or tendered into evidence, but contained some entries from 1 January – 27 December 1992, being the time of Ms Folbigg's pregnancy with the child Sarah and her first three months of life. This diary was tendered in the Inquiry.
45. The second warrant was executed at the matrimonial home. At the commencement of the search police said to Ms Folbigg, "What we are actually doing here is we are here to look for diaries, like we did at the last flat. Are there any diaries here?" Ms Folbigg said "Yeah, one that I bought yesterday".<sup>109</sup> Ms Folbigg went into the main bedroom of the house and retrieved from the built-in wardrobe a personal diary from 1999.<sup>110</sup> That diary was not tendered into evidence at the trial but was tendered in the Inquiry.
46. Police then found another diary, containing entries between 6 June 1997 and 10 April 1998, inside the wardrobe in the bedroom.<sup>111</sup> When asked whether she wished to make any comment about this, Ms Folbigg replied "I didn't know it was

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<sup>104</sup> Exhibit E, ERISP of Kathleen Folbigg Q862.

<sup>105</sup> 28 April 2003 T965.7-10.

<sup>106</sup> 28 April 2003 T965.12-19.

<sup>107</sup> Exhibit E, ERISP of Kathleen Folbigg Q24-27.

<sup>108</sup> 28 April 2003 T965.21-28.

<sup>109</sup> 28 April 2003 T965.30-58-966.1.

<sup>110</sup> 28 April 2003 T966.3-18.

<sup>111</sup> 28 April 2003 T966.20-32.

there, I thought it was gone”.<sup>112</sup> This diary was made Exhibit J in the trial upon Mr Folbigg identifying the hand-writing as Ms Folbigg’s.<sup>113</sup>

47. The statement of the police officer who located the diary confirmed he had located the diary inside the built-in wardrobe, specifically inside a crocheted carry bag wrapped in clothing, which was contained inside a blue plastic container which was on the floor inside the wardrobe.<sup>114</sup> This statement was not before the jury but was before the Inquiry.

48. At 9:40pm after the search warrant was completed, the listening device recorded a conversation between Mr Folbigg and Ms Folbigg which was transcribed by police as follows:

*Craig: I came home to get the diary and, take it back to work and I couldn't find it.*

*Kathy: I couldn't find it and they found it... and I've gone, I didn't have it so...*<sup>115</sup>

49. On 24 July 1999 at 7:53am police recorded the following in a transcript of the listening device recording:

*MRS FOLBIGG ENTERS BEDROOM AND APPEARS TO OPEN A CUPBOARD OR DRAWER CAUSING A LOUD NOISE.*

*Kathy: "I should have fucking done what I was gunna do, stuck it underneath that."*

*Police believe Mrs Folbigg was talking about the diary police found during the search warrant.*<sup>116</sup>

50. In June 2001 Mr Folbigg located inside a bread tin, which he and Ms Folbigg had used to keep important documents, one piece of paper from a 1993 calendar relating to the month of August. On the date of Sarah’s death, 30 August 1993, was recorded “Sarah left us. 1:00am”. He recognised the writing as Ms Folbigg’s. The calendar sheet became Exhibit H in the trial.<sup>117</sup>

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<sup>112</sup> 28 April 2003 T966.32-35.

<sup>113</sup> 3 April 2003 T201.21-26.

<sup>114</sup> Exhibit AZ Diaries Tender Bundle, Statement of Sergeant John Gralton (24 August 1999) p 6.

<sup>115</sup> Exhibit AZ, Diaries tender bundle, p 552.

<sup>116</sup> Exhibit AZ, Diaries tender bundle, p 559.

<sup>117</sup> 3 April 2003 T200.58-201.9.

51. In October 2002, shortly before the trial commenced, Mr Folbigg located inside an old brief case a further diary from 1990, during Patrick's lifetime. This diary became Exhibit G in the trial.<sup>118</sup>
52. In the Inquiry, Ms Folbigg gave a more comprehensive account of her possession and dispossession of the diaries than in her police interview.
53. It was Ms Folbigg's account that once she finished a diary it became "irrelevant", she "moved on to another one" and "didn't think of that particular diary any further".<sup>119</sup> She later said she had no pattern in terms of getting rid of or retaining diaries.<sup>120</sup>
54. When asked about specific diaries that were available, she said of the 1989 diary regarding Caleb that it was one of the few things about him she had so she kept it.<sup>121</sup> In relation to the 1992 diary which included events in Sarah's lifetime, and was located by police at the flat she had been living in, she said she didn't recall any specific reason for keeping it.<sup>122</sup>
55. In relation to the 1996-1997 diary found by Craig, and the 1997-1998 diary found by police, she said she had no recollection of what she had done with those once she finished writing with them, whether she had misplaced them or moved them about the house.<sup>123</sup>
56. In cross-examination by counsel for the Director of Public Prosecutions, Ms Folbigg said it didn't concern her that Mr Folbigg had found the 1996-1997 diary, because she didn't consider the statements in that diary about the death of her children to be "anything to be highly concerned about".<sup>124</sup>
57. It was Ms Folbigg's account that her diaries were not a concern for her such that she had to hide them.<sup>125</sup> She said they were never hidden: "people always knew I was writing in them, they were always in places where people could see them".<sup>126</sup>
58. In subsequent cross-examination by counsel for Mr Folbigg, she acknowledged that she was concerned that Mr Folbigg had read the 1996-1997 diary because

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<sup>118</sup> 3 April 2003 T199.43-45.

<sup>119</sup> Transcript of the Inquiry, 30 April 2019 T699.40-43; 1 May 2019 T806.40-45.

<sup>120</sup> Transcript of the Inquiry, 1 May 2019 T806.39.

<sup>121</sup> Transcript of the Inquiry, 1 May 2019 T807.5.

<sup>122</sup> Transcript of the Inquiry, 1 May 2019 T807.25.

<sup>123</sup> Transcript of the Inquiry, 1 May 2019 T807.7-13.

<sup>124</sup> Transcript of the Inquiry, 29 April 2019 T631.49-T632.21.

<sup>125</sup> Transcript of the Inquiry, 29 April 2019 T634.30-32.

<sup>126</sup> Transcript of the Inquiry, 29 April 2019 T633.40-41.

“diaries aren’t meant for other people to be reading”.<sup>127</sup> She considered it was an invasion of her privacy when he read her diary.<sup>128</sup> She agreed this was why she was disturbed to the point of quite strong language when she realised that police had found one of her diaries during a search warrant.<sup>129</sup>

59. Ms Folbigg agreed that the diary discussed by her and Mr Folbigg on the listening device recording was the 1997-1998 diary seized by police, and that her recorded words indicated she knew of the existence of the diary beforehand. She said “Yes because Craig had already told me that he’d handed a diary in, I am assuming there may have been others around the house”.<sup>130</sup>

60. Ms Folbigg denied however that in the listening device recording on the morning of 24 July 1999, after the police search warrant had been executed and the 1997-1998 diary seized, she was expressing regret at not having put the 1997-1998 diary in a more difficult place to find, stating her diaries were not a concern to her to have to hide them.<sup>131</sup>

61. Her evidence on the first day was that she did not know of that diary’s location in the wardrobe where it was found,<sup>132</sup> and “[didn’t] have a clue” what she had been talking about on the listening device recording.<sup>133</sup> When asked about the recording again on the third day of her evidence she said she still had no recollection at all.<sup>134</sup>

62. As to her account to police during the interview in July 1999 that she had disposed of three diaries on Mother’s Day in 1999, before Mr Folbigg told her he had been to police and provided them with a diary, Ms Folbigg repeatedly stated she only recollected throwing out one diary.<sup>135</sup> She recollected the diary she remembered disposing of was one she had been writing at the time in May 1999, which may have extended back to 1998.<sup>136</sup>

63. In cross-examination by counsel for the Director of Public Prosecutions she said that when she told police there were three diaries she meant that she was remembering possessing three.<sup>137</sup> When examined by counsel assisting she

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<sup>127</sup> Transcript of the Inquiry, 30 April 2019 T697.10-15.

<sup>128</sup> Transcript of the Inquiry, 30 April 2019 T699.20-25.

<sup>129</sup> Transcript of the Inquiry, 30 April 2019 T634.15-20.

<sup>130</sup> Transcript of the Inquiry, 1 May 2019 T803.40-804.20.

<sup>131</sup> Transcript of the Inquiry, 30 April 2019 T697.20-30.

<sup>132</sup> Transcript of the Inquiry, 1 May 2019 T807.7-13.

<sup>133</sup> Transcript of the Inquiry, 29 April 2019 T634.20-35.

<sup>134</sup> Transcript of the Inquiry, 1 May 2019 T802.30-45.

<sup>135</sup> Transcript of the Inquiry, 1 May 2019 T623.11, T623.17.

<sup>136</sup> Transcript of the Inquiry, 1 May 2019 T798.40-799.10.

<sup>137</sup> Transcript of the Inquiry, 29 April 2019 T623.17-18.

accepted that the transcript of the interview was to be read as her saying that she had thrown away three diaries on Mother's Day 1999, but maintained that giving evidence in 2019 she only remembered throwing out one.<sup>138</sup> She rejected the suggestion that it was more likely that she threw that diary away after she heard that Mr Folbigg had given a diary to police.<sup>139</sup>

64. Ms Folbigg said she never had an intention to "get rid of anything" and explained:

*To me the diaries were not that important as in information wise, and they didn't concern me in any way, that okay he's handed this diary over, you know. There, there was no conscious thought from me to go, "Right, that's it, I've got to get rid of everything".<sup>140</sup>*

65. Ms Folbigg's attention was drawn to the inconsistency between her statement during the interview with police on 23 July 1999 that she had not written in a diary since Mother's Day (May) 1999, and the existence of a diary written in by her in July 1999. She denied that she lied to the police and said: "when I got rid of or lost those diaries, I'd made a decision that I wasn't going to write in them but, as it turned out, I'd changed my mind and I decided to and I did."<sup>141</sup>

## Psychiatric evidence regarding the diaries

66. At the conclusion of Ms Folbigg's evidence the Judicial Officer formed the view that aspects her evidence had entered into areas which would be addressed appropriately by psychiatric reports.<sup>142</sup>

67. Accordingly, a psychiatric report recently prepared by Dr Michael Diamond, together with reports prepared by psychiatrists at the time of trial by Dr Michael Giuffrida, Dr Bruce Westmore and Dr Yvonne Skinner were received into evidence. None of these reports was tendered in the trial, however the latter three were evidence on sentence.

68. Following the conclusion of the hearings, a further report of Dr Giuffrida was sought by the Inquiry, on the particular issue of Dr Diamond's diagnosis of Ms Folbigg with Complex Post-traumatic Stress Disorder.

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<sup>138</sup> Transcript of the Inquiry, 1 May 2019 T799.33-50.

<sup>139</sup> Transcript of the Inquiry, 1 May 2019 T800.23-30.

<sup>140</sup> Transcript of the Inquiry, 1 May 2019 T800.45-50.

<sup>141</sup> Transcript of the Inquiry, 30 April 2019 T700.20-701.1.

<sup>142</sup> Transcript of the Inquiry, 1 May 2019 TT810.13-811.22.



69. This part of the submissions considers the psychiatrists' reports insofar as they are relevant to the interpretation of Ms Folbigg's diary entries and consequently the assessment of any doubt about her guilt. The reports are considered separately and in more detail insofar as they are relevant to the assessment of any doubt as to a matter that may have affected the nature or the severity of the sentence.<sup>143</sup>

## Reports of Dr Michael Giuffrida

70. In his 2003 report prepared for sentence at the request of Ms Folbigg's representatives Dr Giuffrida noted that Ms Folbigg disclosed she began writing her thoughts and feelings in diaries and journals from 1996 to 1999 but that these had been "extracted and taken out of context in a manner she hadn't intended".<sup>144</sup> She said the diaries "represented a way of coping with her distress as she had been unable to talk about it with her husband or in counselling".<sup>145</sup>

71. From his review of the material, including the diary entries provided, Dr Giuffrida concluded that at the time of writing in the diaries Ms Folbigg "was a greatly tormented and indeed exceedingly disturbed woman".<sup>146</sup>

72. He observed that throughout the diaries there is a:

*Prevailing theme of intensely depressed mood, expressions of worthlessness and low self-esteem and repeated references to feelings of rejection and abandonment by her husband Craig and her family and friends.*<sup>147</sup>

73. She "had intensely ambivalent feelings and attitudes to the notion of pregnancy and motherhood" and was "always coping at the very margins of her capacity to bond, relate, provide and care for her children".<sup>148</sup>

74. At the end of his sessions with Ms Folbigg, Dr Giuffrida came a conclusion that Ms Folbigg's case was a "very significant phenomenon" following the trauma she experienced as a young girl.<sup>149</sup> He thought this resulted in a profound and probably irreversible impairment of her capacity to develop any meaningful

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<sup>143</sup> See below [133]-[193].

<sup>144</sup> Exhibit BD, Report of Dr Michael Giuffrida (27 August 2003) p 10.

<sup>145</sup> Exhibit BD, Report of Dr Michael Giuffrida (27 August 2003) p 10.

<sup>146</sup> Exhibit BD, Report of Dr Michael Giuffrida (27 August 2003) p 18.

<sup>147</sup> Exhibit BD, Report of Dr Michael Giuffrida (27 August 2003) p 18.

<sup>148</sup> Exhibit BD, Report of Dr Michael Giuffrida (27 August 2003) p 18.

<sup>149</sup> Exhibit BD, Report of Dr Michael Giuffrida (27 August 2003) p 20.

emotional bonding and attachment, which “contributed in some part at least to her total inability to relate, care for and protect her own children”.<sup>150</sup>

75. In his additional report dated 10 May 2019 (discussed further below in relation to the assessment of doubt as to the nature or severity of Ms Folbigg’s sentence) Dr Giuffrida did not give any relevantly different opinion.

## Report of Dr Bruce Westmore

76. Dr Bruce Westmore also prepared a report at the request of Ms Folbigg’s representatives at sentence.<sup>151</sup> As part of his examination of Ms Folbigg, he discussed some of the diary entries with her. She admitted to him that at times she didn’t cope with her children but denied that there were any “angry feelings” directed towards the children, explaining that these were more directed at Craig Folbigg.<sup>152</sup>

77. Dr Westmore considered the diary entries support the proposition that she was “a very over-controlled woman”.<sup>153</sup> He noted that over-controlled people can be prone to episodes of extreme angry outbursts and that it is possible Ms Folbigg has personality characteristics of this type.<sup>154</sup>

78. Dr Westmore concluded:

*Based on the assumption that she was indeed responsible for the death of her children, it is probable in my view that she displaced onto the children her own anger and frustration with the difficulties she was having with her partner. It is unclear to me to what extent childhood difficulties played any immediate role in her behaviours although her childhood history is likely to have influenced her personality development...*

*Her own concerns about not being a good or adequate mother, combined with her personality difficulties and vulnerability and her problems dealing with emotions such as anger and depression and frustration are all likely in combination to have led her to feel she*

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<sup>150</sup> Exhibit BD, Report of Dr Michael Giuffrida (27 August 2003) p 22.

<sup>151</sup> Exhibit BB, Report of Dr Bruce Westmore (16 June 2003).

<sup>152</sup> Exhibit BB, Report of Dr Bruce Westmore (16 June 2003) p 2.

<sup>153</sup> Exhibit BB, Report of Dr Bruce Westmore (16 June 2003) p 6.

<sup>154</sup> Exhibit BB, Report of Dr Bruce Westmore (16 June 2003) p 6.

*could not cope with the children and subsequently her acting towards them in a way in which caused their deaths.*<sup>155</sup>

## **Report of Dr Yvonne Skinner**

79. Dr Yvonne Skinner prepared a report for the Crown in advance of trial regarding the availability of any psychiatric defence to Ms Folbigg.<sup>156</sup> She did not have the opportunity to examine Ms Folbigg.

80. On her review of Ms Folbigg's diaries, Dr Skinner found no evidence of formal thought disorder, nor any evidence of cognitive dysfunction or to suggest that Ms Folbigg might have been suffering a significant depressive disorder.<sup>157</sup>

81. Dr Skinner acknowledged that Ms Folbigg had an "emotionally disturbed childhood" characterised by an "unsatisfactory foster placement, institutional placement and later a foster placement that proved more satisfactory".<sup>158</sup> In considering the significance of Ms Folbigg's chaotic early childhood, Dr Skinner stated:

*Most psychiatrists would agree the background history of such disturbance would lead to personality problems or possibly psychiatric disorder, but studies show that there is no recognisable link between such childhood emotional disturbance and a particular psychiatric disorder or psychological condition.*<sup>159</sup>

82. Dr Skinner was not able to find any evidence that Ms Folbigg suffered from a postpartum psychiatric disorder, nor any other psychiatric condition that might have affected her judgment or ability to cope.<sup>160</sup>

## **2019 report of Dr Michael Diamond**

83. Dr Diamond was briefed by Ms Folbigg's representatives at the Inquiry to provide a psychiatric assessment report.

84. Dr Diamond noted that he did not have the opportunity to go through the diary entries in any detail with Ms Folbigg and was therefore unable to produce any meaningful view as to their relevance.<sup>161</sup>

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<sup>155</sup> Exhibit BB, Report of Dr Bruce Westmore (16 June 2003) p 6.

<sup>156</sup> Exhibit BC, Report of Dr Yvonne Skinner (22 January 2003).

<sup>157</sup> Exhibit BC, Report of Dr Yvonne Skinner (22 January 2003) p 9.

<sup>158</sup> Exhibit BC, Report of Dr Yvonne Skinner (22 January 2003) p 13.

<sup>159</sup> Exhibit BC, Report of Dr Yvonne Skinner (22 January 2003) p 13.

<sup>160</sup> Exhibit BC, Report of Dr Yvonne Skinner (22 January 2003) p 13.

85. However, he suggested that the diary entries need to be assessed in the context of the diagnosis of Complex Post-traumatic Stress Disorder and the deep-seated psychological subjective experiences of Ms Folbigg.<sup>162</sup>

86. Dr Diamond opined as to a significant and pervasive psychiatric diagnosis of Complex Post-traumatic Stress Disorder in Ms Folbigg. He did not define this disorder but noted Ms Folbigg has “lifelong symptoms of emotional detachment, emotional numbing, difficulty trusting, engaging with others and experiencing periods of severe detachment to the point of dissociation”,<sup>163</sup> following the severe disruption of the fundamental early life necessity for attachment, nurture and security, and a history strongly indicative of early childhood abuse, sexual and physical violence.<sup>164</sup>

## Submissions on the diaries: the evidence at the trial in light of the evidence in the Inquiry

### **Ms Folbigg’s account of the meaning of the diary entries**

87. The interpretation which Ms Folbigg says in 2019 should be applied to the diary entries may be summarised as follows:

88. Her diaries were an expression of her searching for answers to explain the children’s deaths.

89. She did not do anything to the children physically to bring about their deaths, but held herself responsible for their deaths, because she was their mother. She always considered that she was a failure of a mother, because each had died in her care.

90. She attributed her causal role to the effect of her mood on the children. The nature of that mood was a depressive state. Her expressions of losing it, snapping her cog, becoming angry, and snapping referred to thoughts and emotions of a depressive nature which she felt inside. Those expressions did not refer to any external response including physical actions towards the children.

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<sup>161</sup> Exhibit BA, Report of Dr Michael Diamond (16 April 2019) p 38.

<sup>162</sup> Exhibit BA, Report of Dr Michael Diamond (16 April 2019) p 41.

<sup>163</sup> Exhibit BA, Report of Dr Michael Diamond (16 April 2019) p 39.

<sup>164</sup> Exhibit BA, Report of Dr Michael Diamond (16 April 2019) p 38.

91. She believed that she could avoid subsequent deaths, namely of Laura, by better anticipating and managing her depressive mood. She believed she could do so by asking for more help, from Mr Folbigg and others.
92. When she referred to a fear of being alone with the child, and things happening again, she was not meaning that she was afraid of losing control and hurting a child when alone with it. Rather, she was meaning she was afraid of experiencing a depressive mood again, and of that mood impacting on the child such that a “spiritual”, “mystical”, “metaphysical” force or “higher power” of some kind would take the child away, or the child would decide to leave her and die. She was also referring to being afraid of being alone while finding a dead child.
93. This account in 2019 is, to a significant extent, consistent with the account she gave to police in July 1999 when she expressed to police:
- a. She held herself responsible for the deaths of the children because she thought she mustn't have tried hard enough or done enough as a mother, because they had all died.
  - b. Her reference to “terrible things” meant something benign like “an angry thought here or there”.
  - c. Any frustrations she felt were never detrimental to the children.
  - d. She had wondered whether it was her battling of the wills with Sarah which caused her death, by tiring her out to the point of her not wanting to wake up.
  - e. Another child would not die because she would learn to accept offers of help and handle the responsibilities of motherhood better, including by being more mellow and less frustrated.
  - f. She wondered whether forces like fate and destiny played any role in the children's deaths.
  - g. She was afraid of being alone with a baby because “terrible things kept happening when I was by myself”.<sup>165</sup>
  - h. That the reference to being her “father's daughter” was a general reference to being a loser, not a person who killed another.

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<sup>165</sup> Exhibit E, ERISP of Kathleen Folbigg Q726.

94. Ms Folbigg's evidence in the Inquiry did differ from her account to police in some respects. In the Inquiry she suggested for the first time that she believed that Sarah and the other children may have decided to leave her to die, and that she was afraid of being alone when finding a dead child.
95. More significantly, Ms Folbigg appeared for the first time to concede in the Inquiry, at one point under cross-examination, that she may have been awake with Sarah during the night/early morning before her death when Mr Folbigg was asleep.<sup>166</sup> This was in the context of suggesting that the entry "I really needed him to wake up and take over from me that night. This time I have already decided that if I ever feel that way again I'm going to wake him up",<sup>167</sup> was referring to her desire generally that Mr Folbigg would assist her more with the care of Sarah.<sup>168</sup>
96. In her interview with police, which did not assume the form of cross-examination, she said she couldn't explain the words "take over from me that night",<sup>169</sup> that the two sentences referred to different thoughts, and she thought she was talking about general mothering care, and why could not Mr Folbigg have woken up and found Sarah instead of her.
97. In our submission, this apparent concession is entirely consistent with a plain reading of the entry, namely that Ms Folbigg was awake with Sarah at the time of her death and needed Mr Folbigg to wake up and take over from her because she was having feelings of frustration and loss of control, which led to her smothering the child.
98. We note that at the trial the Crown submitted that Ms Folbigg had deliberately lied about the meaning of this entry, and that the true meaning of this entry was "if only Craig had got up and taken over from me Sarah would not have died".<sup>170</sup> The trial judge directed the jury that they could consider a consciousness of guilt finding in respect of Ms Folbigg's answers about this entry.<sup>171</sup> In our submission that direction was properly given.
99. To the extent that Ms Folbigg's account of the meaning to be attributed to diary entries relies on an interpretation of the words written other than their plain and ordinary meaning, in our submission her account should be rejected.

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<sup>166</sup> Transcript of the Inquiry, 30 April 2019 T733.29-35.

<sup>167</sup> Exhibit AZ, Diaries tender bundle, p 162.

<sup>168</sup> Transcript of the Inquiry, 29 April 2019 T733.9.

<sup>169</sup> Exhibit E, ERISP of Kathleen Folbigg Q766.

<sup>170</sup> 20 May 2003 T126.

<sup>171</sup> 20 May 2003 T124-128.

100. As set out above, Ms Folbigg said repeatedly that words like “frustrated”, “angry”, “terrible” and “cruel” all meant more or less the same thing, that is, she meant the same things by different words.
101. Having maintained this account about similar meaning throughout her evidence, she accepted in concluding examination by counsel assisting that the ordinary plain meaning of the words that she sought to be interpreted as meaning the same thing, are in fact different to one another.<sup>172</sup> Her explanation for this was that at the time of writing the diaries, “that’s not how my mind worked”.<sup>173</sup>
102. Ms Folbigg was plainly acutely aware of the significance of the interpretation of the content of the diaries at the trial, and in the Inquiry. She said, “it was a major part of how my guilt was decided”<sup>174</sup> and “I may be in prison for the fact that these diaries were used... I’m now trying to answer what everyone has been wanting to know and trying to help your Honour in this Inquiry”.<sup>175</sup>
103. Ms Folbigg agreed she had had 15 years to think about the diaries.<sup>176</sup> She also agreed she had been reading the diaries very carefully over the month or two since she had received copies in the course of the Inquiry.<sup>177</sup>
104. Ms Folbigg also agreed that it was almost impossible for her to have read and given evidence about the diaries without being affected by the significant events which she accepted had occurred since she wrote the 1997-1998 diary.<sup>178</sup>
105. She nevertheless denied that the evidence she had given to the Inquiry had been affected by those significant events.<sup>179</sup> When asked if she agreed that it is human nature to sit and give evidence taking into account all the events that had happened since she wrote the diaries (more than 20 years ago) she said:

*My mind doesn’t work that way... What I am saying is, these diaries that - and the extracts that have been constantly – and I’m – this is also – the extracts that we [sic] used in my trial are the extracts and the diary entries that everybody is always constantly talking about. I*

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<sup>172</sup> Transcript of the Inquiry, 1 May 2019 T795.38-796.5.

<sup>173</sup> Transcript of the Inquiry, 1 May 2019 T795.45-46.

<sup>174</sup> Transcript of the Inquiry, 1 May 2019 T793.1-10.

<sup>175</sup> Transcript of the Inquiry, 1 May 2019 T792.45-49.

<sup>176</sup> Transcript of the Inquiry, 1 May 2019 T791.40.

<sup>177</sup> Transcript of the Inquiry, 1 May 2019 T791.43-792.22.

<sup>178</sup> Transcript of the Inquiry, 1 May 2019 T792.32.

<sup>179</sup> Transcript of the Inquiry, 1 May 2019 T792.44-49.

*have been reminded of those for all the time that I've been in prison. But, as I said, I didn't actually get to read them myself again until it was presented to me to do so. And when presented with something that can trigger a memory, as such, then, yes, I'm sitting there in the moment thinking to myself, "Okay, why have I written this? Maybe I can help explain why I've written this". 'Cause the problem that I felt that landed me in the position that I'm in is assumptions being made and things being taken out of context and nobody understanding what it was I was trying to say when I was writing these diaries.*<sup>180</sup>

106. While Ms Folbigg presented as confident, consistent and unwavering in her account over the two and a half days of giving evidence and being cross-examined, it does not automatically follow that her account is to be accepted. Her obvious motivation for the Judicial Officer to accept an exculpatory account of the diary entries calls for her evidence to be assessed closely against the other evidence.

107. In our submission Ms Folbigg's account of the diary entries as illustrating a benign interpretation is implausible and should be rejected, given:

- a. The inconsistency between the benign meaning contended for by Ms Folbigg in her evidence, compared with the outward behaviours of frustration and anger which Mr Folbigg (in respect of Sarah and Laura)<sup>181</sup> and Ms Bown (in respect of Laura)<sup>182</sup> gave evidence of at the trial and which Ms Folbigg accepted in her July 1999 police interview that she had shown (to an extent, such as yelling).<sup>183</sup>
- b. Ms Folbigg's account to police in July 1999 that "to me losing your temper is well, totally losin' it. I'd regard losing your temper as sort of smashing things or throwing things or doin' something."<sup>184</sup>
- c. Ms Folbigg's acceptance to police in July 1999 of having experienced feelings of frustration with the children, in particular Sarah and Patrick.<sup>185</sup>

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<sup>180</sup> Transcript of the Inquiry, 1 May 2019 T793.32-50.

<sup>181</sup> 2 April 2003 T123.21-28, T126.10-30, T127.50-57 (Sarah); T162.4-22, T171.17-38, T172.27-173.9 (Laura).

<sup>182</sup> 16 April 2003 T769.25-53, T770.25-771.12.

<sup>183</sup> Exhibit E, ERISP of Kathleen Folbigg Q527, 657, 685, 802, 807, 813, 818.

<sup>184</sup> Exhibit E, ERISP of Kathleen Folbigg Q657.

<sup>185</sup> Exhibit E, ERISP of Kathleen Folbigg Q481-484, 527, 657, 685.



- d. The lack of ambiguity in the meaning of the entries when considered in their context and with regard to evidence of the surrounding circumstances.
- e. The private expressive and venting purposes which Ms Folbigg ascribed to her diaries.
- f. The absence of evidence of Ms Folbigg having expressed her beliefs to anyone during the course of the children's lives and deaths.
- g. The fanciful nature of the additional explanations which featured in Ms Folbigg's 2019 evidence.
- h. The apparent concession under cross-examination that she was awake with Sarah before her death while Mr Folbigg was asleep.

### **The psychiatric expert opinion evidence in relation to the diaries**

108. In our submission the opinion evidence in the Inquiry of those psychiatrists who met Ms Folbigg as to her mental state does not provide a basis on which to interpret the diary entries in an exculpatory manner. Indeed, insofar as the opinion evidence identifies in Ms Folbigg difficulties in her ability to relate to, cope with, and form attachments with her children, in our submission the opinion evidence supports an inculpatory interpretation of the diaries, consistent with a plain reading of the entries.

109. Dr Giuffrida relevantly opined that the trauma Ms Folbigg experienced as a young girl resulted in a profound and probably irreversible impairment of her capacity to develop any meaningful emotional bonding and attachment, which "contributed in some part at least to her total inability to relate, care for and protect her own children".<sup>186</sup>

110. Dr Westmore relevantly opined that "her childhood history is likely to have influenced her personality development"<sup>187</sup> and referred to her concerns about not being a good or adequate mother, personality difficulties and vulnerability, and problems dealing with emotions such as anger, depression and frustration.<sup>188</sup>

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<sup>186</sup> Exhibit BD, Report of Dr Michael Giuffrida (27 August 2003) p 22.

<sup>187</sup> Exhibit BB, Report of Dr Bruce Westmore (16 June 2003) p 6.

<sup>188</sup> Exhibit BB, Report of Dr Bruce Westmore (16 June 2003) p 6.

111. We recognise that the reports of Dr Westmore and Dr Giuffrida were prepared on the assumption Ms Folbigg was guilty and take them into account only insofar as it is necessary to consider an inconsistency in diagnosis.

112. In our submission these opinions were in effect consistent with the opinion of Dr Diamond that Ms Folbigg has lifelong symptoms of emotional detachment, emotional numbing, difficulty trusting, engaging with others and experiencing periods of severe detachment to the point of dissociation, following severe disruption and violence in childhood.<sup>189</sup>

113. Additionally, each of the expert's opinions was in our submission reflective of Ms Folbigg's own evidence in the Inquiry, that she had not bonded or developed a maternal instinct with Caleb, Patrick or Sarah.<sup>190</sup>

### **Possession and disposal of the diaries**

114. In her interview with police regarding her disposal of her diaries Ms Folbigg said that she had "just got rid of them all" on Mother's Day, 9 May 1999.<sup>191</sup> When asked by police how many she was referring to, she said three.<sup>192</sup>

115. In her evidence before the Inquiry she said that she could only recall throwing out one diary.<sup>193</sup> She initially rejected the suggestion that her memory surrounding getting rid of the diaries would be fresher on 23 July 1999 than it is now.<sup>194</sup> But later she conceded that it was more likely that what she told police in 1999 about events around that time was more likely to be accurate than her evidence now.<sup>195</sup>

116. In her interview with police Ms Folbigg had also said that she had not written in a diary since 9 May 1999.<sup>196</sup> At the Inquiry she was taken to an entry made on 19 June 1999. Ms Folbigg explained that at the time of the interview on 23 July she didn't recall writing in the diary on 19 June.<sup>197</sup> She accepted that what

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<sup>189</sup> Exhibit BA, Report of Dr Michael Diamond (16 April 2019) p 39, see below [162]-[180].

<sup>190</sup> Exhibit BA, Report of Dr Michael Diamond (16 April 2019) pp 13, 15, 19; Exhibit BB, Report of Dr Bruce Westmore (16 June 2003) p 6; Exhibit BD, Report of Dr Michael Giuffrida (27 August 2003) pp 21-22; Exhibit BC, Report of Dr Yvonne Skinner (22 January 2003) pp 9-10, 13.

<sup>191</sup> Exhibit E, ERISP of Kathleen Folbigg Q460.

<sup>192</sup> Exhibit E, ERISP of Kathleen Folbigg Q463.

<sup>193</sup> Transcript of the Inquiry, 29 April 2019 T621.45, T624.3.

<sup>194</sup> Transcript of the Inquiry, 29 April 2019 T624.37.

<sup>195</sup> Transcript of the Inquiry, 1 May 2019 T798.25.

<sup>196</sup> Exhibit E, ERISP of Kathleen Folbigg Q459.

<sup>197</sup> Transcript of the Inquiry, 29 April 2019 T626.42, T627.1.

she told police was false but suggested that at the time of her interview she didn't remember writing in it.<sup>198</sup>

117. This latter explanation is not plausible given only a few weeks had passed since the entry. Directly following the interview, she was told the police had a search warrant. She then disclosed the existence of the 1999 diary and provided it to them at the start of the search.<sup>199</sup>

118. Mr Folbigg gave police Ms Folbigg's 1989 and 1996-1997 diaries on 19 May 1999. Before the Inquiry Ms Folbigg accepted that he told her he had done so sometime between 19 May and 23 July 1999.<sup>200</sup> However, she did not accept that it was more likely that she had thrown the diaries out after finding out Mr Folbigg had handed in some of the diaries to police.<sup>201</sup> She instead suggested that she "hadn't placed too much importance on the fact that he did, because I wasn't thinking there was anything in them that I had to be highly concerned about."<sup>202</sup>

119. This explanation is inconsistent with Ms Folbigg's diary entry of July 1999 where she says "Decided to start writing in a diary again. Have missed being able to vent regularly. I just pray it doesn't come back to bite me like my 97 one has."<sup>203</sup> This entry was made prior to Ms Folbigg's interview with police as this diary was seized by police following the execution of a search warrant directly after the conclusion of the interview. It demonstrates her concern about her diary entries even before her interview with police. Her explanation that she wasn't concerned about the diary entries is untruthful.

120. The execution of the search warrants was followed by listening devices which recorded:

- a. a conversation that evening between Mr and Ms Folbigg:

*Craig: I came home to get the diary and, take it back to work and I couldn't find it.*

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<sup>198</sup> Transcript of the Inquiry, 29 April 2019 T626.42, T629.10.

<sup>199</sup> 28 April 2003 T965.12-19; Transcript of the Inquiry, 1 May 2019 T807.42.

<sup>200</sup> Transcript of the Inquiry, 1 May 2019 T796.37.

<sup>201</sup> Transcript of the Inquiry, 1 May 2019 T800.30.

<sup>202</sup> Transcript of the Inquiry, 1 May 2019 T800.33-36.

<sup>203</sup> Exhibit AZ, Diaries tender bundle, p 290.

*Kathy: I couldn't find it and they found it... and I've gone, I didn't have it so...*<sup>204</sup>

b. Ms Folbigg saying later that evening:

*prime example now as to why I shouldn't drop the fuckin' walls because I dropped them enough just to write stuff and now it's coming back to bite me in the arse.*<sup>205</sup>

c. the following morning Ms Folbigg saying after opening a cupboard "I should have fucking done what I was gunna do, stuck it underneath that".<sup>206</sup>

121. The inference plainly open to be drawn is that references in these statements were to the 1997-1998 diary found by police in which many of the inculpatory diary entries were found. Ms Folbigg accepted as much. Ms Folbigg's denial that she now has "no clue" what she was referring to in the listening device transcript of the morning after the interview is implausible.<sup>207</sup>

122. In our submission, in light of the above inconsistencies (and bearing in mind the points in the chronology of events at which they occurred) it is open to the Judicial Officer to accept that the evidence about Ms Folbigg's possession and disposal of the diaries indicates that she was lying because of her consciousness of guilt.

## Conclusion

123. Noting the significance of the diaries to the Crown case against Ms Folbigg at trial, in our submission there has been a substantial change in the evidence about and surrounding the diaries since the trial.

124. Ms Folbigg has now given evidence about various entries. In our submission, the Judicial Officer would find that Ms Folbigg has been untruthful in much of that evidence.

125. On that basis, we submit that the effect of Ms Folbigg's sworn evidence to the Inquiry is to strengthen a hypothesis as to her guilt rather than the reverse. It

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<sup>204</sup> Exhibit AZ, Diaries tender bundle, p 552.

<sup>205</sup> Exhibit AZ, Diaries tender bundle, p 554.

<sup>206</sup> Exhibit AZ, Diaries tender bundle, p 559.

<sup>207</sup> Transcript of the Inquiry, 29 April 2019 T634.23-27.

follows that in our submission, Ms Folbigg's evidence to the Inquiry does not give rise to any reasonable doubt about her guilt.

126. The Judicial Officer should be satisfied, having heard sworn oral evidence from Ms Folbigg as to the interpretation of the diaries, and received considered expert opinion evidence about her mental state, that it was well open to the jury at trial, to draw inculpatory inferences in the jury's interpretation of the diaries.

127. The inculpatory interpretation in relation to the diaries dated between 1996 and 1998, taking into account evidence of the surrounding circumstances, is that in the diaries Ms Folbigg was, among other matters, expressing firstly her regret at having smothered Caleb, Patrick and Sarah in circumstances where she succumbed to a momentary loss of control while experiencing significant frustration with them, and secondly her commitment to avoiding that situation recurring with Laura.