

EXHIBIT N



Inquiry into the Convictions of Kathleen Megan Folbigg,
Level 2
Industrial Relations Commission
47 Bridge St
SYDNEY NSW 2000

13 February 2019

Dear Sir/Madam,

Response to Affidavit of Professor John Hilton

I refer to the Affidavit of Professor John Hilton dated 13 November 2018.

On 1 March 1999, the date of Laura Folbigg's autopsy, I was a Staff Specialist in Forensic Pathology at the New South Wales Institute of Forensic Medicine (now known as the Department of Forensic Medicine) in Glebe. At that time, Professor John Hilton was the Director of the then New South Wales Institute of Forensic Medicine. I had worked at the New South Wales Institute of Forensic Medicine since 1994.

I was the on-call forensic pathologist at Glebe on 1 March 1999. That afternoon I was advised by Professor Hilton that he had received a call regarding a deceased child that was coming down from Singleton, NSW. At that time we did not have much information regarding how the child had died. However, I recall Professor Hilton telling me that there had been three previous child deaths in the same family, and that he had performed the autopsy on Sarah Folbigg.

I performed Laura Folbigg's autopsy examination at approximately 9.00 pm on 1 March 1999, in the presence of Professor Hilton and a Crime Scene Officer from NSW Police, Clint Nicol. Professor Hilton was present throughout the entire autopsy on 1 March 1999.

After my appointment as a Staff Specialist in Forensic Pathology in 1996, I was fully accredited to work unsupervised. From 1996 up until the time I left the Department of Forensic Medicine at Glebe in 2002, Laura Folbigg's autopsy was the only autopsy I performed under the direct observation of Professor Hilton.

During the autopsy of Laura on 1 March 1999, various tissue and organ samples were taken for histopathology examination. My recollection is that testing took a couple of weeks to be carried out. The whole brain was also retained and examined by Dr Michael Rodriguez, a neuropathologist who was working at Glebe at the time. He issued a separate Neuropathology Report in December 1999.

As I recall, I kept Professor Hilton informed of the outcome of various histopathological testing. Professor Hilton also personally reviewed the microscopic slides of the heart.

NSW Health Pathology
ABN 49 382 586 535

NSW Forensic & Analytical Science Service
Department of Forensic Medicine Newcastle
PO Box 664J, Newcastle NSW 2300
Tel (02) 4922 3700 Fax (02) 4922 3730



I recall that Professor Hilton and I both formed the view after looking at the slides of the heart that Laura had an inflammatory infiltrate in the heart consistent with myocarditis. The next question that arose was what that finding meant in terms of the cause of death.

After I had finished my review of the various histopathological testing, I drafted the following sections of the autopsy report: the "Microscopic Examination of Tissues" section, the "Report Summary and Opinion" section and the "Opinion" section (listing "Undetermined" as the cause of death). I then gave that draft, and multiple later drafts, of the autopsy report to Professor Hilton who suggested certain changes (with his comments relating mostly to the "Report Summary and Opinion" section).

Prior to the finalisation of my autopsy report, I recall Professor Hilton expressed to me that he agreed that the cause of death should be given as "Undetermined" and was happy with the other sections of the report. In particular, Professor Hilton was aware, prior to the finalisation of my autopsy report, that I had documented the cause of death of Laura as "Undetermined" and that I had stated in the "Report Summary and Opinion" section of the autopsy that the finding of myocarditis may be an incidental finding. After reviewing the final draft of my autopsy report, Professor Hilton did not at any time, express disagreement or raise any issue about it, including as to cause of death being listed as "Undetermined" or as to the way in which the myocarditis finding had been described.

It was not the usual practice for Professor Hilton to review or comment on my autopsy reports before they were finalised. However, I asked Professor Hilton to do so in this case given his close involvement in Laura's autopsy and noting the unusual circumstances of the death, principally that there had been three other child deaths in the same family.

Forensic pathologists often hold differing opinions about a particular case. Professor Hilton had, prior to the autopsy of Laura Folbigg, given me advice in relation to the situation where I disagreed with the autopsy findings of junior forensic pathologists that I was supervising whilst working at the then New South Wales Institute of Forensic Medicine in Glebe. Professor Hilton advised me on several occasions around that time, that if I disagreed with the autopsy findings of another forensic pathologist and especially if I disagreed with the cause of death, that I ought to write a separate letter to the Coroner expressing my views.

I am not aware that Professor Hilton wrote a letter to the Coroner or other authority in Laura's case, expressing the view that Laura's cause of death ought to be listed as myocarditis (either before the death went to a Coronial inquest, to a committal hearing or to a criminal trial).

Further response to report of Prof Cordner

I refer to the report "Report and Opinion in the case of Kathleen Folbigg" by Professor Stephen Cordner of the Victorian Institute of Forensic Medicine (VIFM) and to my report date 26 November 2018.

While Professor Cordner refers to what he describes as my views or reasoning throughout his report, I do not respond to the majority of those references, even though I disagree with that analysis. I note in this respect that, at the beginning of his report, he states on pg 6:



"The report then addresses the forensic pathology aspects of the trial as these are represented by the evidence of Dr Cala. (It is important to note that there were several other doctors, including pathologists, who were saying some of the same things. But it is simply too complicated, and risks losing sight of the wood for the trees, to refer to the evidence of all the doctors)."

I do however respond to Professor Cordner's analysis at p77 of his report which concerns five photomicrographs which were attached to an email and sent to ten forensic pathologists at VIFM. The photomicrographs are attached to the Cordner report as Appendix 4.

Professor Cordner gave the following case outline as context for the photomicrographs that he sent to 10 pathologists:

"This girl was 19 months old when she died. She had a runny nose for a couple of days. She was fed at 7am, playing normally at about 11am. She then had a sleep and when her mother went to check on her around midday, she was not breathing. Pathologist gave the cause of death as unascertained. Apart from myocarditis, which the pathologist reported as being present, the autopsy was negative. I would be happy with myocarditis as the cause of death. Any comments on this, or on the myocarditis itself? Would appreciate feedback."

It appears Professor Cordner made five digital images (photomicrographs) of parts of the heart slides that were made from samples taken from the autopsy of Laura Folbigg.

In total, there were seven blocks of heart tissue that were made into glass slides and which became a part of the overall slides made from tissue sampled at autopsy. Professor Cordner did not show the ten pathologists the actual 7 slides (see p 78 Cordner report). Rather, he emailed them the five photomicrographs together with the case outline set out above.

In my opinion, the five photomicrographs Professor Cordner sent to the pathologists are not representative of the seven blocks of heart tissue. One photomicrograph appears to be of a section of heart at low power, possibly x 2 or x 5 magnification, with the rest "high power" possibly x 20 or x 40 magnification.

This type of digital sampling would give a highly-distorted picture of the amount of myocarditis present as other areas of heart sampled were not shown to the group. Literally hundreds of images would need to be shown to depict the entire heart tissue that was sampled at autopsy if the images were to be shown to the group at these high powers of magnification.

The photomicrographs are not therefore, a representative sample but a small number of selected images. It appears to me that Professor Cordner may have sampled the "worst" or most severe areas of myocarditis and shown those images to the group. The photomicrographs are not a true or accurate representation of the amount of inflammation that I saw when examining the 7 glass slides.



In terms of the case outline Professor Cordner provided to the group (see quote above), I say as follows.

Professor Cordner includes minimal autopsy findings except to say apart from myocarditis, "the autopsy was negative", which is similar to saying "no abnormalities detected". Professor Cordner has not made reference to any autopsy findings such as the heart weight, the heart appearance at autopsy, whether there were other abnormalities found at autopsy such as pleural or pericardial effusions, or fluid in the abdomen such as might occur if the child had heart failure. Even "negative findings" can be of importance in certain circumstances and in my opinion should have been included as findings in the case outline provided to the group in order to provide an accurate picture.

Further, the case outline given by Professor Cordner to the group relates to only one death in isolation. The case outline ignores highly important and relevant aspects of the family history; in particular it ignores the fact that this death was the fourth in the family. There is accordingly a further level of artificiality in the task given to the group.

Professor Cordner states: "I would be happy with myocarditis as the cause of death." This sentence may already bias the group in favour of a diagnosis of myocarditis at the outset before examining the images. Professor Cordner indicated an opinion to the group and, after providing an incomplete case history and non-representative photomicrographs, sought implied agreement from the pathologists to support his view.

In my opinion, no conclusions at all should be drawn from this small study.

Yours sincerely,



Dr Allan Cala
FRCPA



Inquiry into the convictions of Kathleen Megan Folbigg

21 December 2018

Dr Allan Cala
Senior Staff Specialist
Newcastle Department of Forensic Medicine
John Hunter Hospital
Lookout Road
NEW LAMBTON NSW 2305

C/O

Deanne Tadros
Senior Legal Officer
NSW Ministry of Health
73 Miller Street
NORTH SYDNEY NSW 2060

by email: Deanne.tadros@health.nsw.gov.au

copied to: Ian.fraser@fjc.net.au; Blaise.lyons@health.nsw.gov.au

Dear Dr Cala

Receipt of preliminary report

We refer to and thank you for your preliminary report dated 26 November 2018 ("Preliminary Report").

Further material

We refer to your early observations in the Preliminary Report that, as at the time of its compilation, you had not had an opportunity to read all the material provided.

Once you have had the opportunity to consider the material available to you, and if you wish to advance or qualify anything stated in the Preliminary Report, you are invited to provide a further report.

We draw your attention in particular to the affidavit of Professor Hilton dated 13 November 2018 **enclosed** with this letter, on which you are invited to comment.

Inquiry into the convictions of Kathleen Megan Folbigg

Level 2 | Industrial Relations Commission | 47 Bridge Street | SYDNEY NSW 2000
T (02) 9258 0832 | **E** folbigg.inquiry@justice.nsw.gov.au
W <https://www.folbigginquiry.justice.nsw.gov.au>

If there is additional material of which you are aware and which the Inquiry might provide to you, and that would assist you in your consideration of this matter, please advise the Inquiry.

We would be grateful to receive any further report by **16 January 2019**.

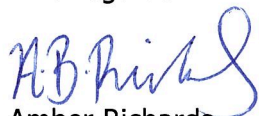
Material referred to in Preliminary Report

Could you please also provide to the Inquiry a copy of the material, referred to in the Preliminary Report, which you obtained separately.

We would be grateful to receive this material by 16 January 2019 so that it may be made available to relevant persons ahead of the hearings commencing in early March 2019. If the Inquiry is able to assist in compilation of the material, please let us know.

We note that the Inquiry already holds a copy of the autopsy file in relation to Caleb Folbigg's death, referred to on p 3 of the Preliminary Report.

Kind regards



Amber Richards
Senior Solicitor
for Crown Solicitor

Encl.