

EXHIBIT O

John M N Hilton RFD, FRSN
M.B. *ChB.*, F.R.C.P.A., F.F.F.L.M. (R.C.P. London), F.A.C.L.M.

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22 January 2019

Ms Amber Richards
Senior Solicitor for Crown Solicitor

Inquiry into the convictions of Kathleen Megan Folbigg

Dear Ms Richards

I take this opportunity to reply to your request dated 15 November 2018 for a report.

I acknowledge for the purpose of Rule 31.23 of the Uniform Civil Procedure Rules 2005 that I have read the Expert Witness Code of Conduct in Schedule 7 to the said rules and agree to be bound by it.

As requested I attach a copy of my curriculum vitae.

I note you asked that I address the following –

1. "...your response, if any, to the undated report of Professor Stephen Cordner provided with the petition prepared on Ms Folbigg's behalf; and
2. In light of any medical advances since 2003 relevant to your area of expertise, advise whether the views you expressed at trial have changed or remain the same, and the reasons therefor."

In order to prepare such I have read a volume of documents as outlined in Annexure A of your Letter of Engagement.

I would make the following comments:

1. (a) I am in substantial agreement with the comments, views and opinions expressed by my colleague Professor Stephen Cordner in his undated report.

I empathise with and share Professor Cordner's expressed discomfort with the use of the words "consistent with" (Cordner p.57 et seq.) in expert reports and evidence. However I would further agree with any suggestion its use should be accompanied by questioning as to its antithesis given the context in which

“consistent with” is used. My sentiments in this matter would appear to be shared by Professor Pollanen (and, with great respect, by Mr Justice Goudge – as quoted).

(b) I would not entirely dismiss the use of the term asphyxia (Cordner p.42) in relation to Sudden Infant Death Syndrome (SIDS). This mechanism is historically discussed in Paediatric Forensic Medicine and Pathology. Ed. J.K.Mason. 1989. Chap. 10 The Pathology of the Sudden Infant Death Syndrome, J.M.N. Hilton, page 161. It should be noted that the conditions under which the testing for asphyxia, briefly described in that publication, (right and left heart blood analysis for oxygen and carbon dioxide levels) are seldom achievable in the general course of inquiry into infant deaths and are thus not readily replicable – a prime requirement being the acquisition of relevant samples within six (6) hours of death.

(c) It is my personal view that the use of such terms as “catastrophic asphyxial event” may be appropriate in at least some instances of SIDS. However to necessarily equate that term with a non-natural mechanism is demonstrably not tenable.

Patrick Allen Folbigg

(d) The neuropathological features demonstrated by the post mortem examination of Patrick’s brain would suggest lack of oxygen sustained in an episodic fashion at a time or times prior to his death. He was known to suffer from epileptiform fits which could have resulted in one or more episodes of hypoxia sufficient to cause brain damage.

(e) To ascribe responsibility for his brain damage to “epilepsy”, or the converse must remain a moot point. However to take this constellation of central nervous system disabilities, structural and/or functional, as necessarily being caused by non-natural events cannot be justified.

Laura Elizabeth Folbigg

(f) Laura died with, and highly probably because of, florid myocarditis. There was no medical evidence demonstrable or demonstrated in the report of the post mortem examination to support another cause for her death.

In summary

(g) I agree with the stated outcome of Professor Pollanen’s peer review report of Professor Cordner’s comprehensive review of the Folbigg children’s deaths.

2. (a) In my area of study, inter alia into causes, mechanisms, pathology and perhaps societal aspects of diseases, disorders and outcomes in infants and young children, there have been exciting developments, or the opening of avenues of exploration, since 2003, although nothing nearly as spectacular as the reduction in the incidence of sudden infant death in the late 80’s and 90’s.

This latter was achieved by implementing “back to sleep”. Many of these developments are referenced in Duncan, J.R and Byard, R.W. , SIDS -Sudden infant and early childhood death: The past, the present and the future. Adelaide University Press, 2018 (as cited in the Folder).

(b) Some of these developments were predicted or suggested by earlier work, often of an epidemiological (including statistical) nature. For example the incidence of SIDS (no matter how defined) seems to peak at about 12 weeks of age. This would appear to coincide with a cross over point “ when immunity acquired by the foetus in-utero from its mother and its own acquired immune capacity is increasing as a result of exposure to extra-uterine environmental factors”. For example the exploration of the human biome and its role in the development and maintenance of immune capability and competence is in an early phase of elucidation by many investigators. Houghteling and Walker in Journal of Paediatric Gastroenterology and Nutrition 2015 March v.60 (3) p.294-307 “Why is initial bacterial colonization of the intestine important to the infant’s and child’s health” and Amenyogbe, Kollmann and Ben-Othman in Frontiers in Paediatrics 2017; 5:11 “Early-life host-microbiome interphase: The key frontier for immune development” are reasonably recent rapporteurs.

(c) Likewise the awareness of genetic factors in sudden infant or childhood death (or indeed disease and death occurring at any age) is proceeding apace and is referenced in the learned writings of my colleagues Cordner and Byard within the Folder.

(d) As exemplified by the Folder the scientific understanding and continuing investigation of the nature of sudden and unexpected death in infancy and childhood is ongoing and our understanding evolving. Such investigations constitute a broad church.

(e) In essence, given the limitations imposed by the trial process in the adversarial system, my views expressed in evidence remain the same.



John M N Hilton

JOHN M. N. HILTON

CURRICULUM VITAE

PERSONAL DETAILS:

Name: John Millar Napier HILTON
Nationality: Australian
Date of Birth: 16 July 1935
Place of Birth: Dundee, Scotland
Address: P.O. Box 127 Tel : 61 (0)2 4757 4074
Wentworth Falls NSW 2782
Email: kornhil@iinet.net.au

PROFESSIONAL QUALIFICATIONS:

1961 M.B., Ch.B. (St Andrews) Scotland

MEMBERSHIP OF LEARNED COLLEGES

1972 Fellow of the Royal College of Pathologists of Australasia
1997 Foundation Fellow of the
Australian College of Legal Medicine
2006 Foundation Fellow, Faculty of Forensic and Legal Medicine,
London

PRESENT POSITIONS

Consultant in Forensic Medicine (semi-retired)

MEMBERSHIP OF OTHER PROFESSIONAL BODIES:

- ◆ Australian Medical Association
- ◆ Royal Society of Medicine, Fellow
- ◆ Australian Academy of Forensic Sciences (Past President)
- ◆ Australia New Zealand Society of Neuropathology
- ◆ Australian College of Biomedical Sciences (Past Patron)

CONSULTANCIES: PAST AND PRESENT

Consulted by and offered professional opinions to Defence and Prosecution in New South Wales, Victoria, Queensland, Western Australia, South Australia, Australian Capital Territory, Northern Territory, New Zealand, Hong Kong, Singapore, Christmas Island, Solomon Islands, Vanuatu & Kiribati. This has involved studying transcripts of evidence, statements, photographs, and other written opinions, attendance at and testifying in the Courts of these jurisdictions.

Adviser to numerous legal firms on a broad range of Forensic Medical and Toxicological matters

Consultant in Forensic Medicine, Pathology and related topics to Australian government:

- Department of Civil Aviation (Aviation Accident Pathology)
- Department of Defence (consulting to Army, Navy and Airforce)
- Department of Foreign Affairs
- Department of Veteran Affairs

Adviser to Australian War Memorial

Consultant to Qantas

Adviser to Senate Committee of Inquiry into the Sinking of the HMAS Sydney

Conducted review of Forensic Services in Tasmania for that State's government

Lead Pathologist, Human Rights Investigation, United Nations Interim Authority, East Timor.

Lead Pathologist, Australian Contingent Investigating the first Bali Bombings

Occasional Consultant in Forensic Medicine to Hunter Area Health Service

Occasional Consultant in Forensic Medicine to Illawarra Health Service

Forensic Pathologist, Victoria Institute of Forensic Medicine assisting in the DVI response to the Victorian bushfires 2009

GUEST LECTURER:

Delivered numerous lectures on Forensic Medicine and a broad range of related topics to a wide variety of scientific and non-scientific bodies.

Most recently:

- June 2005 Invited Speaker to Republic of Ireland Disaster Management Meeting
- July 2005 Invited Speaker Australasian College of Legal Medicine, Surfer's Paradise "A Disastrous Life"
- May 2006 Invited Speaker to Public Defenders Criminal Law Conference, Sydney Paper entitled "Controversies in Head Injury Cases"
- November 2006 Invited Speaker to NSW Military Health Symposium, Sydney. Paper entitled "In Flanders Fields"
- April 2008 Invited Speaker to Fire Investigation Forum "Fire Investigation for the Criminal and Coronial Jurisdictions", hosted by NSW Police Force Forensic Services Group and NSW Fire Brigades Fire Investigation and Research Unit, Sydney. Paper entitled "Deceased Persons in Fire".
- March 2009 Invited to give The Dean's Lecture, School of Medicine, University of Notre Dame Australia, Fremantle "Dead Men Do Tell Tales"
- July 2009 Invited Speaker to Aboriginal Legal Service Annual Conference. Paper entitled "Injury Interpretation"
- February 2010 Invited speaker to UNSW/UTS Multidisciplinary Workshop on Forensic Sciences in Australia. Paper entitled "Critical Issues and Challenges in Forensic Medicine"
- September 2010 Invited Speaker to Australasian College of Legal Medicine "Emergency Services/Overseas Aid – Impact of Legal and Forensic Medicine: Medico-Legal Aspects of Disaster Management"

APPOINTMENTS:

- 1961-1962 Resident Medical Officer - North Western General Hospital, Burnie, Tasmania
- 1962-1963 Trainee in Pathology, Alfred Hospital, Melbourne
- 1963-1964 Private Practice – Suva, Fiji
- 1964-1965 S.H.O. in Thoracic Surgery - Dundee Teaching Hospitals, Scotland (Ashludie Hospital)
- 1965-1967 Private Practice – Wyalkatchem, Western Australia
- 1967-1969 Senior Registrar in Pathology - Fremantle Hospital.
- 1969-1970 Private Practice – Bunbury, Western Australia
- 1970-1987 Pathologist/Forensic Pathologist - State Health Laboratory Services, Western Australia
- 1982-1991 Consultant Toxicologist, SHLS and University Department of Pharmacology, Western Australia
- 1987-1991 Chief Forensic Pathologist, Health Department, Western Australia
- 1990-1991 Clinical Associate Professor in Forensic Medicine, University of Western Australia
- 1991-2004 Associate Professor Pathology, University of Sydney
- 1991-2001 Director, NSW Institute of Forensic Medicine, Glebe, NSW
- Mar-Sep 2002 Visiting Professor, Department of Forensic Medicine and Sciences, University of Glasgow, Scotland
- 2002-2004 Clinical Director, Department of Forensic Medicine Central Sydney Area Health Service
- 2004 Visiting Consultant in Forensic Medicine, Hunter Area Health Service
- Sep-Nov 2005 Visiting Consultant in Forensic Medicine, South Eastern Sydney Illawarra Area Health Service
- Sep 2006 – Aug 2007 Visiting Consultant in Forensic Medicine, Sydney West Area Health Service
- Aug 2009 – 2007 Visiting Consultant in Forensic Medicine, Queensland Health

PAST MEMBERSHIP OF COMMITTEES:

- ◆ Western Australia State Committee RCPA
- ◆ State and National Committee Forensic Science Society Australasia (President).
- ◆ General Committee & Scientific Advisory Committee SIDS Foundation of WA
- ◆ WA State Road Trauma Committee, Royal College of Surgeons of Australasia.
- ◆ Pathology Advisory Committee, Q.E.II Medical Centre, Perth, Western Australia (Chairman).
- ◆ Laboratory Users Management Committee, Q.E.II Medical Centre, Perth, Western Australia
- ◆ Care in Custody Committee, Police Department, Western Australia.
- ◆ Adviser to the Perinatal and Maternal Mortality Committees, Western Australia.
- ◆ Adviser to the Anaesthetic Mortality Committee, Western Australia.
- ◆ AMA Representative Boxing Commission (Western Australia.).
- ◆ Member of the Water Safety Committee, Western Australia.
- ◆ NHMRC Working Party on the Guidelines for the Donation of Cadaveric Organs & Tissue for Transplantation
- ◆ Police Reports of Death Steering Committee, New South Wales
- ◆ SIDS Global Strategy Task Force (Pathology Co-chair)
- ◆ NSW SIDS Advisory Committee
- ◆ NSW Child Death Review Team
- ◆ NSW Funeral Industry Joint Consultative Committee
- ◆ NSW Health - Retention And Disposal Of Body Parts At Post-Mortem Reference Committee
- ◆ Senior Managers of Australia and New Zealand Forensic Science Laboratories Committee.
- ◆ Member Australian Delegation to Interpol (Disaster Victim Identification)
- ◆ Member of Council, Australian College of Legal Medicine

- ◆ NSW Clinical Excellence Commission.
Special Committee Investigating Deaths Under Anaesthesia
- ◆ NSW Clinical Excellence Commission.
Collaborating Hospitals' Audit of Surgical Mortality
- ◆ Australian Academy of Forensic Sciences, Council and Executive (Past President)
- ◆ Australian College of Biomedical Sciences, Past Patron and Member of Council

TEACHING:

- 1968-1991 Teaching and demonstrating morbid anatomy to under and postgraduates at Fremantle Hospital, Royal Perth Hospital, QEII Medical Centre.
- 1970-1991 Teaching of general and systemic pathology to undergraduates in the Faculty of Medicine, University of Western Australia.
- Teaching of Forensic Medicine and Pathology to paramedical personnel, police officers, nurses, dental nurses, dental assistants, and laboratory science students
- 1971-1991 Teaching of Forensic Medicine including ethics and toxicology to undergraduates in the Faculty of Medicine at the University of Western Australia
- 1973-2004. Supervision of Registrars in Forensic Pathology and other trainees for the R.C.P.A., candidates for MSc degrees, supervision of overseas trainees
- 1977-1981 Instigator of and lecturer, demonstrator and examiner in a course for Mortuary Technicians (TAFE)
- 1986-1991 Examiner in Forensic Medicine, UWA
- 1988-2004 Examiner in Forensic Pathology for the Royal College of Pathologists of Australasia
- 1991-2004 Teaching in Forensic Medicine and related topics to undergraduate and postgraduate students in the faculties of Medicine, Law, Nursing and others at University of Sydney, University of NSW, Macquarie University, University of Newcastle and University of Western Sydney (to the present) University of Technology (to the present)
- 1991-2004 Instruction in Forensic Medicine to members of the legal profession reading for the Bar and to the New South Wales College of Law
- 1992- 2004 Supervised PhD students in Forensic Science and History
- 2002 External Examiner in Forensic Medicine to the Post Graduate Medical Committee in Sri Lanka
- 2003 External Examiner in Forensic Medicine to the Post Graduate Medical Committee in Sri Lanka
- 2004 External Examiner in Forensic Medicine to the University of Malaya and National University of Malaysia

MILITARY SERVICE:

- 1962 Medical Officer RAAMC (CMF).
- 1972 Medical Officer 25 (City of Perth) Squadron RAAF.
- 1973 Senior Medical Officer (Squadron Leader) 25 Squadron RAAF
- 1975 et seq Consultant in Aviation Pathology and Forensic Medicine RAAF.
Amongst other activities this involves advising the services on medical aspects of aviation crash investigation, conducting such investigations and instructing and advising more junior officers in similar roles. This involves interstate and rarely overseas travel to the scene of fatal aircrashes involving service aircraft and military personnel or other deaths of Defence Force Personnel under other circumstances.
- These activities necessitate liaising and negotiating with other Australian Government Departments and jurisdictions and with authorities in other countries at a Ministerial and Head of Department level.
- 1987 Appointed DGAFS consultant with the rank of Group Captain.

HONOURS AND AWARDS:

Reserve Forces Decoration.

Defence Force Overseas Service Medal

Australian Defence Medal

Royal College of Pathologists of Australasia, Medal Awarded for Services to Pathology following the Bali bombings

Operations Medal, Australian Federal Police, Bali

Elected to Fellowship Royal Society (NSW)

PRINCIPAL RESEARCH PROJECTS:

- ◆ Multiple projects in S.I.D.S. and other forms of child death since 1972 including epidemiology of S.I.D.S., pathology of S.I.D.S., anatomical variation in infants, child abuse etc.
- ◆ Co-operative studies mainly in relation to S.I.D.S. with the following departments:- Biochemistry, Fremantle Hospital, Department of Respiratory Medicine, Q.E.II Medical Centre, Department of Respiratory Physiology, Department of Haematology, Royal Perth Hospital, Department of Anatomy, University of Western Australia, Department of Neuropathology, Royal Perth Hospital.
- ◆ Effects of alcohol on the human brain.
- ◆ Pesticide residues in human tissue.
- ◆ Human envenomation by snakes etc. and the detection thereof.
- ◆ Retrieval, collection, storage and preservation of body fluids and tissues for Toxicological analysis.
- ◆ Breath, blood alcohol correlations.
- ◆ Effects of alcohol and drugs on simulated driving skills.
- ◆ The ongoing role of the postmortem examination in the teaching of under and postgraduate medical students and other groups.
- ◆ Other studies in forensic medicine and pathology including studies into the relationship between trauma of varying kinds as a cause of death or disability in transportation crashes, accident, suicide and homicide
- ◆ Co-operative investigations into various aspects of neuropathology, bone and joint disorders, disorders of the middle and inner ear and genito-urinary/male reproductive medicine

PAPERS PRESENTED :

Scientific Meetings of the Royal College of Pathologists of Australasia.

Australian College of Legal Medicine

Australian Academy of Forensic Sciences

Australian Forensic Science Society.

ANZ Aviation Medical Society.

Singapore Medico-Legal Society

Republic of Ireland. Disaster Management Meeting

Public Defenders Criminal Law Conference

Fire Investigation Forum, hosted by NSW Police Force Forensic Services Group and NSW Fire Brigades Fire Investigation and Research Unit

Aboriginal Legal Service

Other learned bodies on a variety of topics usually related to Forensic Medicine and Pathology, Aviation Pathology, Child Abuse, Sudden Death in Infants.

PUBLICATIONS:

Numerous papers in various learned journals. (List available on request).

AUTHORSHIP:

Chapter in "Pathology of the Sudden Death in Infancy Syndrome", in Paediatric Forensic Pathology (Mason ed); Chapman Hall Medical Publications 1989.



Inquiry into the convictions of Kathleen Megan Folbigg

15 November 2018

Professor John Hilton

C/O

Blaise Lyons
Principal Legal Officer
NSW Ministry of Health
73 Miller Street
NORTH SYDNEY NSW 2060

by email: Blaise.lyons@health.nsw.gov.au

copied to: Ian.fraser@fjc.net.au; Deanne.tadros@health.nsw.gov.au

Dear Professor Hilton

Letter of engagement

Summary

On 22 August 2018 the Governor of New South Wales directed that an inquiry be held into the convictions of Kathleen Megan Folbigg for three counts of murder, one count of manslaughter and one count of maliciously inflicting grievous bodily harm in respect of her four children on 21 May 2003 ("the Inquiry"). The Crown Solicitor is the Solicitor Assisting the Honourable Reginald Oliver Blanch AM QC ("the Judicial Officer") with the Inquiry.

As discussed, you are engaged to prepare an expert report for the Inquiry which:

1. sets out your response, if any, to the undated report of Professor Stephen Cordner provided with the petition prepared on Ms Folbigg's behalf; and
2. in light of any medical advances since 2003 relevant to your area of expertise, advises whether the views you expressed at trial have changed or remain the same, and the reasons therefor.

As discussed, we would be grateful if you could provide your report, through your solicitor, to Amber Richards, Senior Solicitor for the Crown Solicitor by **Monday 10 December 2018**. Please get in touch if you encounter difficulties in meeting this date.

You may also be required to give oral evidence at the public hearings of the Inquiry. It is expected the hearings will take place at the Industrial Relations Commission Building located

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>

at 47 Bridge Street, Sydney in **late February or early March 2019**. We will contact you once the hearing dates for the Inquiry have been listed.

Background

Trial

Between 1 April 2003 and 21 May 2003, Ms Folbigg stood trial in the Supreme Court before Barr J and a jury, upon an indictment containing five counts in respect of the deaths of her four infant children. Those counts were as follows:

- Count 1:** the murder, on 20 February 1989, of Caleb Gibson Folbigg, 19 days old.
- Count 2:** maliciously inflict, on 18 October 1990, grievous bodily harm upon Patrick Allen Folbigg with intent to do grievous bodily harm, 4 months old.
- Count 3:** the murder, on 13 February 1991, of Patrick Allen Folbigg, 8 months old.
- Count 4:** the murder, on 30 August 1993, of Sarah Kathleen Folbigg, 10 months old.
- Count 5:** the murder, on 1 March 1999, of Laura Elizabeth Folbigg, 19 months old.

The essential issue at trial was whether the Crown could establish that each child's death and Patrick's apparent life threatening event ("ALTE") was a result of a deliberate act of suffocation and not the result of natural causes. The Crown case was that the deaths and the ALTE; the circumstances in which they occurred (including by way of coincidence reasoning); evidence of Ms Folbigg's relationships with, and attitude towards, each child; entries made by Ms Folbigg in her diaries (some of which were said to amount to admissions); and the medical evidence, established that the only rational inference open was that Ms Folbigg unlawfully killed each child.

On 21 May 2003, the jury found Ms Folbigg guilty of three counts of murder in respect of Patrick, Sarah and Laura; one count of manslaughter in respect of Caleb; and one count of maliciously inflict grievous bodily harm in respect of Patrick in respect of the ALTE.

Ms Folbigg was sentenced on 24 October 2003 to an overall sentence of imprisonment of 40 years with a non-parole period of 30 years. This was later reduced on appeal to 30 years' imprisonment with a non-parole period of 25 years and she remains incarcerated at Silverwater Women's Correctional Centre. Ms Folbigg brought appeals against conviction on 17 February 2005, 2 September 2005 and 21 December 2007. These appeals were unsuccessful.

Petition for review of conviction

After having exhausted her right of appeal, on 10 June 2015, pursuant to s. 76 *Crimes (Appeal and Review) Act 2001* ("the CAR Act") a petition on behalf of Ms Folbigg was presented to the Governor of New South Wales seeking an inquiry into her convictions. Accompanying Ms Folbigg's petition were several expert reports, including:

- an undated report by Professor Stephen Cordner (forensic pathologist); and
- a report dated 1 June 2015 by Dr Michael Pollanen (forensic pathologist).

Direction

On 22 August 2018, the Governor of New South Wales issued a Direction pursuant s. 77(1)(a) of the *CAR Act* that an inquiry be conducted into the convictions of Ms Folbigg. The primary focus of the Inquiry is expected to be on expert medical evidence, including:

- Any new research or advances in medical science relevant to the causes of death of each child and the cause of the apparent or acute life threatening event in respect of Patrick.
- Expert medical opinion as to the causes of death of each child and the cause of the apparent or acute life threatening event in respect of Patrick in light of any relevant new research or advances in medical science.
- Any new research or literature concerning the incidence of reported deaths of three or more infants in the same family attributed to unidentified natural causes.
- Any other related expert medical evidence.

Preparation of your report

I understand that you performed the post-mortem examination of Sarah Folbigg, prepared a report of your findings and gave evidence at Ms Folbigg's trial as to the cause of death.

The Inquiry would be assisted if you could prepare a report which includes the following, having regard to the material with which you are briefed:

1. your response, if any, to the undated report of Professor Stephen Cordner (provided at **Tab 9** of your brief); and
2. in light of any medical advances since 2003 relevant to your area of expertise, a discussion as to whether the views you expressed at trial have changed or remain the same, and the reasons therefor (your report is at **Tab 12** and the transcript of your evidence at **Tab 13**).

The report should only offer opinions on these matters to the extent that they are based upon your knowledge, training and fields of specialist expertise.

In preparing your report, please:

- i. identify (and reference as appropriate) any facts and assumptions from materials upon which you rely;
- ii. show how those facts and assumptions relate to your opinions;
- iii. provide an explanation of your reasons for each of your opinions; and
- iv. if necessary, set out any qualification or reservations you have about the opinions expressed in your report (for instance, because of reservations you hold about a fact, or if further research or information is required, or for any other reason).

Documents with which you are briefed

For the purpose of your engagement, you are briefed with the documents set out in **Annexure A** to this letter.

If you believe you would be assisted by any further documents, please advise us of the same.

Giving of evidence before the Inquiry

You may be required to give evidence orally before the Inquiry at the public hearings. It is expected the hearings will take place at the Industrial Relations Commission Building located on 47 Bridge Street, Sydney in **late February or early March 2019**. We will contact you once the hearing dates for the Inquiry have been listed. Please also keep us informed of any planned periods of leave.

Expert Code of Conduct and Curriculum Vitae

At **Annexure B** to this letter I set out the Expert Witness Code of Conduct and ask that you read it carefully. In the report you should acknowledge that you have read the Code and agree to be bound by it. I suggest the following form of words be included in the body of your report:

"I, Professor John Hilton, acknowledge for the purpose of Rule 31.23 of the Uniform Civil Procedure Rules 2005 that I have read the Expert Witness Code of Conduct in Schedule 7 to the said rules and agree to be bound by it."

I also request that you please attach a copy of your curriculum vitae to your report.

Confidentiality

Please ensure you keep your engagement, the documents with which you are briefed, and your report **confidential**.

Conclusion

Please do not hesitate to contact Amber Richards, through your solicitor on (02) 9258 0832 or amber.richards@cso.nsw.gov.au if you have any queries or require anything further to assist in the preparation of your report.

Kind regards



Amber Richards
Senior Solicitor
for Crown Solicitor
Encl.

ANNEXURE A

Index to briefing documents of Professor John Hilton

Tab	Document	Date
1.	Autopsy Report of Laura Elizabeth Folbigg by Dr Allan Cala	26 July 1999
2.	MFI 27: Autopsy Report of Laura Elizabeth Folbigg by Dr Allan Cala; and Neuropathology Report of Laura Elizabeth Folbigg by Dr M Rodriguez	26 July 1999 7 June 1999
3.	MFI 24: Article, Distinguishing Sudden Infant Death Syndrome From Child Abuse Fatalities (RE0036) (American Academy of Pediatrics, Volume 107, Number 2, pages 437-441) by Dr Allan Cala	February 2001
4.	Letter from Dr Allan Cala re IL-10 gene theory	19 March 2003
5.	Expert Certificate / Statement of Dr Allan Cala	28 March 2003
6.	Report of Professor Roger Byard	14 April 2003
7.	Transcript of evidence of Dr Allan Cala at trial (pages 705-765)	15 April 2003 – 16 April 2003
8.	Transcript of evidence of Professor Roger Byard at trial (pages 1195-1259)	7 May 2003
9.	Report and Opinion in the case of Kathleen Folbigg by Professor Stephen Cordner	Undated
10.	Peer Review of Professor Cordner's Report on the Folbigg case by Michael Pollanen	1 June 2015
11.	Chapter from Book, SIDS - Sudden infant and early childhood death: The past, the present and the future edited by Jhodie R. Duncan and Roger W. Byard (University Adelaide Press 2018): Chapter 24: The Autopsy and Pathology of Sudden Infant Death Syndrome by Roger W. Byard	N/A
12.	Post-mortem report of Sarah Kathleen Folbigg by Professor John Hilton	25 November 1993
13.	Transcript of evidence of Professor John Hilton (pages 615-634, 648-656, 912-918)	14 and 24 March 2003

ANNEXURE B

Uniform Civil Procedure Rules 2005, Sch 7: Expert Witness Code of Conduct

1 Application of code

This code of conduct applies to any expert witness engaged or appointed:

- (a) to provide an expert's report for use as evidence in proceedings or proposed proceedings, or
- (b) to give opinion evidence in proceedings or proposed proceedings.

2 General duties to the Court

An expert witness is not an advocate for a party and has a paramount duty, overriding any duty to the party to the proceedings or other person retaining the expert witness, to assist the court impartially on matters relevant to the area of expertise of the witness.

3 Content of report

Every report prepared by an expert witness for use in court must clearly state the opinion or opinions of the expert and must state, specify or provide:

- (a) the name and address of the expert, and
- (b) an acknowledgement that the expert has read this code and agrees to be bound by it, and
- (c) the qualifications of the expert to prepare the report, and
- (d) the assumptions and material facts on which each opinion expressed in the report is based (a letter of instructions may be annexed), and
- (e) the reasons for and any literature or other materials utilised in support of each such opinion, and
- (f) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise, and
- (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications, and
- (h) the extent to which any opinion which the expert has expressed involves the acceptance of another person's opinion, the identification of that other person and the opinion expressed by that other person, and
- (i) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate (save for any matters identified explicitly in the report), and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the court, and
- (j) any qualification of an opinion expressed in the report without which the report is or may be incomplete or inaccurate, and
- (k) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason, and

(l) where the report is lengthy or complex, a brief summary of the report at the beginning of the report.

4 Supplementary report following change of opinion

(1) Where an expert witness has provided to a party (or that party's legal representative) a report for use in court, and the expert thereafter changes his or her opinion on a material matter, the expert must forthwith provide to the party (or that party's legal representative) a supplementary report which must state, specify or provide the information referred to in clause 3 (a), (d), (e), (g), (h), (i), (j), (k) and (l), and if applicable, clause 3 (f).

(2) In any subsequent report (whether prepared in accordance with subclause (1) or not), the expert may refer to material contained in the earlier report without repeating it.

5 Duty to comply with the court's directions

If directed to do so by the court, an expert witness must:

- (a) confer with any other expert witness, and
- (b) provide the court with a joint report specifying (as the case requires) matters agreed and matters not agreed and the reasons for the experts not agreeing, and
- (c) abide in a timely way by any direction of the court.

6 Conferences of experts

Each expert witness must:

- (a) exercise his or her independent judgment in relation to every conference in which the expert participates pursuant to a direction of the court and in relation to each report thereafter provided, and must not act on any instruction or request to withhold or avoid agreement, and
- (b) endeavour to reach agreement with the other expert witness (or witnesses) on any issue in dispute between them, or failing agreement, endeavour to identify and clarify the basis of disagreement on the issues which are in dispute.