

# Inquiry into Convictions of Kathleen Folbigg

## Submissions on behalf of Kathleen Folbigg

### PART D - Diaries

#### SIDS and Grief

1. Bruce Beckwith provides the following explanation for use of the term “SIDS”.

*Sudden infant death syndrome (SIDS) is a term that was first proposed in 1969 for a distinctive subgroup of unexpected infant deaths that occur during the postneonatal period with relatively consistent clinical, epidemiological, and pathological features. This term played an important role by focusing attention on a major category of postneonatal infant death, providing support to grieving families, and diminishing the guilt and blame characteristic of these deaths.*<sup>1</sup> (emphasis added)

2. This purpose of SIDS research is important as it is a tacit recognition of the likelihood of grieving parents to suffer guilt or blame themselves for the death of their children. In the vast majority of those deaths, the parents have done absolutely nothing to cause or contribute to those deaths, the sense of guilt and self-blame does not arise from any act of commission by the parents. Thus, the sense of guilt or self-blame arises from a sense of omission. In other words, the parents blame themselves and suffer guilt by a perception that they have, in some way, failed their children and thus assumed a responsibility for their deaths.
3. Further, as set out in Exh AO, that parents accept blame and responsibility of the deaths of their children:

*Most sudden infant deaths occur at home. Parents are shocked, bewildered, and distressed. Parents who are innocent of blame in their child's death often feel responsible nonetheless and imagine ways in which they might have contributed to or prevented the tragedy.*

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<sup>1</sup> J Beckwith MD, 'Defining the Sudden Infant Death Syndrome', *Arch Pediatr Adolesc Med*, (2003) 157(3), 286-290, 286.

4. Alison Colley made a similar observation at T 591.40-.45:

*... When a catastrophic event happens, obviously mothers, families and doctors try to go back into the history and say is there anything, anything possibly that could give us some clues, and so you often have an overzealous natural wanting to find something beforehand, and something that might not really be relevant suddenly perhaps can assume a greater importance than what it should.*

5. Dr Diamond refers to ruminations that people experience with respect to what they did or failed to do.<sup>2</sup>
6. It is apparent from the report of Dr Giuffrida<sup>3</sup> and Dr Westmore<sup>4</sup> and the latter reports of Dr Diamond<sup>5</sup> and Dr Giuffrida<sup>6</sup> that Ms Folbigg suffered emotional trauma from the death of her children and suffered a prolonged post-traumatic disorder. Findings should be made that the death of one child is likely to cause distress and grief which is likely to be linked to a sense of guilt and blame for their actions and their omissions. This chronic grief is likely to be compounded with each additional death and the emotional response has every likelihood of being objectively irrational. Without having experienced those events, it would be difficult to judge one who has.
7. The diaries need to be assessed against that background of human frailty. It is to be noted Ms Folbigg was raised in a Christian foster family and one of the central tenets of that faith is to be found in the Confiteor:

*... I have greatly sinned ... in what I have done, and in what I have failed to do ...*

8. As such, there should be recognition that, given her Christian upbringing, given the recognition that parents blame themselves for the death of a child through SIDS or sudden death in infancy despite no actual wrongdoing on their part, that a parent may express responsibility for that death through a

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<sup>2</sup> Exh BA Diamond report page 42, answer 8 and answer 9.

<sup>3</sup> Exh BD.

<sup>4</sup> Exh BB.

<sup>5</sup> Exh BA.

<sup>6</sup> Exh BR.

belief that any omission by the parent for the care for the child has contributed to the death.

9. The belief by the parent may be objectively irrational but the rationality of the belief is not the issue. It is whether the belief is held and whether any writings or statements by the parent record a mode of thinking to that effect. The parent is not rational in their own assessment of their own failings, and may express a view they are responsible, and have contributed to the death.
10. Putting aside her Christian upbringing, the acceptance of responsibility for an omission is a natural aspect of the human frailty.
11. Yet those cross-examining Ms Folbigg did not address the omission/commission distinction at all.
12. The cross-examination by counsel for the DPP, Craig Folbigg and Counsel Assisting proceeded on the assumption that any expression by Ms Folbigg of responsibility for the children reflected an admission by her of a positive act that caused the death of the child. At no time was it ever considered by any of the cross-examiners that the expression of responsibility for the death of one or more of the children was borne by a sense of grief or self-blame brought about by her perception that her omission may have contributed to the death.
13. In this regard, there was an awful lot of questioning and very little listening.
14. In her evidence, Ms Folbigg made statements of her perception of responsibility through her omissions. Examples of this are as follows:

(a) From 29 April 2019:<sup>7</sup>

Q. *Because you say - you're taking responsibility for their death there, aren't you?*

A. *Absolutely, I was their mother.*

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<sup>7</sup> T 662.16-29.

Q. *And you say, "because it was me, not them", is it not implicit in that that there was nothing wrong with them either?*

A. *I'm blaming myself there. That sentence is totally me blaming myself.*

Q. *I see, that's you blaming yourself because you killed three children that didn't have anything wrong with them?*

A. *No.*

Q. *And that's what that means?*

A. *No.*

(b) From 30 April 2019:<sup>8</sup>

Q. *The children all had two parents naturally, you and Craig.*

A. *Yes.*

Q. *You didn't consider that the other parent, the father, was a failure as a father because your children had died, did you?*

A. *No, because I took the onus of responsibility for it all upon myself.*

Q. *I suggest that you did that because you knew that it was you and not Craig who was responsible for the deaths of the children.*

A. *No. I took the responsibility and the onus of the responsibility for the deaths of my children extremely hard, because I had worked so hard in preparation and in my attempt to succeed at being a mother I did deem it as a personal failure that I had lost my children and I was not succeeding where I thought I was supposed to be.*

Q. *Or to put it another way, you deemed it as a personal failure every time you lost control of your temper and did away with your children in circumstances where you felt alone, even if you were not physically alone.*

A. *No, I deemed it as a personal failure, yes, if I'd thought I'd lost control, if I'd shown frustration or any negative feelings towards anything, including Craig, children, whichever, I took that onus of responsibility totally on myself and I thought I had to fix everything, and it was my bordering on obsession with doing so that created such an attitude where I just continually felt that I was failing at the plan of life which I thought I was supposed to be undertaking.*

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<sup>8</sup> T 702.49 - T 703.23.

(c) From 30 April 2019:<sup>9</sup>

Q. *You know, you're telling yourself -you've just found out you're expecting another baby, haven't you?*

A. Yes.

Q. *And you're telling yourself that the main thing you've got to remember is to change your attitude and "try earnestly" not to let anything stress you "to the max"?*

A. *Yes, and the focus on that -in that extract, as far as I'm concerned, is to change my attitude. I - as I said - constantly keep saying, I took the onerous responsibility on my own shoulders for failing to be the parent I was supposed to be and the plan that I thought my life was supposed to take, and I was constantly trying to fix everything myself. So, as far as I'm concerned, that extract demonstrates that.*

Q. *Well, ma'am, may I suggest to you, you weren't trying to fix everything in your life, you were just trying to fix your attitude in relation to your baby, weren't you?*

A. *Anything. I've written the words, "not to let anything stress me out". That's a - generalising, that's not specific to the children.*

Q. *Well, it's not stress you "out", is it, it's "stress me to the max"?*

A. Yes.

Q. *May I suggest to you that what you meant there was, when you are stressed to the max, something dreadful happened to your babies in the past?*

A. *I believed, as I said before, that all negative emotions -stress, frustration or anything else - impacted on the people around me, including my children, and I had almost convinced myself that my children, in a very warped way, had decided to not stay with me and I blamed myself for that.*

Q. *Well, that was one of the ways, I'd suggest to you, that you absolved blame from yourself, knowing that physically you had taken all their lives?*

A. No.

Q. *That was one of the ways. The other way was to blame everyone else in your life, starting with your father?*

A. *No, my diaries are pretty much evident and obvious that I'm constantly blaming myself. I'm not blaming anybody else, I'm always blaming myself.*

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<sup>9</sup> T 714.48 - T 715.39.

Q. Because you knew that it was you and no-one else who had brought about the death of your children?

A. No.

(d) From 30 April 2019:<sup>10</sup>

Q. "Seriously wonder whether I'm stupid or doing the right thing by having this baby, my guilt of how responsible I feel for them all haunts me, my fear of it happening again haunts me, my fear of Craig and I surviving if it did haunts me as well", once again you're saying that you acknowledge responsibility for their deaths, aren't you?

A. As in I feel responsible all the time yes, that passage is quite good really at explaining constantly how my mind was going.

Q. You were, on that night anyway, racked by guilt about being responsible for the deaths of your children, weren't you?

A. Not for the physical response no, you keep, you know I will always say I had no direct part in the killing of my children, do I feel responsible for their deaths, as their mother and the fact that I did not do something in any way whatsoever that could've helped prevent that in some way then yes I will always say I'm responsible.

Q. Well that just doesn't make any sense madam does it, if you had done nothing active to bring about those children's deaths, you would deserve no more guilt than your husband?

A. I'm not going to agree with that, because I constantly blamed myself for everything, including the responsibility. I took the onus of responsibility because I was their mother and being their mother was very important to me, and the idea of being a mother was very important to me. The idea of family was important to me. The constant need of me wanting a family was important to me.

Q. And your fear of "it happening again" haunted you?

A. The fear of me walking in and finding one of my children deceased, yes.

Q. You feeling guilty, because you feel "responsible for it happening". That's because you did something active to bring about their deaths during those times when you were alone or felt alone –

A. No.

Q. --and stressed?

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<sup>10</sup> T 724.12 - T 72.35.

A. No.

Q. *When you say: "I wonder whether having this one wasn't just a determination on my behalf to get it right and not be defeated by the total inadequate feelings about myself. What sort of mother am I? Have I been a terrible one? That's what it boils down to"?*

A. *Yes, and that is, pretty much, a statement agreeing with how my mind was working at the time, where I constantly felt that I'd failed, I –*

Q. *And that is because, I'd suggest to you, you did fail, in the most extreme way, with each of your children by bringing about their deaths?*

A. No.

Q. *You weren't a terrible mother in any other way, were you?*

A. *No. That doesn't stop the, the responsibility of which I felt for that. I could have been the best caring, as in, day-to-day carer of my child ever, but when you lose a child you doubt all that, and that's what I was doing, constantly doubting that.*

Q. *If it was just a feeling that you failed because as a mother you're responsible, you would join Craig in those feelings, that the two of you are responsible because our children keep dying?*

A. *Why would I? If I'm taking the onus of responsibility on my own shoulders, why would I be including Craig in that?*

Q. *Well, I'm suggesting to you, that the only reason you take that responsibility is because you, in contrast to Craig, were the one to do something active to kill your children?*

A. No.

Q. *And there is the word "terrible" again when, in relation to your father, you say, some years later on 19 June 1999, "I can't help but feel my life would have been so different, and how it was meant to be, if only Tom hadn't made a stupid mistake one night and the family hadn't interfered in the way they did"?*

A. *It was a stupid mistake, wasn't it? An error of judgment, a stupid mistake, be it, however he made it.*

(Emphasis added.)

(e) From 30 April 2019:<sup>11</sup>

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<sup>11</sup> T 743.47 - T 745.30.

WITNESS: Yes, but I always felt I was being punished, in some form or other.

Q. Well, I'm suggesting that you are acknowledging there that, even if you get your child past infancy, she or he is at risk of fate or someone punishing you for what you did to your other children, your earlier children?

A. No. I - I'm thinking of the - when my child could be older and fate or whatever could interfere, and that child may have an accident and then die and be taken away from me.

Q. Yes, precisely, you're worried that you think that you deserve punishment by that means, that is your child being taken from you by accident or other causes later in his or her life, because of what you did to your previous children?

A. But I didn't do anything to my previous children.

Q. Well, you understand that I am suggesting to you that you did and these words are a reflection of your consciousness of that?

A. No. You know, I'm, I'm merely stating that, you know, I again am seeing the worst and, and having a fear, that even if the - if Laura reaches adulthood, that something could happen and she could still end up being taken away from me. And, yes, I did regard that as a -

Q. Yes, well, then you -

A. --if you'd let me finish -

Q. I'm so sorry.

A. --regard that as, as I did with all the others, a punishment for a failure as, as not being good enough in what I was doing.

Q. But I'm suggesting to you that this is different. The punishment comes when this child is older and the punishment is for what happened to the other children, that's clear, isn't it?

(Emphasis added.)

(f) From 30 April 2019:<sup>12</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?

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<sup>12</sup> T 756.42 - T 757.14.



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

(g) From 30 April 2019:<sup>13</sup>

- 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.

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<sup>13</sup> T 757.42 – T 758.17.

Q. "It was me, not them"?

A. I always thought it was me, always blamed myself.

Q. And that's because it was?

A. No.

Q. Isn't it?

A. No it's not.

(Emphasis added.)

15. This response is also set out in the report of Dr Diamond.<sup>14</sup> In her account to Dr Diamond, she described her perfectionism which is one aspect of her perception of her failure to meet her own expectations and to build upon a persecution complex that she was being punished for not being perfect.<sup>15</sup>

16. There are further examples in the ERISP.

(a) Q 321;

(b) Q 641;

(c) Q 721.

17. In the ERISP, there was the following exchange:

Q719 *My guilt of how responsible I feel for them all. What" does that mean?*

A My responsibility as in did I try enough, did I do enough, was I where I was supposed to be, was I not trying hard enough, was I, all the things that I thought responsibility was.

Q720 *Do you seriously think that you are responsible for your children's death?*

A. *I regarded it, and I still sometimes do now, which I'm tryin' to work through with Fitch that it was a failure of mine somewhere along the lines if I couldn't keep my children alive and with me. So, I just sort of, yeah.*

Q721 *How have you failed?*

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<sup>14</sup> Exh BA page 16.

<sup>15</sup> Exh BA page 18.

A. Didn't do something, didn't walk in the room two minutes earlier, didn't check two seconds earlier, I didn't do something that would have meant when I walked in the room that they were alive and well instead of when I've walked in the room they weren't, sort of thing.

Q722 . My fear it happening again haunts me. What's it?

A. Death.

Q723. Death you said was it?

A. Yeah. The inadequate feelings that go hand in hand with it. Again, the feeling that, the overwhelming feeling that I'd failed somewhere along the line. You can't have something like this happen without somewhere along the line thinking it's got something to do with you. That's a natural thing and Craig went through the same thing. He did exactly the same thing. Did it have something to do with him? Did he fail as a father? It was all interrelated and have you.

Q725 Why do you say you were a terrible mother?

A. Because they weren't there with me, no other reason. I look at other mothers who can be poppin' out of five, six, seven, eight of them, probably havin' even more stress and trouble than I have ever had in my lifetime with that. many of them but they were all still there. The parents who are nasty to their kids in public and you look at them and think, well, good grief, you poor kid. They're still there. And to me the, you know, at that time in my life I was wondering whether I was strong enough and a good enough mother to make sure this one stayed with me. And now I sit here and - -

Q725 That doesn't make you a terrible mother.

A. It's a perception I've got to get over, that's all.

(Emphasis added.)

18. Ms Folbigg was not cross-examined that her statement of acceptance of responsibility for her omissions was false. She was only cross-examined only on her commission of acts. In this regard, if there was to be a submission put that she should not be believed on that evidence, then as a matter of procedural fairness, it should have been put to her, and she could have advanced an explanation. As noted above, there is plenty of evidence to support her contention.
19. As such, this Inquiry should make a finding that many of her statements contained in her diaries are consistent with an assumption of responsibility for

omissions. This is a common feature of a grieving parent and it is objectively irrational but subjectively important in formulating the way in which a person thinks in the face of tragedy.

20. The diaries were put to Kathleen Folbigg by police at the time of her ERISP. This was some years after the diaries were written and some years after Caleb, Patrick and Sarah had died. In her ERISP, Kathleen Folbigg gave an explanation for the diaries.
21. Crown Prosecutor did not refer to any explanation in the ERISP when opening the trial, relying on the diary entries themselves to evidence a consciousness of guilt. Crown Prosecutor undertook the same exercise in referring to the diary entries themselves but not to any exculpatory statements in the ERISP. This failure to present the explanation is the clearest failure to address the context in which the diaries were written and the belief system of the person writing them. It demonstrated a decision to ignore these aspects that are central to the determination of what was meant by the words used by the author. It demonstrates a clear predetermination of the interpretation to be placed upon them, as demonstrating a consciousness of guilt to the exclusion of some alternative interpretation that may be available in the context of profound grief and emotional disturbance. It failed to address the omission/commission distinction.
22. It is submitted this Inquiry not only needs to assess the evidence of Ms Folbigg and her explanation for her diary entries through a prism of commission, but also through a prism of omission. When one assesses such of the further context that is available through the exhibits and trial transcript, it is consistent with her writing her journals with a perception of her responsibility through what she had failed to do.

## Writing of Diaries

### General Matters

23. The diary entries form one cornerstone of the Crown claim at trial that Kathleen Folbigg was responsible for the deliberate killing of her children.<sup>16</sup> At this Inquiry the diary entries are advanced on the same basis.
24. The “diaries” are of two broad types:
- (a) Calendars that were generated for the care of Caleb;<sup>17</sup>
  - (b) Journals that recorded:
    - (i) Contemporaneous events;
    - (ii) Ruminations on past events.
25. It is the second category of documents that has attracted the attention of the prosecuting authorities for the statements made in them by Ms Folbigg. They are not diaries in the strict sense, but journals.
26. There is no clear, unambiguous or unequivocal admission in any diary entry that she murdered her children. There is no direct reference in the diaries to the death of Caleb in a manner that could infer murder. There are no unambiguous or unequivocal direct admissions as to smothering or murder, only inferences to be drawn from:
- (a) The use of words by Ms Folbigg in her diaries seen in the context of family ordinary issues of disagreement and relationship issues within a family and within a marriage;
  - (b) The weight of the medical evidence presented at trial; and

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<sup>16</sup> This evidence was always set in the context of the other medical evidence and together provided “proof” of her guilt. The medical evidence is dealt with elsewhere in these submissions.

<sup>17</sup> Exh AZ.

- (c) The fact of four deaths in the one family with no identified alternative cause of death at trial.
27. Counsel Assisting has submitted that at an Inquiry, the presumption of innocence is not revived.<sup>18</sup> As stated earlier in Part A of these submissions, Ms Folbigg submits this statement is incorrect. However, if this submission is not accepted, it is submitted that one does not assess the evidence through a presumption of guilt.
28. Ms Folbigg submits Counsel Assisting, counsel for the DPP and counsel for Mr Folbigg proceeded in their respective questioning and in their submissions of Ms Folbigg operating upon a presumption of guilt and wholly neglected to address the omission/commission distinction. Further, the questioning by counsel for Mr Folbigg clearly extended beyond the grant of leave by the Inquiry. Objection was taken and the objection was overruled.<sup>19</sup>
29. However, the very tone and content of the questioning revealed a perspective that the relevant entries were wholly incriminating. This is the natural consequence of addressing the diaries by assessing them as being admissions of commission only and is largely influenced by the presumption that four deaths in one family carries with it a high index of suspicion of guilt. This demonstrates the innate presumption of guilt and a blinkered view of their contents. This presumption is derived in an incomplete consideration of context.
30. The submissions of Counsel Assisting, Craig Folbigg and the DPP wholly ignore the entirety of the context in which the diaries were written, and the chronology of events that preceded them.

### **Context**

31. At the commencement of the first day of Ms Folbigg's evidence, when asked about the order of witnesses, Counsel Assisting advised she did not propose to

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<sup>18</sup> See Submissions of Counsel Assisting at [12].

<sup>19</sup> T 617 - T 619.05.

ask question immediately of the witness but to be the last questioner. In those circumstances, counsel for Ms Folbigg was prepared to lead evidence, but advised the Inquiry there would be a degree of material relating to the context in which the diaries were written. This application to lead the context of the generation of the diaries was rejected.<sup>20</sup>

32. Ms Folbigg was extensively cross-examined upon the diaries with no reference to the context in which they were written only the use of words, assessed against a test of “ordinary English usage”. The context in which the entries had been written and the belief system and emotional state of the author played no relevant part in the cross-examination.
33. On the third day of her evidence, Ms Folbigg was cross-examined extensively by Counsel Assisting regarding “reconstruction” in her evidence.
34. The context is essential to understanding the meaning of the entries in the diary.<sup>21</sup>
35. It is submitted on behalf of Ms Folbigg that context is directly relevant to the existence of any reconstruction, the extent of it and the extent to which the existence of reconstruction has rendered her evidence inaccurate or unreliable. The context is an entirely reasonable consideration to determine how the language was used, the purpose for which it was used and the belief system and likely emotional state in which the author wrote it. By excluding evidence of context, Ms Folbigg has been denied forensic opportunities to explain herself and, given the nature of the cross-examination by Counsel Assisting, and senior counsel for Mr Folbigg, was exposed to procedural unfairness.
36. Be that as it may, there was material tendered before the Inquiry to establish some (but not all) of the context in which the diaries were written.

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<sup>20</sup> T 617 - T 619.05.

<sup>21</sup> Exh BA, Diamond report pages 41. Answer 6.

## Ms Folbigg

37. Ms Folbigg has suffered terrible trauma in her life. Yet she has no psychiatric illness that would explain her killing of four children. She has post traumatic symptoms but no illness that has an association with homicide. In this regard, it is convenient to deal with some of that evidence.
38. Dr Giuffrida's report was prepared for the purpose of sentencing and upon the finding of guilt. It was a presentence report. In this regard, he noted she pleaded not guilty and disputed her conviction.<sup>22</sup> His report was based on a base assumption Ms Folbigg had killed her children and he was obliged to accept that finding. Accordingly, his assessment was through a prism of commission. His report is illuminating. His section on diagnosis reads as follows:<sup>23</sup>

### *Diagnosis*

*I said at the outset that my experience of assessing and my studies of women who have murdered' or attempted to murder their children has revealed that in almost all cases there is evidence of serious psychopathology. The younger the age of the children when murdered, the greater is the evidence of serious psychopathology. The murder of children by their mothers in the first year of life has a long history in psychiatry and, in the law, and in the latter case known as the offence of infanticide. Evidence of severe mental illness in the form of psychotic depression or other psychosis such as schizophrenia has of course been given as evidence of infanticide which has led to acquittal or a reduction of the charge of murder to manslaughter. Where a woman is charged with the offence of murder of a child in the first year of life, it is the primary duty of the psychiatrist to satisfy himself or herself that the patient does not suffer from a psychotic illness that is characterised by delusional beliefs for example or where the mother might be commanded by auditory hallucinations to take the life of the child. I must say that I could find no clear evidence of psychotic illness in Mrs Folbigg. ...*

39. This Inquiry should find Ms Folbigg had no demonstrable psychiatric disorder and Dr Giuffrida's experience is that almost all of the women he has assessed who have killed or attempted to kill their children have a "serious psychopathology". The corollary to this point is that the psychopathology has caused the murder which is otherwise very rare. In this context, Ms Folbigg

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<sup>22</sup> Giuffrida report page 2.

<sup>23</sup> Exh BD pages 19-24.



does not fall into a class of women who are likely to have murdered or attempted to murder their children.

*... There is on the other hand a history of pervasive depression throughout her marriage which is described in her history to me and strongly confirmed by numerous references to her depressive mood, feelings of failure, shame, guilt and loss of self esteem and a profound sense of worthlessness in her diaries. This pervasive state of depressive mood sometimes called a chronic dysthymia was accompanied by biological or vegetative signs of depression at different points in her life. There would certainly seem to be significant vegetative signs in the form of compulsive or at least uncontrolled eating and massive weight gain from 60 to 90kg of weight for example. These episodes were accompanied by loss of a joy in living, loss of interest, energy and decline in activities. This was particularly true when she became severely withdrawn, avoiding all social company, spending almost all of her time watching videos. ...*

40. This is important evidence because it demonstrates Ms Folbigg has suffered pervasive depression and a sense of “*failure, shame and guilt*”. This observation by an experienced forensic psychiatrist is wholly consistent in the writings in her journal and with the stated explanations by Ms Folbigg in her journal and her ERISP of feelings of failure, shame and guilt. The clearest contemporaneous example that best demonstrates this belief system is the entry for 26 June 1997. This is the subject of a detailed submission later in this document. It is perhaps the most important entry with respect to her belief system.

*Although the episodes of depression were pervasive they certainly appeared to become more intense and long lasting after the death of each child and probably represents Mrs Folbigg's particular expression of grief and bereavement. ...*

41. Further, Dr Giuffrida recorded these feelings become more intense after the death of each child.

*It would seem ~ fairly clear from the history she gave me and the evidence from the diaries that Mrs Folbigg completely failed to experience any true sense of bonding or attachment to her children, although it seems to me that there were repeated despairing attempts to find what she refers to as her maternal instinct.*

*My impression is that this woman desperately attempted to achieve such an emotional bonding with her children and the very experience of failing to achieve it, of itself, precipitated and probably aggravated her intense feelings of failure and worthlessness as a mother and probably at the same time as a wife.*

*At the same time, Mrs Folbigg was very definitely overwhelmed by what she clearly perceived as the intense and insatiable demands of her infant children. It is clear that she was only coping at the very limits of her capacity and repeatedly relied to an inappropriate degree on her husband, his relatives and friends for support and care of her children. Despite this help and support, it seems clear that she had a persisting sense of tension and anxiety at which times she described herself as "losing it". I expect that the episodes of losing it was when she felt that she could not cope any further, became angry and perhaps enraged and would leave the care of her children to whoever was available.*

42. This evidence does not match the clinical history with respect to Caleb and Patrick. With respect to Caleb, Craig Folbigg did not describe a child who had "insatiable demands" nor a woman who was at the limits of her capacity and who repeatedly relied upon her husband. There is not the slightest evidence to that effect with Caleb. Caleb was taken to every recommended medical appointment and cared for during the day by Ms Folbigg without incident.
43. When she discovered she was pregnant with Caleb, the couple were happily anticipating the birth.<sup>24</sup>
44. As to Patrick, after the ALTE, Ms Folbigg had to readjust her lifestyle and perceptions of her marriage when she had the care of a seriously disabled son. But she got through this period, took the body to every medical appointment and cared for him without incident and without the slightest suggestion of want of care or prior abuse.
45. With respect to Sarah, she had a "tussle". This is not unusual. But she cared for Sarah and developed her own relationship with her. She strongly bonded with Laura.
46. The opinion of Dr Giuffrida on this issue is not grounded in the evidence.

*Whilst I do not think Mrs Folbigg suffered from a psychotic level of depression, that is to say the state accompanied by the development of psychotic phenomena such as delusional ideas, hallucinations or a serious form of thought disorder, it is nonetheless clear to me that her state of depression was serious enough and persistent enough to have strongly contributed to a state of mind that led to her killing her children.*

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<sup>24</sup> Exh F T 219.36.

47. Any statement to the effect her depression contributed to her state of mind that contributed to her killing her children can only be seen in the context of the finding Ms Folbigg had killed her children. The conclusions in this report do not mean she killed her children through depression and that has never been part of the Crown case.
48. This observation by Dr Giuffrida is made on the assumption she did kill her children. There is no doubt Dr Giuffrida formed the view Ms Folbigg suffered severe depression and he was searching for an explanation for the deaths. He neither provides an explanation of any relationship between depression and murder nor does he provide any real reasons for that opinion. This Inquiry should express a considerable doubt about that opinion.

*I said earlier that Mrs Folbigg is a woman of probably at least average, if not above intelligence, although not having achieved her potential educationally. There is therefore no evidence of developmental disability.*

*I said at the outset that women who cause the death of their children very frequently suffer from the most serious kind of personality disorder. The most common type of severe personality disorder encountered is of women who show marked features of the borderline personality disorder or dependent personality disorder or more commonly it combination of borderline and dependent personality disorder. Less commonly one finds women with serious antisocial personality disorder, many with the core features of psychopathic personality disorder. I should say in Mrs Folbigg's case that there was remarkably little to implicate any of these serious personality disorders. She certainly shows none of the usual features of borderline personality disorder nor in particular of psychopathy. In relation to the latter, there is a very significant absence of antisocial conduct or behaviour in adulthood, although there is some evidence of conduct problems in childhood in the form of two episodes of stealing. There is no criminal history or antisocial behaviour in adulthood. In fact in many respects Mrs Folbigg has been remarkably conventional in terms of her lifestyle and interests and if anything had very ordinary and conservative aspirations. Despite her difficulties in her marriage, she persisted with it and continued to contribute to the family welfare in the sense of always working when she could. There is therefore very significantly a remarkable absence in terms of the historical features or the core criteria for psychopathy.*

49. Again, Ms Folbigg does not fit the class of persons who are likely to murder their children, ie those with a borderline personality disorder or dependant personality disorder. She had neither of those features, and it was notably

remarkably conventional in her lifestyle, interests and aspirations. A finding should be made to this effect.

*I have commented in my mental state examination and numerous others have commented on Mrs Folbigg's emotional detachment and indeed the blunted or attenuated capacity to grieve the death of her children.*

*I spent a good deal of time taking a very detailed history of her relationship with her children and her response to each of their deaths. That response was characterised by an almost total absence of normal grief and bereavement. For a woman to lose a young child and then to lose four children suddenly is an intensely traumatic experience and it is almost invariably the case that the mourning and grieving process is both profound and long lasting. Such women often develop grossly pathological symptoms particularly of severe depression.*

50. Again, Dr Giuffrida's opinions are a clear overstatement of the actual position when assessed against the evidence given by Craig Folbigg. While Craig Folbigg dealt with the emotional fallout from the deaths of his children in a particular way, that his wife coped differently does not amount to a "total absence of normal grief and bereavement". Observations of her response are to be found in the evidence of a number of witnesses, the closest being Craig Folbigg.

*Although it is clear that after the death of each of her children, Mrs Folbigg became depressed in the sense of becoming emotionally blunted and withdrawn, there was in each case an extraordinary absence of any of the normal mourning or bereavement signs. Given that each of the children died suddenly and assuming they died by her own hand and I presume by smothering, this would for any woman be an intensively traumatic experience and would almost invariably result in symptoms of a post traumatic stress disorder, that is a state accompanied particularly by acute anxiety, depression, usually gross cognitive impairment and most of all intense reliving phenomena in the form of flashback type experiences of the time of death of the child or of terrifying nightmares or the death which would be usually sufficiently intense to wake the woman from sleep, usually accompanied by symptoms of an acute panic attack with palpitations, sweating, tremor, hyperventilation and so on. As far as I could determine, Mrs Folbigg did not appear to experience any of the normal symptoms of grief or mourning) nor did she reveal any of the symptoms that I would expect of post traumatic stress disorder in these circumstances.*

*I must say that this is a very significant phenomenon and I should attempt to explain this as far as I can.*

*The clearest phenomenon is the lack of the capacity for bonding or attachment of Mrs Folbigg to any of her children. Her attachment to each of the children such as it was, appears to have been of a practical and mechanical kind, devoid of any sense of loving or*

*passion. I might say that also seems to be equally true of her relationship with her husband and with her foster mother.*

51. This again appears to be an overstatement. There was not a lack of bonding but there was likely an impairment of bonding for which Ms Folbigg felt a failure. It is recorded in her writings. In any event, he provides a rational explanation for such impairment of bonding in her childhood.

*The question arises in my mind as to how to account for this apparently inherent incapacity. I think the clues to this can be identified in Mrs Folbigg's earliest life experiences. It is clear that in her first 18 months of life that she is highly likely to have been bought up in a highly dysfunctional and probably emotionally, physically and possibly a sexual abusive relationship. It is highly likely that her father Thomas Britton, who had a history of assault and malicious wounding and who ultimately killed his wife, was abusive to his wife in the child's (sic) first 18 months of life. It seems likely that Mrs Folbigg would have been exposed to such violence.*

*It also seems to be clear that Mrs Folbigg's mother was unable to care for her child and gave the child to her sister and her brother-in-law to look after for periods of time. My best guess in all of these circumstances is that Mrs Folbigg herself as a child was probably neglected and probably traumatised. There is some indication from the reports from the Department of Community Services at the time that she may have been subject to sexual abuse.*

*The evidence that Kathleen Folbigg was seriously disturbed when she came to live with her aunt and uncle when she was 18 months old is compelling. It would seem abundantly clear from all of the reports available from the Department of Community Services that the child was severely regressed. It is significant that she is described as being of low intelligence and having trouble being taught the most basic requirements of hygiene, acceptable manners and behaviour. Given that we now know that Mrs Folbigg is of at least average, if not above average intelligence, the description of her level of cognitive development at that stage is, I believe, highly significant. When she was tested by a psychologist on 4 August 1970, she was described as being remote, speaking little, not responding to conversation and otherwise restless, inattentive and non cooperative. She is described as a very disturbed little girl with various behavioural difficulties, aggressive to other children and not responding to the usual social and emotional demands placed on her. This level of regression and cognitive impairment in a child of 18 months to 3 years would strongly suggest to me that the child had been severely traumatised in her first 18 months of life.*

*What is of even greater significance to me is a 3 year old child who is said to have a preoccupation with her genitals and repeatedly tries to insert various objects into her vagina. This is evidence of a very disturbed child and I would take the fact she was inserting various objects into her vagina as prima facie evidence that she had been seriously sexually abused in her first 18 months of life. The behavioural disturbances were also characterised by "severe temper tantrums" with screaming and crying incessantly for reasons which do not appear to be clear at the time. I would take all of*

*these behavioural changes together as evidence that the child was severely traumatised at the time.*

*There is abundant evidence in the literature of early childhood development that children who are neglected and who suffer serious sexual and physical trauma and neglect, suffer a profound disturbance of personality development. Given the likely trauma suffered by this child at the time, it is very highly likely that she herself failed to experience any true bonding or attachment to her own mother. The fact that her mother gave her up to her aunt for periods of time before then retrieving her would reinforce that view. I note that after she was cared for by her aunt and uncle that her behaviour appeared to deteriorate further and that she was aggressive to other children and apparently destructive in the home. She continued to masturbate herself and as far as I could determine from the reports probably continued to have a preoccupation with her genitals.*

*The history available from the Department of Community Services file is that Kathleen Folbigg remained an exceedingly difficult child and it was only with the long passage of time that her behaviour became more tractable.*

*I believe that what happened to Kathleen Folbigg in her first three years of life was that she suffered a profound and probably irreversible impairment of her capacity to develop any meaningful emotional bonding or attachment and that this impairment contributed in some part at least to her total inability to relate, care for and protect her own children.*

*The condition is such that she will have life long difficulties of this kind and probably never be able to have any responsibility for children and is likely to have considerable difficulty in relating in an intimate way. This is not an impairment that is easily remediable with any particular form of psychotherapy. She does however suffer from a chronic depressive illness and she will require psychological care and treatment and may respond antidepressant medication for example.*

52. Further, Dr Giuffrida does not assess the possibility of an expressed view of responsibility in Ms Folbigg's diaries arising from her perception that her omissions may have contributed to their deaths. Great caution should be exercised in attempting to identify a potential psychiatric disorder that may have led to Ms Folbigg killing her children in the first report of Dr Giuffrida.
53. The reports of Dr Diamond<sup>25</sup> Dr Skinner<sup>26</sup> and Dr Westmore<sup>27</sup> come to remarkably similar conclusions.

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<sup>25</sup> Exh AZ.

<sup>26</sup> Exh BC.

<sup>27</sup> Exh BB.

## Background Evidence

54. Each policeman who attended the scene described the house as well-maintained and neat and tidy. There was nothing about the state of the house that indicated any neglect. This was consistent with Craig Folbigg's evidence.
55. Craig Folbigg and Ms Folbigg came to a fairly traditional domestic arrangement. He would go to work and earn the money and she would stay at home and mind the children. At some stage, after continued money troubles, Ms Folbigg returned to work but that is beside the point. She was the nominated primary carer of the children.
56. There was no evidence Ms Folbigg suffered from alcoholism or substance abuse issues at any time.
57. At the outset, it must be recognised Ms Folbigg had a traumatic and unusual childhood. This involved:
  - (a) The murder of her mother by her father;
  - (b) The probable sexual assault as an infant;
  - (c) Disturbed living arrangements with relatives and later foster parents;
  - (d) Inter-personal conflict with the foster parents; and
  - (e) Sexual proclivities that were not age appropriate.
58. Superimposed upon these events was the loss of four children, subsequent separation from her husband and her conviction and imprisonment. Contrary to the suggestion in cross-examination by Craig Folbigg's counsel, Ms Folbigg did seek assistance for trauma as early as 1999. Ms Folbigg consulted with Dr Innes on three occasions on 29 January 1999, 5 February 1999 and 4 March 1999. The consultation on 4 March 1999 was with her husband. He prescribed temazepam to assist with sleeping. He opined that Mr and Mrs Folbigg were

shocked and distressed. The report of Dr Innes was referred to in the report of Dr Skinner.<sup>28</sup> It was not otherwise tendered at trial.

59. Her sense of the need to control is alluded to by Dr Diamond.<sup>29</sup> She became anxious about bedding and the preparation of the nurse. She became focussed on controlling environmental issues. She sought to establish a routine and would check on Patrick. After his death, she became preoccupied with her thoughts of her own failure.<sup>30</sup> This is consistent with her evidence at the Inquiry and the ERISP.

60. In Craig Folbigg's ERISP, he made the following statement:<sup>31</sup>

*"And, and, you know, 99 per cent of the time, she was, you know, the children were always neat and tidy and clean and fed and, and all that, you know, and you just have to get to a stage where you think, well, you just get fuzzed out on the bad times."*

61. At the trial, Craig Folbigg stated Ms Folbigg was happy with the birth of Caleb.

<sup>32</sup> She was happy to be a mother.<sup>33</sup> This was the history taken by Dr Diamond.

<sup>34</sup> She was happy with Caleb.<sup>35</sup>

62. Craig Folbigg did not notice any emotional problem with Ms Folbigg at the time of Caleb's birth or at any time proximate to her his death. She was happy to be a mother and appeared to be coping. Kathleen prepared a detailed diary in order to assist in her mothercraft skills. This diary extended well beyond Caleb's death, which indicated she was planning a future for him in the family. Ms Folbigg took Caleb to doctors' appointments as recommended. These entries included entries for vaccinations that were several matters hence. Craig Folbigg described Ms Folbigg as "devastated" when Caleb died. There was no

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<sup>28</sup> Exh BC page 11.

<sup>29</sup> Exh BA at page 15.

<sup>30</sup> Exh BA Diamond report page 16.

<sup>31</sup> Exh F T 355.57-T 356.04.

<sup>32</sup> Exh F T 100.33-.35, T 223.42 and T 223.55.

<sup>33</sup> T 102.25-.29, T 233.13-.16.

<sup>34</sup> Exh BA page 13.

<sup>35</sup> Exh F T 219.42.



sign of physical abuse and no sign of Munchausen by Proxy, that is, injury to the child or overly zealous medical treatment for him.

63. There was no evidence of a post-partum psychiatric disorder,<sup>36</sup> or psychotic disorder or delusional beliefs.<sup>37</sup>
64. There was no history of drug use or alcoholism at the time of Caleb's death.
65. There were no direct entries relating to the death of Caleb. There is no suggestion the evidence of Mr Folbigg (summarised at [66] to [75] of the submissions of Counsel Assisting) that Ms Folbigg ever had an issue of temper control or rage during the 19 days of Caleb's life. This is critical context with respect to the contents of the diary as it might apply to the circumstances of Caleb's death. There was no evidence of smothering on autopsy. There was no evidence of prior abuse, nor of Munchausen's by Proxy. Indeed, Ms Folbigg attended all recommended medical appointments for Caleb. She was meticulous in planning for his care and had divided the days in the 1992 diary (Exh A) into half hour time slots and carefully noted sleeping and feeding patterns. She had diarised the future vaccinations in a wholly appropriate manner. In this regard, she was planning for his future.
66. The family doctor gave evidence that the children were well cared for and he never had any concerns regarding the children's wellbeing.<sup>38</sup> The house was always neat and tidy.<sup>39</sup> There was no evidence of drug abuse or alcoholism.
67. These contemporaneous features are consistent with a woman who was caring and loving of Caleb .
68. Further, if the Crown postulate was a savage and uncontrollable rage caused her to smother her child, it is notable there was no evidence recorded of any injury to Caleb on autopsy. The Inquiry cannot reconcile the physical findings

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<sup>36</sup> Exh BC – report of Yvonne Skinner.

<sup>37</sup> Exh BD – report of Dr Giuffrida.

<sup>38</sup> Dr Marley 9 March 1999, FPTB 136.

<sup>39</sup> Ward statement, Exh BQ.

with respect to Caleb with any suggestion any one entry in the diaries is an “admission” of his death.

69. Craig Folbigg’s perception was she could have moments of grumpiness but she was “*calm and comfortable with her new situation*”.<sup>40</sup> He noticed no change in her moods or general character after the birth.<sup>41</sup> She did not appear to have any problems with motherhood.<sup>42</sup> Ms Folbigg was diligent in her care of Caleb and he was well looked after and thriving.<sup>43</sup>

70. Craig stated:<sup>44</sup>

*Q. Did it appear to you that your wife was being quite diligent in her care for Caleb?*

*A. Yes, it did.*

*Q. The child appeared to be well looked after?*

*A. He was thriving.*

*Q. The child appeared to be well clothed and kept clean?*

*A. Always tidy.*

*Q. That included bed clothes. Everything about the child was kept clean and well cared for?*

*A. Yes.*

*Q. She seemed to fuss over Caleb in that regard?*

*A. She seemed diligent with it.*

71. When Caleb died, Ms Folbigg grieved for Caleb.<sup>45</sup> The parents received counselling from a SIDS organisation.<sup>46</sup> After a few months, Ms Folbigg went back to work and she went out a bit with friends to nightclubs.<sup>47</sup>

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<sup>40</sup> Exh F T 225.15.

<sup>41</sup> Exh F T 225.55.

<sup>42</sup> Exh F T 226.03, T 227.16.

<sup>43</sup> Exh F T 229.45-T 230.03, T 231.09-T 231.23.

<sup>44</sup> Exh F T 229.45 - T 230.02.

<sup>45</sup> Exh F T 105.57.

<sup>46</sup> Exh F T 106.05.

<sup>47</sup> Exh F T 106.43.

72. With respect to Patrick, Craig Folbigg thought Ms Folbigg was depressed.<sup>48</sup>  
Ms Folbigg's response is telling:<sup>49</sup>

*Can't really tell you anything. I recall getting in a down sort of mood, but I don't know if I'd class that as a depression. Some of the moods that I get in now today I would class as a depression, but, I dunno. To me they strike me as two totally different sort of moods. If the was a depression, looking back now you could probably understand it, you wouldn't be able to be happy and chirpy 100% of the time if you're carin' for a baby constantly and you're sort of, you know? I sort of in the background realised that Craig wasn't being cared for and that our marriage might have been in a bit of trouble, but was not in a position to do anything about it, it didn't cross my mind to do anything about it. It was, it crossed my mind that I had to look after Patrick and help him develop and keep him strong so he'd stay with us, and then I would worry about the marriage and then I would worry about Craig and then I would worry about me. That was just, yeah, so if he classed that as a depression, I've only got a frown and Craig classes that as a depression, so. That's yeah, can't be too unhappy around him all the time. If I am he thinks I'm in a real big bleak depression or something, and Craig has a tendency to over analyse severely.*

73. She cried for about a couple of weeks after the funeral.<sup>50</sup> At the time they were trying for a second child, they were both suffering from residual grief.<sup>51</sup>
74. On 20 February 1999, she was diagnosed with a "grief reaction" by Dr Marley, her general practitioner. She resisted grief counselling after Patrick's death.<sup>52</sup>
75. When Ms Folbigg conceived Patrick, both parents were happy again.<sup>53</sup> She was looking forward to the arrival of the new baby.<sup>54</sup> She appeared to be excited about the birth of a child.<sup>55</sup>
76. When Patrick was born, Ms Folbigg was euphoric.<sup>56</sup>
77. As to Patrick's ALTE, it is important to note Mr Folbigg gave up his job and remained at home to be with Patrick and Ms Folbigg. There is not one statement made in Mr Folbigg's evidence regarding any loss of temper control

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<sup>48</sup> Exh E, ERISP Q 468.

<sup>49</sup> Exh E Q 468.

<sup>50</sup> Exh F T 247.11 and T 247.17-.27.

<sup>51</sup> Exh F T 248.31-47.

<sup>52</sup> Exh BA page 14.

<sup>53</sup> Exh F T 249.20.

<sup>54</sup> Exh F T 250.05.

<sup>55</sup> Exh F T 250.21.

<sup>56</sup> Exh F T 252.10 - T 254.20.

that is even temporally associated with Patrick's ALTE even though he had every opportunity to observe it while he was awake and in the presence of Ms Folbigg. Again, this is important context.

78. Ms Folbigg gave unchallenged evidence she took Patrick to various medical appointments. Patrick's Blue Book was tendered in evidence and is corroborative of her evidence. It is clear she bore the brunt of the care for Patrick after his ALTE. She suffered the strain of it but she persisted with it. She could get grumpy with a lack of sleep but there was no indication she was being "stressed out" about being a mother.<sup>57</sup> With Patrick, she seemed happy to be a mother<sup>58</sup> and seemed to be enjoying motherhood.<sup>59</sup> There was nothing to suggest she was not coping with being a mother.<sup>60</sup> He had no concerns or misgivings and there were no incidences relating to Patrick to cause concern.<sup>61</sup> There was nothing on the night in question of 18 October 1989 that caused him any concern<sup>62</sup> and there were no arguments.

79. When Ms Folbigg discovered Patrick, she screamed.<sup>63</sup>

80. With Patrick, Ambulance Officer Hopkins observed Ms Folbigg to be crying and she stated:<sup>64</sup>

*My baby's having trouble breathing and won't wake up properly.*

81. The time after the 18 October 1989 incident was difficult, and Ms Folbigg had a huge amount of additional work to do to care for Patrick.<sup>65</sup> Craig Folbigg says she would lose her temper a bit with both him and Pat and get frustrated.<sup>66</sup> However, she bathed and fed him and taught him things. She set about doing

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<sup>57</sup> Exh F T 254.40.

<sup>58</sup> Exh F T 255.07.

<sup>59</sup> Exh F T 254.10.

<sup>60</sup> Exh F T 255.14.

<sup>61</sup> Exh F T 255.37-47.

<sup>62</sup> Exh F T 255.04.

<sup>63</sup> Exh F T 256.26.

<sup>64</sup> Exh F T 428.10-11.

<sup>65</sup> Exh F T 257.37.

<sup>66</sup> Exh F T 257.55.

day by day things to ensure his development by teaching him. She was giving him his medication and trying to teach him despite his disabilities. She was diligently attending to his needs. Craig Folbigg accepted it was a stressful situation for both of them, and it was distressing at times. Craig Folbigg said she kept things to herself and Craig Folbigg found her diary and concluded she was going through a lot of emotional turmoil. After that, Craig Folbigg's sister gave more support.

82. Shortly after Patrick's ALTE, she was under considerable strain and talked of leaving Patrick with her husband.<sup>67</sup> There is nothing unsurprising about a woman finding it difficult to realign her life in the face of a significantly ill child. It is not surprising that when faced with the responsibility of the additional care, she would find her role a cause of strain<sup>68</sup> and that she may express frustration or even anger at times.<sup>69</sup> It is not surprising she may feel the need to get away or to leave that responsibility of wife and mother. It is no surprise Ms Folbigg might seek some "time out" by asking neighbours to take care of the child from time to time.<sup>70</sup> As Dr Giuffrida noted and as she has always admitted, she was finding difficult to cope at times.
83. She expressed views of leaving Craig but despite her written ruminations, she got through that conflict and resolved to stay and accept her responsibilities as a mother.<sup>71</sup> She continued to care for Patrick. There is no evidence of violence or ill temper towards Patrick. There is no evidence of abuse. She was not abusive of Patrick,<sup>72</sup> took him to all relevant medical and clinical appointments and gave no cause for concern to Mr Folbigg about her attitude or the manner in which she cared for Patrick.

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<sup>67</sup> Exh E, ERISP Q 454-455 referred to in CA submissions [170]. Also see Mr Folbigg's evidence at Exh F, T 112.25-.26.

<sup>68</sup> See Mr Folbigg Exh F, T 112.25-.26 and T 258.02-.51.

<sup>69</sup> Mr Folbigg Exh F, T 112.44-.54.

<sup>70</sup> Craig Folbigg Exh E, T 113.03-.10

<sup>71</sup> Craig Folbigg Exh F, T 113.12-.22, T 261.23-.42.

<sup>72</sup> Exh F, T 261.44, T 262.09

84. In February 1990, at about 10:00am, Ms Folbigg telephoned Craig Folbigg at work and was screaming down the telephone, *"It's happened again"*. She told him to come home.<sup>73</sup> By then she had rung for the ambulance. On Craig Folbigg's arrival, Ms Folbigg was crying.<sup>74</sup>
85. With respect to Patrick's death, when the ambulance officers arrived in February 1991, they made the following observations:<sup>75</sup>
- Q. *When you got to the front of the house, did you hear the sounds of a woman sobbing?*
- A. *Sobbing, hysterical screaming, yes.*
- Q. *Did you see the accused, Kathleen Folbigg, sitting on a lounge in a hysterical condition?*
- A. *Yes.*
- Q. *Did she have her hands up to her face and was she crying out and sobbing?*
- A. *Yes.*
86. The ambulance officer was unable to speak with her because she was too hysterical.<sup>76</sup> She was overcome with grief.<sup>77</sup>
87. Ms Newitt entered the house after Patrick's death and saw Ms Folbigg sitting on the lounge directly in front of the door with her elbows on her knees down and she was crying.<sup>78</sup>
88. His death devastated both Mr and Mrs Folbigg.<sup>79</sup> There were constant arguments between the two of them about their differences in grieving. She tried to make sure he socialised.<sup>80</sup>

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<sup>73</sup> Exh F T 114.16.

<sup>74</sup> Exh F T 115.51.

<sup>75</sup> Exh F T 440.07-.17.

<sup>76</sup> Exh F T 445.25.

<sup>77</sup> Exh F T 445.41.

<sup>78</sup> Exh F T 839.29.

<sup>79</sup> Exh F T 116.15.

<sup>80</sup> Exh F T 117.57.

89. With the birth of Sarah, they had a monitor which would go off almost every night.<sup>81</sup> That caused anxiety but it was largely false alarms.<sup>82</sup> Ms Folbigg got frustrated with the use of the monitor. Mr and Mrs Folbigg argued about the use of the monitor. Craig Folbigg found it irritating but comforting.<sup>83</sup> Ms Folbigg was enjoying motherhood. Craig Folbigg gave this evidence:<sup>84</sup>

*Q. By this stage, would you tell us how was Kathy reacting to motherhood?*

*A. Well, she enjoyed it but she didn't - there were times that she did enjoy it and things that she was doing as a mum that she did enjoy; other stuff about it that she didn't enjoy. It would seem like the weekend was her escape.*

*Q. Can you give us some examples of her attitude to motherhood?*

*A. She, she was a very rigid, regimented type of person, and so times were always a factor, so if you went beyond the boundaries of those times, it was very hard for me because working in Singleton was an hour away and it was very hard for me because I was that much further and much longer, and so you would come home and if you got home late that was tough for you, the baby was going to bed at 8, 8.30, and that was it. So she just got sort of like harder about things.*

90. Ms Folbigg would get frustrated with Sarah. Ms Folbigg accepts this happened.

91. With Sarah, Ms Folbigg became a perfectionist with respect to her pregnancy. She became depressed. She had difficulties with Craig Folbigg.

92. The relationship with her husband was highly strained at times. There was a perception by him she was overly rigid with respect to her requirements for raising the children<sup>85</sup> and she would get frustrated when Mr Folbigg would get the children over-excited just prior to bedtime.<sup>86</sup>

93. There was interpersonal frustration between them from time to time<sup>87</sup> and Ms Folbigg became very concerned about her appearance and her weight gain and felt this affected her attractiveness to her husband. The diaries are replete

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<sup>81</sup> Exh F T 120.55.

<sup>82</sup> Exh F T 121.05 - T 122.05.

<sup>83</sup> Exh F T 122.04.

<sup>84</sup> Exh F T 123.01-19.

<sup>85</sup> See Exh BB Giuffrida report page 2.

<sup>86</sup> Exh BB Giuffrida page 3.

<sup>87</sup> Exh BD Giuffrida page 3.

with references to this feature of her personality and it is submitted this is another example of her concern about control – in these circumstances relating to her eating habits, fitness, weight and appearance. At trial, her husband thought her attendances at the gymnasium were an act of self-indulgence (and this flavour was adopted by the Crown at the trial) whereas her diaries record she was attempting to maintain her self-esteem, maintain the sexual attention of her husband and place her body in peak physical fitness for the arrival of her newborn child and to ensure her attractiveness to her husband. These entries demonstrate an underlying emotion vulnerability of Ms Folbigg. A finding should be made to this effect.

94. Craig Folbigg accepted he had the capacity to wind Sarah up.<sup>88</sup> This used to make Ms Folbigg frustrated. There were arguments about sleep discipline.<sup>89</sup>
95. On the night of Sarah's death, Craig Folbigg was awoken by Ms Folbigg's "blood curdling scream".<sup>90</sup> Ms Folbigg was sitting in the hallway outside the door screaming and crying with her knees up under her chin just crying.<sup>91</sup>
96. In terms of grief, Craig Folbigg explained at T 135.

*Kathy, at first, hid herself away from the world, didn't really want to do anything. ...*
97. Prof Hilton could not explain the death to them.<sup>92</sup>
98. From that point on, the relationship was troubled.
99. After the death of Sarah, Ms Folbigg wanted another child. After some time, she conceived.
100. She was enthusiastic about the arrival of Laura.

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<sup>88</sup> Exh F T 126.01.

<sup>89</sup> Exh F T 127.32-.40.

<sup>90</sup> Exh F T 131.33.

<sup>91</sup> Exh F T 131.43.

<sup>92</sup> Exh F T 135-136.



101. Ms Smith noted that with the birth of Laura, both the parents seemed to be happy.<sup>93</sup> With respect to the death of Laura, Ms Folbigg was observed to be sitting in a chair crying hysterically the day after the death.<sup>94</sup>

102. After Laura's birth, they got an alarm system for Laura which was a nuisance.<sup>95</sup> A large amount of the time Ms Folbigg would be getting up to fix up the monitor.<sup>96</sup> This caused tension between them.<sup>97</sup> Craig Folbigg wrote in a letter to Margaret Tanner (a nurse):

*Strangely though, I feel Kathy finds it all tedious and frustrating and probably would not use it at all, merely in trusting in Laura's survival to fate. You would think that after all she's been through as a mother she of all people would be more diligent with the monitoring. ...*<sup>98</sup>

103. This is an important document because, contrary to the submission of Counsel Assisting, it demonstrates Ms Folbigg had told Craig Folbigg about her belief system insofar as "fate" is concerned. There was no evidence from Craig Folbigg at trial that she had not discussed her personal beliefs with him. He was not called as a witness at the Inquiry.

104. In December 1998, the parents were no longer using the monitoring machine.<sup>99</sup> They used a Fisher Price listening monitor.<sup>100</sup>

105. With the birth of Laura, Ms Folbigg was happy being a mother although she did get cranky.<sup>101</sup> It started to get worse after Laura started walking and "carrying on".<sup>102</sup> At that stage the relationship was in trouble and most of the time the parents were sleeping in separate rooms.<sup>103</sup> Craig Folbigg's perception was that it was Ms Folbigg's problem:

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<sup>93</sup> Exh F T 815.49-.53.

<sup>94</sup> Exh F T 816.01-.16.

<sup>95</sup> Exh F T 157.31.

<sup>96</sup> Exh F T 158.20.

<sup>97</sup> Exh F T 158.45.

<sup>98</sup> Exh F T 159.01-.07.

<sup>99</sup> Exh F T 160.10-.14.

<sup>100</sup> Exh F T 161.17.

<sup>101</sup> Exh F T 161.01-.06.

<sup>102</sup> Exh F T 162.14.

<sup>103</sup> Exh F T 162.30.

*If you showed displeasure at the things she was doing with her life ... her nights out with the girls ... the frequency of her going to the gym. Other than that basically all she wanted to do was lay around watching videos.*<sup>104</sup>

106. Ms Smith gave evidence that Laura was a happy child who was well cared for and well fed.<sup>105</sup> The parents were happy to have a child.<sup>106</sup> Kathleen was clearly devastated after her death.<sup>107</sup>
107. Kerrie Anderson was in charge of the gymnasium at the childcare centre. She noted Kathleen would check on Laura.<sup>108</sup> Both parents were very loving towards Laura.<sup>109</sup>
108. There was an exchange of correspondence between the two parents in about February 1999. This was addressed at the Inquiry. After the letter that was given to Craig Folbigg and before Laura's death, Ms Folbigg said she would give the marriage a go.<sup>110</sup> By the time of Laura's death they had resumed sleeping in the same bedroom.<sup>111</sup> There was an argument between them on the morning of the death of Laura, yet Ms Folbigg took Laura in to Craig Folbigg's work for morning tea.
109. Laura died at home.
110. Craig Folbigg first saw Ms Folbigg at the Singleton Hospital where he could see Ms Folbigg crying, she was being comforted by a nurse.<sup>112</sup> At the hospital, Ms Folbigg said:

*I called you. Where were you? Why didn't you come home? I called you. And I said, "I didn't get any phone call" and she was crying and I was crying. ... and I asked Kathy, "What happened? She said, "Oh, I just went in and she was just laying there".*<sup>113</sup>

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<sup>104</sup> Exh F T 162.

<sup>105</sup> Exh F, T 814.36-47.

<sup>106</sup> Exh F, T 815.51.

<sup>107</sup> Exh F, T 815.54 - T 816.16.

<sup>108</sup> Exh F, T 921.51.

<sup>109</sup> Exh F T 922.20.

<sup>110</sup> Exh F T 164.29.

<sup>111</sup> Exh F T 169.48.

<sup>112</sup> Exh F T 176.35.

<sup>113</sup> Exh F T 176.47-56.

111. With respect to the death of Laura, Craig Folbigg gave this evidence in his statement:<sup>114</sup>

*... I just didn't know what to do. Once again, I was overcome with grief. I don't know how to console Kathy and, once again, I put all my reliance on her. The night Laura died, Kathy spent the night just laying on our bed, crying and staring into space."*

112. When Brian Wadsworth, ambulance officer, arrived at the death of Laura, he entered the house, there was a woman performing CPR and the woman was crying.<sup>115</sup> She appeared to be quite distressed.<sup>116</sup>

113. Ms Hall observed both parents crying after the death of Laura<sup>117</sup> and she thought Ms Folbigg's behaviour was consistent with someone who had suffered a tragedy.<sup>118</sup>

114. Ms Newitt was also there for the death of Caleb and she saw both parents crying.<sup>119</sup>

115. All of this evidence is largely set out in the history taken by Dr Diamond in his report.<sup>120</sup> In that report, she described her coping mechanisms which included attempting to fill her life with activity. This is evident from the diaries as well.

116. Ms Folbigg was a person who like routine and order in her life. The 1992 diaries are clear evidence of this. So is the diagnostic opinion in the Giuffrida report.<sup>121</sup> It is unsurprising that a woman who suffered sexual abuse, trauma and emotional deprivation in her infant life<sup>122</sup> may be overly focussed on issues of order and control. Mr Folbigg intimated about his feature but he was not so committed to routine. Ms Folbigg had high expectations of herself. The house was always neat and tidy and she saw her role as caring for her children and husband. She equated order and routine with "control" and when order and

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<sup>114</sup> Exh F T 426.19-25.

<sup>115</sup> Exh F T 700.24.

<sup>116</sup> Exh F T 703.10.

<sup>117</sup> Exh F T 890.30.

<sup>118</sup> Exh F T 819.39.

<sup>119</sup> Exh F T 897.55-898.08, T 898.20-.29.

<sup>120</sup> Exh BA.

<sup>121</sup> Exh BD. See also Diamond report Exh BA.

<sup>122</sup> See Guiffrida EXH BD page 21.

routine was lost, she perceived this as a loss of control. Mr Folbigg gave evidence of a number of incidents where she lost her temper at around bedtime, where the children were expected to be asleep and Craig Folbigg wanted to play or socialise with them. No criticism is made by Ms Folbigg of this given he was at work all day, however it was disruptive to the children's routine. This disruption was likely to cause conflict with her husband. He would just be as likely to characterise her response as unreasonable and indicative of ill temper. This is not an uncommon domestic experience where each parent has a different parenting style and differing expectations.

117. It is abundantly clear that neither Mr nor Mrs Folbigg had any relevant medical training. Ms Folbigg took her children to doctors and sought their advice on health issues. She took advice from Dr Springthorpe with respect to Caleb. She took the children for genetic testing, which is where she came to meet Dr Wilcken, and obtain advice from Dr Colley and Dr Wilkinson.
118. She and her husband sought from the doctors' advice as to the cause of death. Dr Springthorpe was unable to provide any answers with respect to Caleb. Craig Folbigg was told Patrick had genetic problems by 13 February 1991.<sup>123</sup> By the time of Sarah's birth, she had been told there was a genetic problem with her male children<sup>124</sup> and she had been told later there was probably a genetic component to the deaths.
119. Further, it would not be unnatural for Ms Folbigg to blame herself with respect to the death of her children. If she was convinced routine and order were an essential part of mothering, then it is not unnatural for her to equate that with a loss of control and in the absence of any clear medical cause for their deaths.
120. Her failure to achieve emotional bonding and that experience of failing to achieve it probably aggravated the feelings of failure and worthlessness as a mother and wife. This is not an unreasonable observation to make in ordinary human experience, but Dr Giuffrida gave a psychiatrist's opinion to that effect

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<sup>123</sup> Exh H page 50.

<sup>124</sup> Exh H page 109.

<sup>125</sup> which was tendered in these proceedings. The fact of impaired emotional bonding does not equate with Ms Folbigg murdering her children. It requires a certain degree of impermissible speculation and imagination tainted with a presumption of guilt in order to draw such a conclusion. In any event, this did not form any part of the Crown case. The Crown case was that the murders occurred when Ms Folbigg was in a blind and uncontrollable rage.

121. The development of the entries within the diary with respect to food and eating are clear indications Ms Folbigg became frustrated with her own lack of self-discipline and would judge herself sharply. This feature of her personality was quite amply demonstrated in the diaries. The diaries cannot be interpreted without recognising that aspect.
122. Further, at times she would use the diaries to express dissatisfaction with her marriage and express her desire to leave her husband due to the strain in the marriage. These expressions may have been the recording of an actual intention to leave the relationship or they may have been simply the expression of frustration and a way of reconciling emotional conflicts in a diary which was generated for her own private purposes and was not for communication with any other person. This is important because it is likely a degree of laxity of expression that emerges in her writings. This Inquiry should be careful not to unconsciously judge this conflict with her husband and her expression of her desire to leave him at certain points throughout the marriage as a sign of the moral turpitude of Ms Folbigg. The Inquiry should not over-interpret these entries against her.
123. It is perfectly clear she did express her views to herself. Mr Folbigg refers to one incident when Ms Folbigg recorded she was thinking of leaving Craig and despite that, the family held together and the couple went on to have another child.

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<sup>125</sup> Guiffrida Exh BD page 19.

124. It is clear she has (and had) a persistent post-traumatic stress disorder type syndrome.<sup>126</sup>
125. The opinion of Dr Diamond was sent for review by Dr Giuffrida who substantially agreed with Dr Diamond's diagnosis. However, and importantly, Dr Giuffrida does not challenge this aspect of Dr Diamond's report. Thus, the Inquiry can accept this statement as a matter of agreement between experts.
126. As such, the diaries must be read in this context. It would be in error to read the diaries through a prism of objectivity, rationality or clinical and impartial analysis based on the words used. They are private ruminations not intended for publication. Further, any statement in which she accepts responsibility for any of the deaths can be assessed through a prism of a reference to an omission or commission by Ms Folbigg.
127. Ms Folbigg gave evidence she blames herself for the deaths of her children:
- (a) T 715.25;
  - (b) T 724.31;
  - (c) T 757.13;
  - (d) T 757.46;
  - (e) T 758.11.
128. This sense of self blame was evident and the subject of opinion in the report of Dr Giuffrida of 23 August 2003,<sup>127</sup> and there are references to it in the ERISP.<sup>128</sup>
129. The same diary entries tendered at trial were the subject of cross-examination at the Inquiry. It should be noted Ms Folbigg was vigorously cross-examined by three counsel (Maxwell QC, Cunneen SC and Counsel Assisting) in a form of questioning that was clearly designed to undermine any innocent

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<sup>126</sup> Exh BA Diamond report.

<sup>127</sup> Exh BD.

<sup>128</sup> Exh E AZ.

explanation that may be given by Ms Folbigg as to the meaning behind the content of her diaries. Further, it wholly failed to address an acceptance of responsibility by Ms Folbigg by reason of any omission by her.

130. The Crown at trial said the diaries that it was interested in were '*written totally for herself and for no one else*' and '*often at the end of the day when she was in bed before sleep*'.<sup>129</sup> This is repeated by Counsel Assisting at Part 2 of her submissions. This comment does no more than indicate a very ordinary approach by a person keeping as personal diary.

### **Reconstruction**

131. The suggestion there has been "reconstruction" in the giving of her evidence is one that has initial simplistic attraction, but any concession by Ms Folbigg<sup>130</sup> are not a complete reason to wholly disregard the evidence she has given before the Inquiry.

132. It is clear Ms Folbigg has always held a view that there was some question of fate,<sup>131</sup> or blame,<sup>132</sup> or supernatural force<sup>133</sup> that has governed her life and those of her children. Her foster family were practising Christians and she was educated in that faith with an understanding of afterlife and concepts of sin.<sup>134</sup> She had this belief system at the time of her contemporaneous statements to her husband<sup>135</sup> (contrary to the submissions of Counsel Assisting at paragraph 119) that were then provided in a letter to Margaret Tanner at Dr Seton's clinic. It is to be found in the writings in her diaries,<sup>136</sup> at the time of her ERISP<sup>137</sup> and at the time of her giving evidence at the Inquiry.<sup>138</sup>

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<sup>129</sup> T 1.4.03 47.55.

<sup>130</sup> See T 792.34-49.

<sup>131</sup> Exh H, letter from Craig Folbigg to Nurse Tanner being Exh E from trial, Exh AC (ERISP) Q 603, Q 639 Q 879.

<sup>132</sup> Exh AZ Q 678, Q 680

<sup>133</sup> Diary entry 26 June 1997.

<sup>134</sup> T 805.45 - T 806.06

<sup>135</sup> Exh F, T 159.2-5

<sup>136</sup> See entry 26 June 1997.

<sup>137</sup> Exh AZ, Q 602-604, Q 639-641, Q 637.

<sup>138</sup> T 752.28-35.

133. On 30 April 2019, she gave evidence to the following effect:

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.*

134. On 1 May 2019, she gave further evidence on this topic at T 804.44-806.19.

Q. *You don't remember. Can I come to some evidence that you gave yesterday, now when answering a question put by his Honour, and this is at transcript 752 you were asked whether or not you believed there was some supernatural power, now this is 752 of the evidence that was given yesterday, if we can just have that on the screen, and you say, you were asked the question there at about line 28, "Now you're saying that you believe there was some supernatural power that took the other three children away from you, and you were concerned that the same supernatural power would take Laura away" and you answered "yes." Now is that a belief that you had when you wrote that entry in the diary?*

A. *Yes. I took your Honour questioning me about that as trying to understand what it is I'm trying to -the message I'm trying to get out and across, which was my belief of a higher power, be that God, Mother Nature, fate, destiny, karma, all of those things, metaphysical combined, and when your Honour said the word "supernatural", I believed it's along the basis of the thinking that I had at the time yes.*

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

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.*

Q. *So took Laura as well?*

A. *Yes.*

Q. *And you also gave evidence of your beliefs that the children who had died, communicated with Laura, who was then alive and warned her as to how she should behave, do you remember giving evidence to that effect yesterday?*

A. *Yes.*

Q. *And is it the case that today, you believe that that occurred?*

A. *Yes, still believe that yes.*

Q. *Do you believe that they warned their sister to be good or else you might "crack it" or some other expression that you used?*

A. *I believed and believe that -how do I explain this, being brought up on the faith and the Christian based belief that I had as I was growing up as a child, I've always believed in once you've died, your spirit rests or goes to another place, or is at peace. I've always believed that when it came to my children, it turned out to be a necessary belief for me, that they could speak to each other or that they were peaceful, they were happy. And when I was pregnant with Laura, I believed that it was possible that the spirits of my children could have spoken to my child and they had discussions about things.*

Q. *So in relation to those two matters, the belief that you had then, as reflected in your diaries, is the same as the belief you have now, that's right?*

A. *Yes, it hasn't changed.*

Q. *Is there any other aspect of the diaries that you have a view now that is different from the view that you expressed back in the late 90s?*

A. *I don't think so, I'm not foreseeing, my core beliefs are my core beliefs.*

Q. *I'm not talking about your core beliefs, I'm talking about whether or not you have a view now that's different from what was expressed in your diaries back in the 1990s?*

A. *No.*

Q. *You don't?*

A. *No.* (Emphasis added)

135. This piece of evidence may be criticised as being inconceivable and irrational if approached from a post-enlightenment scientific approach. However, there are a number of powerful features about this evidence about which specific findings should be made:

- (a) There was no challenge to the effect she did not hold those beliefs. There was evidence from the diaries themselves,<sup>139</sup> her discussions with her husband<sup>140</sup> and her ERISP that she held them;<sup>141</sup>
- (b) There is no doubt Ms Folbigg has retained those beliefs,<sup>142</sup> and to that extent, there is no reconstruction in that issue;
- (c) Her evidence on her diaries must be considered in that context and in the broader context which is addressed above;
- (d) She was absolutely committed and unwavering in her answer despite the potential for people to lambast her. She was prepared to state her belief without fear of public ridicule (which had occurred in the press in the evening of 30 April 2019).

136. Further, such beliefs are widespread and part of human nature. The perception of the existence of a higher power, concepts of punishment for sins, and abandonment are common in ancient religious texts and these belief systems have survived and retain committed adherents despite the enlightenment and the development of science.

137. Any rejection of her evidence about her beliefs would require a tribunal of fact to reject evidence that people could believe in God, guardian angels, fate, nature, destiny or karma. Such a rejection would fly in the face of belief

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<sup>139</sup> See entry 26 June 1997.

<sup>140</sup> Exh H being Exh E from trial.

<sup>141</sup> Exh AC, Q 603, Q 639, Q 879.

<sup>142</sup> See ERISP Exh AZ, diary entry 26 June 1997, evidence at T 804-806.

systems that have long been accepted even if many would regard them as fanciful or even delusional.

138. Given that belief system, the extent of criticism that can be made of her “reconstruction” is limited. Ms Folbigg understands her belief system and is capable of giving evidence of it and how it informs her perception of the world. In this regard, it is no different from a doctor giving evidence of his or her “usual practice” when the precise memory is non-existent or unclear.<sup>143</sup>
139. In other words, her use of language is informed by her belief, which has not changed since the events.
140. Put another way, it would be an error to interpret the diaries without due regard to her belief system, whether that belief system was judged by this Inquiry to be rational or not.

## Missing Diaries

### The Diary Entries

141. The diary entries used during the trial (which overlap with the Inquiry) are included hereunder together with brief submissions with respect to each entry.

#### 3 June 1990

*This was the day that Patrick Allan David Folbigg was born.*

*I had mixed feelings this day whether or not I was going to cope as a mother or wether (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?*

142. This entry is nothing more than a woman questioning her capacity as a mother. She linked her stress to problems with the children.<sup>144</sup> That was part of her belief system. There was no evidence of stress proximate to the time of Caleb's death. Any stress she felt at the time of Patrick's death was highly

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<sup>143</sup> *Connor v Blacktown District Hospital* (1971) INSWLR 713 at p 721, *Tinnock v Murrumbidgee Local Health District* (No 2) [2016] NSWSC 87, *Elayoubi v Zipser* [2008] NSWCA 335 at [86].

<sup>144</sup> \Exh E ERISP Q 475, Q 481.

understandable in the circumstances. This does not amount to any admission and the only inference that can be drawn is at the time of writing, she was concerned about getting stressed with the activities of motherhood. She also expected more from Craig Folbigg which she had not been getting.<sup>145</sup>

### 18 June 1996

*I'm ready this time and I know I'll have help and 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 totally alone. Getting back into my exercise after will help my state of mind and sleeping, wherever possible, as well.*

*I have learned my lesson this time.*

143. Again, this is an entry by a woman who is concerned about getting stressed as a mother. She also recognised there was a change in the marriage which gave rise to strain.<sup>146</sup> She equated “control” with order and perhaps an unrealistic perception of motherhood. There is clear evidence of a difference in parenting styles. Craig Folbigg was more relaxed and did not see the benefit in timetables and had no issue with playing with the children before bedtime which would lead to the frustration of Ms Folbigg with Craig Folbigg.<sup>147</sup> Ms Folbigg was more focussed on routine, whether that be eating or bed time, and got stressed if that order was broken. This is what she meant by “control” and she felt her loss of control contributed to the deaths of the children, there being no alternate explanation.

Q454. *Craig tells me that after Patrick had this near miss episode and you and him were required to look after this child that's now suffered from epilepsy and was diagnosed as being blind, ---*

A. *Mmm hmm.*

Q454--- *that your marriage was strained somewhat. What can you tell me about that?*

A. *That'll be a correct statement. 100% of my time was probably, 99% was caring and lookin' after Patrick. There was sort of, unfortunately Craig came, you know, third or fourth down the rung ladder of who I was carin' for and who I was*

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<sup>145</sup> Exh E ERISP Q 484.

<sup>146</sup> Exh AZ Q 454 and Q 455.

<sup>147</sup> See Exh AZ ERISP Q 265, Q 282, Q 286 and Q 287.

*thinkin' of, so even the poor old animals probably slipped in there above him. So feedin' and carin' for them and then carin' for Patrick, he unfortunately got dropped down the ladder. So yeah, that's a fair statement, we went through quite a bit of strain during that time.*

Q455 Do you feel that you need to care for Craig?

A. Yes. He is a sort of man that requires someone to devote most of their time to him, he's not, I mean he could stand on his own two feet I'm sure, but he does like someone to care and appreciate and all the rest of it. And his ego needs to a slight inflation every now and then or he gets a bit depressed with himself and all that sort of thing. So yeah, that's, yeah that's a fair statement, he required lookin' after an at that particular time I wasn't. so. I had more important person on my mind.

144. Craig Folbigg acknowledges she bore the burden of caring for the children. This entry can be read in this context.

### **21 June 1996**

*Depressed a little now. Probably because it will be another couple of months before I'm pregnant. Pretty sure I'm not now, had or having what I think is a period. God I hope so or else these tablets will cause brain damage. Probably would be just desserts for me considering. But not fair for Craig at all. I would feel like a failure and wouldn't cope at all. Can't be dwelling on what-ifs. I truly (sic) deserve anything life throws at me so my philosophy is whatever happens, happens, or it's the way it shall be. I'm going to try my hardest this time. If anything does happen, I'll just leave and let Craig go in peace and start again – no I wouldn't I'm not that brave – really I depend on people and other people's help too much.*

145. The Crown did not include paragraphs and with the 21 June 1996 entry used the word 'Stressed' instead of the actual word written which is 'Depressed'.<sup>148</sup>

Contrary to the actual word used, the word "stressed" strengthened any Crown case that Kathleen Folbigg would become stressed and would kill her children. It is not a small error. The Crown made no allowance for the fact Kathleen Folbigg was depressed following the death loss of her children.

146. This is an important entry as it demonstrates exactly what Ms Folbigg gave evidence about and for which Counsel Assisting submits there is no prior communication of this thought process. It demonstrates she has a belief she may be punished ("just desserts", "truly deserve"), had an acute sense she was

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<sup>148</sup> T 1.4.03 49.35.

inadequate and a failure and a strong sense of fate. There are earlier references to fate.

147. Further, it is quite clear Ms Folbigg did not communicate at this level with other people including Craig Folbigg. She kept many of her emotions to herself. Further, there is only a very limited amount of material produced at this Inquiry. Ms Folbigg has suffered divorce and imprisonment and does not have access to her personal correspondence. Further, this matter was not put to Ms Folbigg for explanation. It is procedurally unfair to make such a submission in such circumstances and to make a finding on such a submission.
148. None of the entries above include any admissions of guilt.

### **22 June 1996**

*I watched a movie today about schizophrenia, wonder if I have a mild case of that. I change moods really quickly. In my most dangerous mood, I'm not nice to be around & always want to be anywhere but where I am. As long as it has music & men to show off too.*

*Then there are times I wish to be more of a home body and please my hubby. Am I strange or is this behaviour normal. Guess I'll never know.*

149. This entry has no relevance except to demonstrate Ms Folbigg's acknowledgement she had a temper. She has a tension in her relationship which she is acknowledging and willingly seeking to reconcile. This is an honest appraisal of the normal challenges of marriage.

### **25 July 1996**

*Did miss him in bed though. Just the comfort that someone else was going to be there. Like I know that it would be me who would hear a break-in first not him, but at least if I screamed loud enough he'd hear me.*

150. The Crown at trial relied on this evidence to show that Craig Folbigg was a 'solid sleeper'.<sup>149</sup> As part of its case, the Crown needed Craig Folbigg to be asleep when the children were found dead. They also needed him to be asleep when Kathleen Folbigg attended to her children's needs at night. This is

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<sup>149</sup> T 1.4.03 50.5.

because the trial case theory was that Kathleen Folbigg found the children, and had the opportunity to kill her children, therefore she was responsible for their deaths. This was an essential part of the coincidence reasoning used at trial. Coincidence reasoning is dealt with in a separate section of these submissions; suffice to say at this point, if the Crown postulate was correct, if the mother has primary care responsibilities, it is unsurprising the fact a mother finds an infant dead in its bed or cot when she has primary responsibility for its care is unsurprising.

151. This has further implications with respect to the diaries. If Ms Folbigg has the perception she carries primary responsibility for the care of her children, it is unsurprising she would perceive a responsibility for or a sense of failure in the face of their deaths. It is very easy for a person with the responsibility and care for another, after the event, to pose the “what if” question, and in the face of an adverse answer, ascribe responsibility to themselves for the result. This is a feature of human nature. This was raised in her diaries from time to time<sup>150</sup> and in her ERISP.
152. There was a number of occasions during her ERISP when Ms Folbigg dealt with the question of mistakes she had thought were made and a strong sense that had different decisions been made, the outcome would have been different, and the child would have been alive.<sup>151</sup>

*... We were really enjoying, she was getting to that next sort of child stage, not sort of, she was getting out of the baby bit that was so frightening to us and into more of the toddler child sort of thing. So, we relaxed, which is again something that Craig and I have to live with, that we sort of occasionally think to ourselves we relaxed too much. We shouldn't have been so complacent and we should have, we were told that a SIDS thing can occur up to five years of age but we still started to relax ...*

153. Also, with respect to Sarah:<sup>152</sup>

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<sup>150</sup> See entry 21 June 1996 – “Can’t be dwelling on what-ifs”.

<sup>151</sup> Exh AZ ERISP at A 333 on page 97.

<sup>152</sup> Exh AZ ERISP Q 321 page 87.

A. ... *Actually that night was the first night that she had not been on the mat. That night we had not used the apnoea mat at all. It's another sort of cross to bear, I s'pose, if you'd like to put it that way, that we sort of have to think about.*

154. It is very easy for a person to conflate a sense of responsibility for the “cause” of the deaths through omission, especially in a private account contained in a diary. This feature was completely ignored by counsel for the DPP and counsel for Mr Folbigg when cross-examining Ms Folbigg and is ignored in their submissions. However, Ms Folbigg has made the point repeatedly in her evidence.
155. This entry also confirms Ms Folbigg’s evidence that she was terrified of finding her children dead and wishes it was Craig Folbigg. There is no doubt that a woman who has lost a child would have a morbid fear of it happening again and would seek to obviate the responsibility of discovering another to someone else, notably her husband. This is strong corroborating evidence of her statements to this Inquiry.

#### **26 August 1996**

*Went to clairvoyant 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 there. I’ve always felt her strongly and now I know why. She is with me. I think my mother is too. Nice to know that Craig’s mum and guardian angel are with him. He seems more relaxed now he knows they are still with him.*

156. This entry deployed at trial by the Crown does not include another entry made on the same day at 9.30 pm. Additionally, at trial it should be noted that the Crown selected parts of entries entered for individual dates, obviously those he thought were the most likely to show guilt.
157. This is also strong corroborative evidence of Ms Folbigg’s belief in the afterlife, the survival of the human spirit after death, and implies a capacity for communication between the spirits of separate deceased people. This cuts across the submission of Counsel Assisting that the explanation given by Ms Folbigg was “fanciful”.



158. In the diary entry of 26 August 1996, the words *'even though I'm responsible'* were the words the Crown wanted to highlight to show guilt. Kathleen Folbigg's evidence during her ERISP and at the Inquiry was that she did and still does feel responsible for the death of her children. She was their mother and felt that she failed them. Under cross examination by Maxwell QC, Kathleen Folbigg said:

Q. *Even though you said you're responsible?*

A. *Because I felt responsible, I was their mother.*

Q. *You say your position is that you were very hard on yourself about the children, isn't it?*

A. *Absolutely.*

Q. *So, you felt responsible for what was actually just a death that you had nothing to do with physically? That's your position isn't it?*

A. *Yes, because I didn't understand why.*

Q. *You see, what I suggest to you is that, what you're saying there is that you're accepting in your diary you were directly responsible for their death, by smothering them?*

A. *No.*

Q. *Or Sarah, in this case?*

A. *No.*

Q. *But that it's okay because Sarah, wherever she is now, is happy, so that kind of made you feel better. What do you say about that?*

A. *No.*

Q. *So, if you go to question 610 in the interview. So, you're there being referred to this diary entry and you're asked - just read it to yourself, 610 and the answer thereto.*

A. *Yeah.*

Q. *And, question, "What do you mean by that, 'even though I'm responsible'?" You say, "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, or I didn't try enough, or*

*didn't do something, or should have done something". That's what responsible meant to you, correct?*

A. Yes.

Q. Wouldn't it have been more accurate to say in your diary "even though I could have done more"?

A. To me it's the same thought.

Q. *"Even though I could have done" more would have expressed far more accurately your position?*

A. *It may have but it's still along the same line of thought. I felt responsible because I was their mother and I had failed at being that mother.*

Q. *I suggest that you didn't have words something like, "I could have done more" because you have used the word "responsible" to mean that you killed your child. What do you say about that?*

A. *No, I won't accept that. (T 29.4.19, 646.50 – 647.45) (Emphasis added.)*

159. This line of questioning regarding the use of more appropriate words was replicated in cross-examination of Ms Folbigg. It should be borne in mind Ms Folbigg was writing to herself and she did not require objective precision in the words she used. Simply because experienced senior counsel could convey a more accurate meaning by using different words is a wholly irrelevant consideration. Further such a method of analysis invites the risk of unwarranted prejudice in the assessment of the diaries.

160. With respect to the clairvoyant issue, under cross-examination by Maxwell QC, Kathleen said:

Q. *So, did you make contact with Sarah at the clairvoyant, did you?*

A. *I wouldn't say I made contact, no.*

Q. *Well, you say that you know she's happy. How do you know she's happy?*

A. *The clairvoyant that I went to was a general one, it was in a mall. I didn't specifically go to a targeted one. She was capable of reading auras and colours, as such, and had stated that she thought she saw children around me, that they were all happy and, and that everything was okay.*

Q. *But what you've said here is that "She" - being Sarah - "accepts and is happy there". You see that?*

A. *Yes.*

Q. *So, you believed that, did you?*

A. *At the time, yes. I've always believed.*

Q. *Well, do you now?*

A. *Well, if you'd let me finish. I've always believed that - maybe not necessarily in god, but I've always believed that there are other things that go on. I always believed in fate, destiny, karma, all of those styles of belief. When I saw this clairvoyant, I was pleased that she told me that she'd seen children around me. I had concluded that they must have been mine and Sarah, being gone, I used to always - all of them - worry about their spiritual wellbeing, as to whether were content and at peace.*

Q. *So, as a result of going to the clairvoyant, you came away believing that Sarah was happy, wherever she might be?*

A. *Yes.*

Q. *That Sarah, who died at ten and a half months, is happy, wherever she's gone, that's what you came away from the clairvoyant thinking, is that right?*

A. *Yes, because for me there, there would have been no, no worse a thought than your children have passed on and they're not at peace in some way.*

Q. *Even though you said you're responsible?*

A. *Because I felt responsible, I was their mother. (T 29.4.19, 646.15-50)  
(Emphasis added.)*

161. The suggestion by counsel for the DPP that she could have recorded her feeling in more complete detail or with greater clarity<sup>153</sup> is illogical and not probative of guilt. Ms Folbigg was writing in her own diary for her own purposes rather than any purpose that required proper grammar and objective use of language. She was not writing an essay, learned paper or contract. She is a simple woman using language in a way that she deems fit. This Inquiry should not

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<sup>153</sup> See for examples only T 641.16-.29, T 642.18, T 644.05, T 644.09, T 644.25 and T 645.36.

approach the analysis of the language used in the diary devoid of Ms Folbigg's belief system or education that affects her use of language.

162. But the fact is Ms Folbigg went to a clairvoyant. This is important for a number of reasons:

- (a) It is a contemporaneous statement that corroborates her belief of some spiritual dimension and communication with spirits. This infers a belief in the afterlife;
- (b) This cannot be regarded as unusual for a person seeking answers to an insoluble problem or mystery. It demonstrates feelings of doubt.<sup>154</sup> Putting the proposition around the other way, had she smothered her four children in five separate events, she would have no cause to see a clairvoyant. She would have known the answers anyway;
- (c) It would be unusual for a guilty person to attend on a clairvoyant. This is especially the case if the person believes that a clairvoyant can assist in providing an answer about a cause of death;
- (d) There was no suggestion put to Kathleen Folbigg that she did not believe clairvoyants could assist or that she did not have spiritual beliefs.

### **8 September 1996**

*Feel now is a time for us to have another baby. Have finally realised the right time for me. I have Craig and he wants a child that I can give him. And I have enough friends now not to lose it like before.*

163. It should be noted the spelling in the transcript of the trial is not a true replication of the original diaries, for example, the spelling of lose is actually spelt 'loose' in the journal entry of 8 September 1996. Kathleen was a poor speller which reflects her education. Her education reflects her use of words in

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<sup>154</sup> It is significant that Craig Folbigg went to a clairvoyant also.

her own way with her own meaning without any pretence of sophistication or accuracy.

164. Her bad spelling can also be regarded as an indicator she was not intending the entries to be publicly viewed and did not convey precision in the use of language. It supports her proposition that they were 'fleeting' thoughts.<sup>155</sup> Kathleen Folbigg also describes her diaries as 'random' thoughts, for example, under cross-examination by Maxwell QC she states, 'these are not set in stone. They were never set in stone. All my thoughts were just random thoughts'.<sup>156</sup>
165. Maxwell QC asked Kathleen Folbigg about her father. The questions and answers are relevant and show an attempt to push Kathleen Folbigg into a position where she would accept that she was like her father who killed her mother, after he lost his temper. The diary entry in regard to this was removed from consideration from the jury, but was permitted in the Inquiry:

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.*

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<sup>155</sup> See Inquiry T 29.4.19, 645.10; T 29.4.19, 652.5; T 29.4.19, 652.10; T 30.4.19, 713.35.

<sup>156</sup> T 29.4.19, 652.10.

- 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.
- 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, 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.
- Q. Reflected that you may have inherited the sin of killing when you're angry?
- A. I don't believe you can, you can inherent being able to kill people.
- Q. What you just said, the sins of your father, you were the one that raised it.

A. *As a, as a generalised saying. It's what I believe isn't it.*

(Emphasis added.)

166. Firstly, if these extracts are considered through the prism of responsibility by reason of the commission of an act, then the meaning contended for by senior counsel for the DPP may carry the meaning for which he contends. However, if the entry and the evidence of Ms Folbigg is considered through the prism of responsibility for an omission, then it is perfectly clear Ms Folbigg could be making a comparison between her and her father as “losers”. She felt like she was a loser because she had failed her children.
167. Second, if one ties this entry in to the belief system set out in the diary entry for 26 June 1997, it is clear Ms Folbigg has a belief system whereby she is punished by reason of her failings. That punishment specifically relates to her three children being taken from her. The expression in her diary that she is her father’s daughter and her explanation they are both losers is entirely consistent with this belief system.
168. Third, the information Kathleen Folbigg’s father had murdered her mother was a matter that arose after the trial and was used in many media reports to promote the salacious. It is the sort of information that is likely to distort the proper analysis of the evidence based on suspicions, inuendo and prejudice. This prejudice amounts to a presumption of guilt and tends to blind one to an available alternative interpretation consistent with innocence. This feature also needs to be assessed in the context of the medical evidence. If the prior deaths of her children do not have a reasonably available natural cause, then the suspicion is greater. If, however, there is a reasonably available natural cause of death consistent with innocence, then the base assumption of the cross-examination falls away entirely. There can be no confidence the children were murdered, so there can be no confidence this diary entry imports any acknowledgment she murdered her children. This is a matter to be addressed when fact finding in this Inquiry.

169. While her father murdered her mother, Kathleen thought of her father as a loser. This was not just a matter that had been raised in the ERISP and before the Inquiry. It was a matter that she had discussed with her husband.<sup>157</sup> This was a perfectly valid assessment to make given the impact it had on the entire family.
170. For Kathleen Folbigg to liken herself to her father does not bespeak of a tendency to anger or a murderous response to stress. It was and remains an absurd proposition to suggest that anything she wrote about her father other than what is contained in her answers, shows a guilty mind with respect to her alleged deliberate murder of her children.
171. Kathleen Folbigg suffered enormous emotional deprivations by reason of her father's rash act. The murder gave rise to a loss of family, the care of Kathleen in a foster family with attendant emotional difficulties and conflict. It is obvious it would have an adverse emotional impact upon a child as she passes through childhood to adulthood. So much is accepted by Dr Diamond and Dr Giuffrida. When assessing the evidence of Ms Folbigg, full credit has to be given to this emotional turmoil, blame and self-blame when considering the type of language a woman might use in a journal in which she reflects on life and a perceived injustice inflicted upon her by her father and the world at large. It is understandable she may seek to characterise her father in a particular manner using particular words.
172. Maxwell QC posited to Kathleen Folbigg that she was concerned she inherited the killer quality from her father and suggested she had raised this in her diary. She denied this allegation strenuously.
173. The allegation is broad and makes no reference to any violence by her. The statement in her diaries could be capable of two or more meanings. In the context of her contemporaneously expressed views to her husband that her husband is a loser,<sup>158</sup> and her belief in a spiritual dimension, her account during

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<sup>157</sup> See T 190.52 - T 191.07, T 191.32-.48 and summarised at Counsel Assisting' submissions at [145].

<sup>158</sup> Exh F, T 190 - T 191.



the ERISP and her account to the Inquiry, it is perfectly conceivable she is right when she gives her evidence. It was not suggested to her in cross-examination that she was lying when giving this evidence. As a matter of procedural fairness (as opposed to a rule of evidence) it should have been put to her she was lying when giving that evidence. That suggestion was not put and quite properly so, as Mr Maxwell QC had no instructions to that effect. As such, the Inquiry would be cautious in rejecting Kathleen Folbigg's answers. That is, she was drawing a comparison between herself and her father as both being losers. To draw any other inference is unreasonable and it the attribution of a meaning by those cross-examining her that is not contained in the words.

#### **14 October 1996**

*Children thing still isn't happening. Thinking of forgetting the idea. Nature, fate, and the man upstairs have decided I don't get a 4<sup>th</sup> chance. And rightly so I suppose. I would like to make all my mistakes and terrible thinking be corrected and mean something though. Plus I'm ready to continue my family time now. But I think losing my temper stage and being frustrated with everything has past (sic). 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. ((Emphasis added.))*

174. Again, this entry demonstrates her belief of some supernatural power that metes out reward and punishment. It corroborates her views in the diary entry of 26 June 1997. She again blames herself for her omissions.
175. The entry is both ordinary and does no more than show that Kathleen Folbigg was concerned to have another child. The Crown, however, relied on the words, 'I think losing my temper stage and being frustrated with everything has past'. Whilst ignoring the context in which it is written, namely, that fate and "the man upstairs" decides her fate, and that is linked to her behaviour and thought processes. The reliance on her losing her temper and being frustrated coupled with some higher being deciding she did not deserve to have a child, is grouped together to invite a conclusion that she killed her children and was likely to kill her next child Laura. The drawing of such a conclusion would require a tribunal of fact to accept that a loss of temper and

frustration by a mother would most likely cause that person to harm their child. One does not lead to the other. This conclusion would have to be regarded as absurd, yet it was advanced at trial and at the Inquiry as reasonable. It is absurd because it would simply be extraordinary for a parent not to have moments of anger and frustration from time to time and later feel guilty about it.

176. Second, if one assesses her evidence through her sense of responsibility for the death of her children through omission, the meaning to be ascribed by the DPP, Craig Folbigg and Counsel Assisting falls away.
177. This diary entry is highly exculpatory when considered in its proper context.

### 30 October 1996

*I worry that my next child will suffer my psychological mood swings like the others did. I pray I'm prepared and ready mind-wise for the next one. Maybe nature has decided I never will be and it will never happen. (Emphasis added.)*

178. Firstly, it demonstrates a habit of praying to some higher being. This corroborates her belief in a higher being.
179. Second, the reference to nature is an ongoing theme in her diaries and shows that Kathleen Folbigg has and still does have spiritual beliefs: *'I've always believed that there is a spiritual or something else going on, fate, karma, destiny'*.<sup>159</sup> The Crown relied upon psychological mood swings and the fact Kathleen Folbigg believed her mood swings impacted her children, her evidence at the Inquiry is:

Q. "I worry that my next child will suffer my", what is that, "psychological mood swings the others did"?

A. Yes.

Q. "I pray I'm prepared and ready mind wise for this next one"?

A. Yes.

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<sup>159</sup> See T 29.4.19, 644.25.

- Q. *It's very clear there isn't it that you express regret for your mood swings and the effect that they had on your three deceased children?*
- A. *Yes, the psychological mood swings is referring to how I would get depressed, yes, and I was always worrying because it was a belief and a view I had that any negative moods from me would impact the people around me and that included my children.*
- Q. *Well Caleb was only 19 days old wasn't he when he died?*
- A. *Yes.*
- Q. *And the psychological mood swing that affected him the most was the one that you had between 2 and 3 o'clock on the morning that he died wasn't it?*
- A. *No, when I had Caleb there was, my thoughts weren't as dark as what they are here, you're talking, there's nearly a ten year gap.*
- Q. *Well you don't say there that "I worry that my next child will suffer my psychological mood swings like Patrick and Sarah did", you say "like the others did"?*
- A. *And I always referred to previous children, all three, as the others or the three of them, so I'm not quite sure what you're trying to get at.*
- Q. *Well in that passage you are admitting that your children suffered from your psychological mood swings, all of them?*
- A. *And as I said I had a belief that if I had negative moods at all that it was affecting the people around me and that included my children, I always worried and stressed about that because I linked it in a rather warped fashion to my whole belief that I wasn't succeeding or very successful at doing this and blaming myself for that.*
- Q. *And it was these violent swings of mood and that's my word, but I'd suggest to you that that's what happened to you, a dramatic complete turn in your mood, that brought about something that shocked even you, your actions in smothering each of your children?*
- A. *No, you're saying, dramatic, as in a sudden change or spontaneous change of mood and my diaries, as far as I'm concerned are evidence that that's not what happened, my depressions were, when they hit they were quite deep, that I was fermenting and constantly worrying about that as well and then attempting to try to fix that which meant I was trying to fix me, which turned into the whole me being in turmoil, so –*
- Q. *You do use the word depression quite often during these journals, that is true isn't it?*
- A. *Yes.*

- Q. *But you don't use depression in this paragraph, you say "I worry that my next child will suffer my psychological mood swings, like others did"?*
- A. *Psychological is just a fancy word for saying you're having a personality or a depression of some sort, that's how I'm taking it.*
- Q. *What about the word "swing, mood swings", there might be depression on one end of the swing, one end of the spectrum, but what about the other end?*
- A. *My diaries are evidence that I would have those swings, my diaries are evidence that at times I was happy and incredibly euphoric about what my hopes and dreams for life are and then at the same time my diaries were also a representation of the dark moods and the swings and the depression that I would be in.*
- Q. *At one end of your mood swings, I would suggest to you, was such anger with your children not doing as you wanted, usually sleeping I'd suggest to you, that you took it into your own hands and smothered them?*
- A. No.<sup>160</sup>

(Emphasis added.)

180. There is absolutely nothing unusual in a mother believing that her mood swings might affect her child. Craig Folbigg shared the same view with respect to Caleb. Further, it was Ms Folbigg's experience that people suffered when someone had a mood swing.
181. Further, if one assesses this evidence accepting Ms Folbigg held the view she was responsible by reason of her omissions, the interpretation to be placed on this entry as suggested by this cross-examination falls away.
182. Further, Craig Folbigg noticed no trouble with Ms Folbigg during Caleb's life and there was nothing about her behaviour which gave him the slightest concern.
183. Finally, if a natural cause of death cannot be excluded by the Crown, the central tenet of this cross-examination falls away.

#### **4 December 1996**

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<sup>160</sup> T 30.4.19 711.5 to 712.25.

*I'm ready this time but have already decided if I get any feelings of jealousy or anger too much I will leave Craig and baby rather than answer, being as before. Silly, but will be the only way I will cope. I think support and not being afraid to ask for it will be a major plus. Also I have and will change my attitude and try earnestly not to let anything stress me to the max. I will do things to pamper myself regularly and 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 and sleep whenever I can to keep myself in a decent mood. I know now that battling wills and sleep deprivation were the causes last time. (Emphasis added.)*

184. Kathleen Folbigg's evidence at the Inquiry related to this diary entry was:

Q. *Because, as you say there, "I know now that battling wills and sleep deprivation were the causes last time". Now, I'm going to suggest to you that it's patently clear, isn't it, that you meant the causes of the deaths of the other children?*

A. *What's clear there to me is, again, I'm blaming myself for everything.*

Q. *"Battling wills" was a phrase that arose in the context of Sarah?*

A. *Yes.*

Q. *You battled wills with her about sleeping, didn't you?*

A. *Yes, because she was a catnapper and sleep was a problem.*

Q. *And sleep deprivation was also a cause. That's your sleep deprivation, isn't it?*

A. *Yes.*

Q. *You don't mean the baby's sleep deprivation?*

A. *Well, I was always concerned that Sarah wasn't getting enough sleep. If you've got a child that would only sleep for 15, 20 minutes in a row or, if you're lucky, an hour or two, as a mother you're then concerned that they're not getting enough sleep –*

Q. *You're not seriously suggesting that, where you say "sleep deprivation" there, you weren't talking about your own deprivation of sleep?*

A. *No, there I am talking about myself, yes.*

Q. *And you're saying there that battling wills, in the case of Sarah, and sleep deprivation and the anger that caused you were the causes of the other children's deaths because you killed them, being sleep deprived and/or being in a battle of wills?*

A. *No.*

- Q. *Did you think it was unusual to have a battle of wills with a baby who was under nine months old?*
- A. *Yes.*
- Q. *Because "battle of wills" is something that you mention a few times in your diaries, isn't it?*
- A. *Yes.*
- Q. *"Battling wills"?*
- A. *Yes.*
- Q. *And it's always in the context of Sarah?*
- A. *Yes.*
- Q. *Would you say when that battle of wills commenced?*
- A. *No, I can't answer that.*
- Q. *You can't say when Sarah –*
- A. *No.*
- Q. *--what Sarah's age was when that started?*
- A. *No.*
- Q. *How did the battle of wills play out?*
- A. *In the - in the point - in the fact of just the frustration level and my lack of sleep, concern of her lack of sleep, it created a frustration situation, and I didn't know how to handle that. **It must be remembered that Sarah was also - even though she was my third child, she was also, in retrospect, my first child of being able to have such experiences with. Patrick did not have a sleeping problem, due to his epilepsy and medication that he was on, and Caleb had not developed a sleeping issue, and I had no sleeping issue back then either. This was new ground and new territory and, basically, I'm a new mother trying to deal with a child that didn't wish to go to sleep very often.***
- Q. *Well, Caleb and Patrick both, as babies do, required feeding during the night, didn't they?*
- A. *Yes.*
- Q. *At times when Craig was fast asleep?*
- A. *Yes.*

Q. *And that caused, not just for you but I suppose for any parent dealing with it, sleep deprivation?*

A. *Yes, as any parent, yes.*

Q. *As to battling of the wills, what was it about Sarah that you perceived was her battling against your will? It was you against her, was it, that's the "battle of the wills"?*

A. *It, it was a battling of wills as - not necessarily me against her, it was I believed I was supposed to have a routine in place for her that was supposed to make both our lives, and our family unit, easier. In not going with that routine and her difficulty in being able to stay asleep, yes, it didn't fit the routine of which I was trying to do, and my lack of sleep and her lack of sleep, and the whole frustration of the whole situation, at times, it could become quite exasperating as to how to solve that issue and how to fix that problem. And, again, I took that on myself as to, how do I fix this? As a mother, you want - I did, always wanted to try to meet the needs of my child in some fashion.*

Q. *And yet, you felt you were in a battle of the wills with her because, as you just said, her not being able to stay asleep?*

A. *Yes. I have never denied that. I'm not denying any of that.*

Q. *When you wanted her to be asleep?*

A. *When it was time or I thought that in - by my routine I was trying to do, that she should have been asleep, then, yes.*

Q. *And if she wasn't, she was battling against your will?*

A. *Okay, yes.*

Q. *If we go to -*

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.<sup>161</sup> (emphasis added).*

185. Kathleen Folbigg's answer is reasonable given her belief system and the omission/commission distinction. She is simply accepting her failures as a parent and her belief she was punished for them. To suggest this entry shows a guilty mind requires a reasoning process that imparts suspicion and prejudice rather than assessing this entry in the context in which it was written.

186. Further, if there is an available natural cause of death for one or more of the children, the meaning to be ascribed to this entry by the cross-examiner falls way. The meaning Ms Folbigg ascribes to her words becomes completely understandable.

### **1 January 1997**

*Another year gone and what a year to come. I have a baby on the way which means major personal sacrifice for both of us but I feel confident about it all going well this time. I am going to call for help this time and not attempt to do everything myself any more - I know that that was the main reason for all my stress before and stress made me do terrible things. Had a talk to Craig while in the bath tonight - our favourite talking spot. Haven't really cleared anything, just told him how I feel and what vibes I am receiving from him.*

187. The use of the expression "what vibes I am receiving from him" imparts a spiritual dimension to it.

188. The Crown relies on the words 'stress made me do terrible things' in order to infer Ms Folbigg murdered Caleb, Patrick and Sarah.

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<sup>161</sup> T 30.4.19, 717.5 to 718.45.



189. Kathleen Folbigg's answer to the proposition put to her that "terrible things" were killing her children was:

Q. *But you felt confident it will go well this time because unlike the other times, that's my words putting in, but this is what you meant, tell me if this is fair, unlike the other times you are going to call for help to stop the stress that made you do terrible things the other times?*

A. *Again I'm saying that the word "terrible things" is that it covers a whole heap of ground here. You're, you're trying to limit it to a terrible action I'm supposed to have taken, and I will always argue that point, there was no terrible action on my part.*

Q. *You thought it was terrible when you lost it with Laura later on, didn't you, the first time you lost it with Laura?*

A. *Of course I did.*

Q. *Was that terrible?*

A. *Yes, it was terrible.*

Q. *What about when you lost it with Caleb and Patrick and Sarah? Is that what you meant?*

A. ***I never lost it with Caleb. I don't recall ever losing it with Patrick. Did I lose it with Sarah due to frustration and all the issues I was having, yes. I've never denied that, and I've written and fully admit that, yes, I, I lost it that time with Laura and that particular time was quite stressful even, and distressing even for me.***

Q. *You say that you similarly lost it with Sarah?*

A. *Yes.*

Q. *In the same sort of way that you later lost it with Laura?*

A. *In a, in the way that, incessant crying and I've had to walk away to take a deep breath, then yes.*

Q. *How did you lose it? Walking away and taking a deep breath seems like you're handling it.*

A. *I didn't look at it like that. I looked at it as I'm not handling this at all.*

Q. *So what were the "terrible things" that you did?*

A. *For me the "terrible things" are anything. As I said, it's a broad spectrum of things that I'm using the word terrible for. It could be me placing my child down to let her cry for even 30 seconds. That's a terrible thing in my view.*<sup>162</sup>

(Emphasis added)

190. The important thing to note is there is not one suggestion in any of the evidence there was any conduct of Ms Folbigg that suggested stress with Caleb. Further, there was no suggestion she was adversely emotionally affected during Caleb's life and proximate to the time of his death. The meaning ascribed to the words by the cross-examiner imports the same terrible thing was committed by Ms Folbigg to each child. This is selective over-interpretation. Further, it ignores her self-blame and guilt, which is a recognised consequence of sudden death in infancy. It is clear Ms Folbigg, with her objective to provide the perfect controlled family and environment considered any departure or failure as being far more serious than it objectively was.
191. Relevantly, this entry is while Kathleen Folbigg is pregnant with Laura and has not and could not possibly have anything to do with her death (which of course has been determined by Australian and internationally respected forensic pathologists as being caused by myocarditis).
192. Further, this diary entry is perfectly consistent with a woman who, having an unexplained death of a child for no reason the doctors can give her, sets about blaming herself for her failings. This is a recognised phenomenon with SIDS deaths.
193. The time she had with Caleb was so short that losing her temper and killing him is highly unlikely.
194. There was no evidence from Craig Folbigg that she acted inappropriately with Caleb and there was nothing on the night of his death that caused him any concern. After the evidence at this Inquiry, it is perfectly clear Caleb may have died from a natural condition, being airway obstruction caused by

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<sup>162</sup> T 30.4.19, 721.5-35.

laryngomalacia. When ambulance officers arrived, his upper airway was obstructed, yet there was no evidence of any object obstructing his airway. There may have been fluid or vomitus but there was none ingested into the lungs. If Caleb had died from laryngomalacia, then this diary entry cannot support an inference that Ms Folbigg was admitting to killing her children. It would be nothing more than an overly emotional assessment of her own omissions, which is a human phenomenon with SIDS parents.

195. With respect to Patrick and his ALTE and death, there is expert medical evidence to support a conclusion he was suffering from a progressive neurological disorder that could have caused his death. He may also have suffered from an infective process that triggered a cardiac arrhythmia.
196. Similarly with Sarah, there is evidence she may have died from a displaced uvula or laryngospasm, or from infection.
197. It does not matter that the cause of death in each of these children cannot be determined with certainty. What matters is there is a natural cause of death that cannot be excluded by the Crown. If this be the case in one or all three of them, then the inference that in this entry of her diary Ms Folbigg was admitting to murder cannot be sustained. Indeed, the jury may have reached a similar conclusion because it found her guilty of manslaughter not murder.

#### **14 January 1997**

*Well best go. Time to return to bed and see if I can get some sleep. I'm sure this is training for when baby arrives. That's ok I'm pretty sure this time I'll handle it better. Hope so.*

198. This entry is very dull. It merely is a reflection of Ms Folbigg's own self-blame and guilt and her attempt to reassure herself she could do better next time. This blame and guilt are a common feature in SIDS cases.

#### **4 February 1997**

*Still can't sleep. Seem to be thinking of Patrick & Sarah & Caleb. Makes me seriously wonder whether I'm stupid or doing the right thing by having this baby. My guilt of*

*how responsible I feel for them all, haunts me, my fear of it happening again haunts me, my fear of Craig & I surviving if it did, haunts me as well. I wonder whether having this one wasn't just a determination on my behalf to get it right & not be defeated by me total 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'm trying to conquer with this baby. To prove that there is nothing rong 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 ill get through. What scares me most will be when I'm alone with baby. How do I overcome that? Defeat that?*

199. Again, this entry is nothing more than the ruminations of a woman who is blaming herself for the deaths of her children, out of guilt and a sense of failing. She is questioning whether to proceed with a further pregnancy is appropriate.

200. A number of points can be made about this entry:

- (a) If Kathleen Folbigg was not haunted by the death of her children she could reasonably be considered as suffering an abnormality of mind. The report of Dr Diamond and Dr Giuffrida dated clearly indicates she is not a psychopath;
- (b) The fact that she has feelings of inadequacy points to her being a normal person;
- (c) The feeling that she was a terrible mother cannot be regarded as unusual because at this point three of her infant children had died. It is a common feature with SIDS parents;
- (d) The fact she felt she needed to prove there was nothing wrong with her must be regarded as normal because she states, 'if other women can do it, so can I';
- (e) The fact she was going to ask for support with the baby is normal and not to be expected from someone who kills their infant children in secrecy.

**17 February 1997**

*He should be for me, forever, just because a baby is entering our life makes no difference really. One day it will leave, the others did, but this is not going in the same fashion.*

*This time I'm prepared & know what signals to watch out for in myself. Changes in mood etc. Help I will get if need be.*

201. The start of the quote should read '*Hopefully I've explained that's not true he should be for me, forever, just because a baby is entering our life makes no difference really.*'
202. The words "in the same fashion" can equally relate to the sudden death of the children brought about by that her acts (in the sense of her behaviour) Ms Folbigg considers are omissions. The use of these words does not lead to the only inference that she murdered her children. Further, she is accepting that one day the child will die but is trusting it shall not die prematurely.
203. The suggestion that somehow Ms Folbigg was saying Laura would leave in the same way as the others did, cannot be properly be taken from this entry. It is an entry referring to the desire to stay with her husband and to avoid mood changes that might affect the child. In every case that involves a relationship between a man and a woman when a child is arriving it can reasonably be inferred that there are varying levels of concern for the ability of the relationship to remain as it was before the arrival of the child. This suggests a hope Laura will survive into adulthood, but an acceptance death is an inevitability at some stage. It is nothing more than another existential rumination. To construe I as anything else is to permit suspicion and prejudice to dominate the interpretation of the entry. Further, if there is an alternative natural cause of death for each child, then the adverse interpretation falls away.
204. Further, this entry was generated after extensive ruminations by Ms Folbigg in which she has attributed the deaths of her children to her mood. She is not admitting guilt of murder, but what she sees as being her failure as a mother. No inference can be drawn from this entry that she murdered her children.

**28 April 1997**

*I think this baby deserves everything I can give her. Coincidentally 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. I think it's because I'm 30 now & time to settle & bring up a child. Obviously I wasn't ready before at all.*

205. Apart from this entry being humdrum and certainly not indicating any murderous intent, it is also inaccurate as she did in fact 'give' to the other children. The entry is written over seven years after the death of Caleb and six years after the death of Patrick and four years after the death of Sarah. It is not a contemporaneous entry showing her feelings during the times her other children were alive.
206. The fact is, from the evidence of Craig Folbigg and others addressed elsewhere in these submissions, she did "give" to these children. She bathed and fed them. She was excited at their birth. She had no relevant identified emotional stress with Caleb nor Patrick (up to the time of his ALTE). She clearly did have stress after Patrick's ALTE, this being due to the added responsibility of caring for a child with profound developmental issues. She struggled with conflicting thoughts at that time, resolved them and cared for Patrick. Thereafter she fed him, bathed him and took him to all necessary hospital consultations and medical appointments. She planned for both Caleb's and Patrick's futures including assessing schooling options for Patrick. She cared for Sarah as well and took her to all medical appointments. So, the blunt statement she did not "give anything to the others" is a rumination she did not give enough to the others. It reflects self-blame and guilt which is common for parents who suffer a SIDS death. By the time of this entry, those feelings of inadequacy must have compounded significantly.
207. The contemporaneous diary entries during Caleb's life indicate Kathleen Folbigg gave careful consideration to the care of her baby to the extent of preparing half hour sections of the day to list minor matters, such as the times she fed Caleb, and his sleeping patterns on an hourly basis. She also planned for his future care including diarising when he would need booster injections. She took him to the doctors as required and sought their advice with respect to his laryngomalacia. She took him for an EEG. Caleb died when he was 19 days old and despite this fact for her to suggest she gave nothing to him does no

more than show she was depressed. In his short life her attention to his care is obvious and commendable.

208. In the case of Patrick, the contemporaneous diary entries show she was planning for his future to the extent of even considering moving to Melbourne where there would be better schools. Moreover, when Patrick became very ill she was meticulous in her care of him '*I had bonded with him and then was so intent on his survival and day to day care I didn't really think of much else*'.<sup>163</sup> It is clear she was very concerned to ensure the best medical care for Patrick during his life. She bore the brunt of his care in the home. This has been addressed elsewhere.
209. Similarly, with Sarah, she cared for her, clothed and fed her, took her to doctors' appointments.
210. Further, it's notable she uses the expression, "*I really gave nothing to the others*". This is a very passive form of expression and it does not impart the commission of any act that may have been detrimental. Seen in context, this appears to be another example of self-blame, guilt and harsh self-assessment which is a recognised consequence of sudden infant death. In the light of the contemporaneous observations of her case for the children (addressed earlier in these submissions) it simply is not correct and represents destructive ruminations.

### **16 May 1997**

*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 mornings 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 stills seems to sleep okay every night & did with Sarah. I really needed him to wake that morning & take over from me. This time I've already decided If I ever feel that way again I'm going to wake him up. (Emphasis added.)*

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<sup>163</sup> T 30.4.19, 747.15.

211. This extract is advanced as demonstrating guilt. In particular, the focus of the cross-examination was that *"if I ever feel that way again"* relates to a feeling of murderous rage which led to the murder of her children.
212. It is important to recognise that if Ms Folbigg did not kill her children (which has been her consistent position at all times), then Ms Folbigg discovered her children dead (in the case of Caleb, Patrick and Sarah) or seriously ill (in the case of Patrick). She was alone and, on any view, this must be a most distressing experience. The evidence demonstrates she was devastated on each occasion.
213. This being the case, this entry clearly records her morbid fear at discovering her dead children. Further, by this stage Ms Folbigg is suffering from insomnia. As she notes, night time and early mornings will be the worst for her. In this regard, it is likely this entry relates to her fear of discovering her child dead. It does not permit an inference that it is any admission of murder or an inference she is referring to a blinding rage that may have led to murder.
214. Her answer to this entry and the proposition that it shows guilt is not reasonable and her answers should be accepted:
- Q. *You then say, "This time I've already decided if I ever feel that way again I'm going to wake him up."*
- A. *That is a spontaneous decision that I've made right there and then whilst writing that, that I would wake him up. (Inq T 30.4.19, 732.35)*
215. This entry could clearly reflect a rumination of self-blame and doubt for an omission. It is a common experience with SIDS parents.
216. There is no clear inference available on this entry.

### **29 May 1997**

*Need new diary soon I've actually nearly filled up this one. Think it has helped, writing my thoughts & feelings down regularly. Feel as though it's become a friend that I can off load on. And it doesn't back answer me – that's the best thing. Laugh at*



*stupid things I've written in the past, but they were important to me back then as this is now.*

217. At the trial, the Crown suggested that this showed that it was '*a very serious personal diary just for her own use*'.<sup>164</sup> The obvious point in this regard is that a personal diary that is not for business purposes is just for the author's use. The suggestion that it a "serious" personal diary is a facile proposition as is clear from the entry, '*laugh at stupid things that I have written in the past*'. Additionally, the entry indicates that things Kathleen Folbigg has written in the past were '*important to me back then*' followed by the words '*as this is now*' indicating she understood feelings changed over time. The importance of this reflection is that her entries after the death of her three children may have been very different to her feelings when they were alive.

#### **6 June 1997**

*Maybe then he will see when, stress of it all 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 here, 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.*

218. At trial, the Crown had this entry as 6 July 1997 which occurred because of an inaccuracy in date recording in the journal by Kathleen Folbigg.
219. Kathleen Folbigg refers to 'dark moods' twice in this entry only. This is the only time that phrase appears in any journal entry authored by Kathleen Folbigg. She refers to 'mood' or 'moods' 21 times only, 13 of which could possibly relate to depression in over 41,000 words. For example, in an entry dated 15 July 1997 she says, 'Hope I'm not in a bad mood after travelling all that way' or in an entry dated 22 June 1996 'Not hectic today Craig's been in a mood all week'. The use of the word "mood" is variable and consistent with her evidence before the Inquiry. To use it as showing a mood swing to the extent that it results in a conclusion that murder has been committed by Ms

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<sup>164</sup> T 1.4.03 52.55.

Folbigg on four occasions can be regarded as without evidential foundation or experts' opinion in support.

220. Seen in the context of her self-blame and guilt regarding her own personal failings, it does not have the meaning suggested by those cross-examining her.

### 11 June 1997

*Don't think I'll suffer Alzheimer's disease, my brain has too much happening, unstored & unrecalled memories just waiting. Heaven help the day they surface & I recall. That will be the day they lock me up & throw away the key. Something I'm sure will happen one day.*

221. To take this entry alone and attempt to interpret it in an adverse manner against her is highly misleading.
222. At trial, only this section was emphasised, but the full extract gives a great deal of important context.
223. The full entry reads (including paragraphing):

*Sad news for Craig & his dad & family, his grandmother gam died tonight.*

*Even though Craig says she wasn't very special to him I'm sure he feels sadness of some kind. He says that he had been thinking about her lately for some reason. I think he has slight ability to foresee. What's happened or going to happen. Wonder if he'll predict our coming birth in the same way. Interesting.*

*Shouldn't of eaten tea & chocolate tonight, now having pains in gut etc. Feeling very uncomfortable. Think that the bub is having another growth spurt, extremely tight, swollen & uncomfortable. Not good feeling at all. Feeling a little flushed as well.*

*Put bassinet in our room today, not sure why, but feels right to have everything ready. Looks OK should work out okay I hope. Doesn't seem to of intruded to much space wise. Craig can still get up his side of the bed okay.*

*I know it's a selfish thought but why is it that something always seems to happen so that my birthday pales to non existence & becomes less important. I'm 30 this year, another milestone age, and again I feel depressed, lonely & unacknowledged.*

*I think its because mum & dad now no longer acknowledge me on my birthdays it hurts. On my birthdays I have no family of my own that really cares about when I was born into this world.*

*Except for Craig & this year it now been marred by Gams death. It will be interesting to see who remembers me & who doesn't. None of Craig's family will except Dad & Mary ? & they may still get to upset over Gams funeral to remember anyway. Mel might remember, work will probably let it slide.*

*If it wasn't for my baby coming soon I'd sit and wonder again what I was put on this earth for, what contribution have I made to anyone's life. Only person I think I've made a difference too is Craig, And times like this I can't do anything for him so I fail there as well. 30 years, first 5 I don't really remember, rest I don't choose to remember last 10-11 have been filled with trauma, tragedy, happiness, mixed emotions of all desires. Maybe from now on I'll be able to settle a little, nut no immediate future brings turmoil, happiness, sad memories, happy ones, depression, great pride & it goes on. Life sux. You can never figure it out is anyone meant too.*

*Don't think I'll suffer Alzheimer's disease, my brain has too much happening, unstored & unrecalled memories just waiting. Heaven help the day they surface & I recall. That will be the day they lock me up & throw away the key.*

*Something I'm sure will happen one day.*

*My problem is I'm feeling like an obscurity of no existence. And it happens every birthday - damn why have them.*

(Emphasis added.)

224. This entry is important in a number of respects:

- (a) It is written in the face of the death of Craig Folbigg's grandmother;
- (b) It relates her belief of spiritual capacities and processes at work - "I think he has the slight ability to forsee. What's happened or going to happen." His corroborates her statements to the Inquiry about her belief in the supernatural. It may be an inchoate belief system, but this is a clear reference to it;
- (c) It is clear from this entry her belief about order in her lift affecting her success "not sure why, but if feels right to have everything ready". This corroborates her evidence at the Inquiry;
- (d) There is clear reference to her emotional state of being lonely, depressed and unacknowledged;

- (e) She ruminates upon her purpose in life. *"I'd sit down and wonder gain what I was put on this earth for ..."*. This is a phrase that raises the perception she was put on this earth for a purpose, and implies it was some creator that placed her here. This is not an uncommon sentiment, but it corroborates her belief given at the Inquiry that there is some other force at work;
- (f) She again refers to her sense of failure and of trauma and tragedy;
- (g) She ruminates on *"feeling like an obscurity of no existence"*. This is again an existential concept and it is hardly surprising that a woman with such thoughts would contemplate her purpose and whether there is some higher power influencing her life.

225. At trial, the emphasis by the Crown was that Kathleen Folbigg was acknowledging that if her "secrets" came out, she would be gaoled. This was taken up by Cunneen SC at the Inquiry on behalf of Craig Folbigg when she embraced the prosecutorial position on the point during her cross-examination. The approach lacks any cogency because the context clearly establishes that her reference is clearly to mental health issues she was facing at the time and not to any involvement in killing her children.

226. Inserting words into diary entries when they do not exist in the entry themselves, and applying a condemnatory tone when asking a question, does nothing to provide clarity or support for the proposition that she killed her children. The evidence when this is done is the answer given by the witness. In this particular instance, the full answer given by Kathleen Folbigg is important and very clear.

227. The answer given by Kathleen Folbigg at the Inquiry, which should be accepted, is as follows:

Q. *This relates to some cross-examination at page 739 through to 740 in relation to that cross-examination by my learned friend Ms Cunneen, about the use of the expression "lock me up and throw away the key".*

- A. Yes.
- Q. *You told his Honour that your reference to being locked up and throw away the key was due to mental illness concerns that you had?*
- A. Yes.
- Q. *Could you just read for his Honour, just let's go through this entry at the top, "Sad news for Craig, his dad and family, his grandma Gam died tonight."*
- A. Yes.
- Q. *So it was in the context of a death in the family, right?*
- A. Yes.
- Q. *Then you go on to say that Craig says that she wasn't very special, but you were sure that he felt some sadness of some kind, and he said that he'd been thinking about her lately for some reason.*
- A. Yes.
- Q. *Just read on from there.*
- A. *"I think he has slight ability to foresee what's happened or going to happen. Wonder if he'll predict our coming birth in the same way. Interesting." Do you wish me to keep going?*
- Q. *We don't need to go onto the next bit because that's a part of the document in which you shift from that thought to your dietary concerns, right?*
- A. Yes.
- Q. *Of course this was sometime around your birthday, wasn't it, this death?*
- A. Yes.
- Q. *If we go to the next page in the - sorry, it's on that same page. You then say, "I know it's selfish thought but why is it that something always seems to happen so that my birthday pales into insignificance."*
- A. Yes.
- Q. *I'd like you to read on from there please.*
- A. *"Pass into non-existence and becomes less important. I am 30 this year, another milestone age, and again I feel depressed and lonely and unacknowledged. I think it's because mum and dad now no longer acknowledge me on my birthdays and it hurts. On my 40 birthdays I had no family of my own that I really care about*

*when I was born into this world, except for Craig, and this year it's now been marred by Gam's death."*

Q. *On to the next page?*

A. *"It will be interesting to see who remembers me and who doesn't, none of Craig's family will accept dad and Mary and they may still get upset over Gam's funeral to remember - to be too upset or too upset, Mel might remember, work will probably let it slide, if it wasn't for my baby coming soon I would sit and wonder gain what I was put on this earth for and what contribution I have made to anyone's life, the only person I think I've made a difference to is Craig and times like this I can't do anything for him so I fail there as well. 30 years, first five I don't really remember, rest I don't choose to remember, last ten and 11 I have been filled with trauma and tragedy, happiness, mixed emotions of all designs, maybe from now on I will be able to settle a little, but no immediate future brings turmoil, happiness, sad memories, happy ones, depression and great pride, and it goes on, life sucks. You can never figure it out, is anyone meant to."*

Q. *And it's in that - and then the passage following that, is the section about being locked up and throw away the key?*

A. *Yes.*

Q. *And then if we go down below that you say, "My problem is" and if you could just read that for us please?*

A. *"My problem is I'm feeling like" I can't read my own writing, "My problem is I'm feeling like an obscurity of non-existence and it happens with every birthday, damn, why have them."*

Q. *And is it fair to say that on this day when you made this entry, you were sitting there pondering your position on Earth, what it's all about and that maelstrom of emotions and difficulties you've had over all the years?*

A. *Yes, absolutely. (from T 1.5.19, 784.45 to 786.25)*

228. The cross-examination wholly failed to address the full context of the entry, in which Ms Folbigg's ruminating upon her existence. It does not relate to a fear of being gaoled for the murder of her children. Again, if there is a reasonably available alternative cause of death for one or more of the children, the basis of the cross-examination falls away.

229. This evidence from Ms Folbigg provides a clear explanation for the entry. There is nothing sinister in this entry, and to suggest the phrase that "*they [will] lock me up and throw away the key*" is an acknowledgment she anticipates she

will be arrested for the murder of her children is to impose an inference which is simply not available given the context in which it is written. There is an alternative interpretation which sits comfortably with the context which should be preferred.

## **26 June 1997**

*This time I'm positive with support from friends etc & Craig this time everything will work out fine – the slight visions of the future I've been having will come true this time. With the other 3 I never bothered to think of school or teenage years, maybe because I always knew they'd never get there – but this one I see myself taking her to school & Craig doing homework etc with her. Therefore I assume I'm actually ready for the "family life" now where I wasn't before. Feeling secure, loved, successful & wanted by Craig has helped me. And to a degree the fact that I don't wish to die with no one really knowing I was here. At least now I know my second daughter will. If god or that elusive higher power doesn't take them away from me once they are older to punish me. I'm trying to do this right. I hope that is received & understood.*

230. This journal entry is inaccurate where it refers to her never being bothered to think about school and teenage years of her children. The contemporaneous diary entries for Patrick show that this reflection cannot be accurate. Kathleen Folbigg was thinking about his schooling in Melbourne. She was planning of Caleb's inoculations in June 1989.
231. Moreover, she states 'if God or that elusive higher power doesn't take them away from me once they are older to punish me' is an important statement for a number of reasons:
- (a) It is a contemporaneous recording of her belief in god or some elusive power. This is consistent with her evidence to this Inquiry and is strongly corroborative that she held that view;
  - (b) It is a clear statement that "god or that elusive power" took her children away from her;
  - (c) It is a clear statement she believed the "god or elusive power" took her children away from her as punishment of her;

- (d) Implicitly, the “god or elusive power” took her children away from her to punish her for her failings, which include her omissions;
- (e) It corroborates her statement to Craig Folbigg about her belief in “fate”;<sup>165</sup>
- (f) Is a clear statement that she did not know the cause of death of her three children and was looking to a spiritual or ‘supernatural’ cause.

### 20 July 1997

*I accept that my identity as a person starts with me. I've decided that's the way that it has to be. I have no past, no relatives to remind me, and I am it, so therefore the choice of this baby was to “extend” me, natural, and one I've made happily & whole heartedly. I would make again I'm sure. Problem was with the other three kids I felt I didn't deserve to be extended & that I was condemning them to life with me – that feeling has now changed – so this time all is well & well it will go.*

232. This entry is merely a simple statement reflective of her depression and her self-blame and guilt at the time. There is no inference to be drawn from this.

### 25 August 1997

*Scary feelings, I've realized I actually love her & have bonded with her, wish to protect her etc. maternal instincts, 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 enough to not plug it in because they'd want to know why I hadn't, everything will be fine this time.*

233. Despite the fact that at the Inquiry an attempt was made to suggest she did not have maternal instincts for her other children, her answer is:

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

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<sup>165</sup> Exh F T 159.01-.05.



*immediate bond with her and it was the first time that I'd felt that. (T 30.4.19, 74715-20)*

234. This entry clearly shows she had no intention or desire to have any harm befall Laura.
235. Secondly, it is another example of self-blame and guilt over her perception she failed to bond with her child. Her activities during their lifetime and her contribution to their welfare are all consistent with the usual maternal caring for her children. Craig Folbigg did not give any evidence that he was concerned with her care for Caleb or Patrick. His only concern with Ms Folbigg with respect to Sarah seems to arise when there was tension in the relationship and a different perception between the two of them with parenting styles.

### **20 September 1997**

*Sleep, who needs it. Yes I'm getting a little irritable now. This is my punishment for the others to be continually woken up because this time we know that we have a child with a sleeping disorder. Even though I'm sure they are all false alarms, the thought is still scary. Am getting very stressed because I can't depend on Craig for any real help or support. He doesn't hear her or the alarms. How dare he complain to me about lack of sleep – what the fuck would he know. Think we'll have to sleep in other room. Just so HE'S not disturbed – selfish prick. Well now I know where I stand. Craig is refusing to help & hasn't even attempted to in any way. Just wants me to bear all the stress, so he can keep selling his cars & making money. I suppose the stress of having to provide for us is real but its nothing compared to this.*

236. The full entry for this date reads as follows (including proper paragraphing):

*Sleep, who needs it. Yes I'm getting a little irritable now.*

*This is my punishment for the other to be continually woken up because this time we know that we have a child with a sleeping disorder. Even though I'm sure they are all false alarms, the thought is still scary. Must admit the only thing this has taught me is how to go to sleep myself quickly. Except for this morning. Every little sound is disturbing me, wondering if this could lead to me becoming and insomniac.*

*Am getting very stressed because I can't depend on Craig for any real help or support. He doesn't hear her or the alarms & I can't even \_\_\_\_\_ & depend on him to look after her properly \_\_\_\_\_ for better learn anything about her. He doesn't pay attention when feeding her, hasn't changed a nappy, doesn't do washing or ironing only wakes up once & a while his life continues as normal. Work, come home & I look*

*after him. He doesn't even cook tea every now & then unless I ask him to. And then it is begrudgingly.*

*What do I do. The only break I get is when I go to aerobics – 3 1/2 hrs a week. But there are times is not enough. I know my feelings are normal I'm just venting but at the moment I \_\_\_\_\_ I hadn't made the decision to have her but then all I have to do is look at her & all that melts away.*

*Well I just pissed Craig off he's up & out of bed now complaining he can't sleep. I have to keep disturbing him because he snores & grinds teeth too badly.*

*How dare he complain to me about lack of sleep – what the fuck would he know. Think we'll have to sleep in other room. Just so HE'S not disturbed – selfish prick.*

*Well now I know where I stand. Craig is refusing to help & hasn't even attempted to in any way. Just wants me to bear all the stress, so he can keep selling his cars & making money . I suppose the stress of having to provide for us is real but its nothing compared to this.*

*Only real friend that helps me is Mel & even then I feel bad asking her too. What do I do. Well someone stirring. Slowly – will probably wake for a feed soon!*

*Kathy*

237. The following can properly be seen in this entry:

- (a) Kathleen Folbigg is afraid when the alarms go off because it may indicate there is something wrong with her child. This is not the thought of a murderous felon;
- (b) She is concerned about lack of sleep. This is normal;
- (c) Craig is 'selfish prick' who does not assist with the child. This entry speaks for itself. It is her perception, written down in a private journal;
- (d) Craig is not the sound sleeper suggested by the Crown and at the Inquiry as evidenced when Kathleen says, 'Well I just pissed Craig off he's up and out of bed now complaining he can't sleep';
- (e) Kathleen has one friend Mel who helps her;
- (f) Kathleen states her child will wake up for a feed soon.

238. It is clearly inappropriate to suggest there is any inference that could be drawn from this entry showing a guilty mind. It simply demonstrates frustration between spouses that can be expected.

**23 October 1997**

*She sleeps pretty good during the night too. Hell of a lot better than Sarah ever did I think that why I seem to be coping better this time. Sure I'm really tired by the evening. But not too bad during the day. Also exercising is helping me to release stress & everything during the week, I was fat & lazy last time. I really not ready but I am this time.*

239. This entry is very pedestrian. There is nothing significant in it.

**25 October 1997**

*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 and 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 wrong now, instead of just snapping my cog. Also she is a far more agreeable child and is easy 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 or cuddly. Gorgeous & beautiful. Well so far anyway.*

*Looking at the video, Sarah was boyish looking, Laura has definite feminine features, they are chalk & cheese & truthfully just as well. Wouldn't of handled another one like Sarah. She's saved her life by being different.*

240. The Crown case is that this entry shows that 'Laura has saved her life by being different to Sarah'.<sup>166</sup> This proposition comes from the last sentence of the entry. If this proposition advanced by the Crown carries any weight at all, it means that Laura is not going to be killed by her mother because she is so different to Sarah.

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<sup>166</sup> T 1.4.03 55.35.

241. Alternatively, taken literally, Kathleen Folbigg was about to kill Laura but decided she was different from Sarah therefore she would not be killed. It also suggests that Kathleen Folbigg had a particular dislike of a certain type of child, and therefore would kill them and not others. This line of reasoning advanced by the Crown is strained and internally illogical.
242. The alternative interpretation drifts back into Ms Folbigg's belief system that there is an omnipresent being that metes out reward and punishment for behaviour. This has been addressed elsewhere and will not be repeated here. It ties in with the belief about fate and the capacity to communicate.
243. Ignoring myocarditis as a cause of death for Laura and importing the suspicion that she was instead smothered does not support the Crown contention that this entry shows Laura is so different that her life was saved. There is no reference to Caleb or Patrick
244. The entry does not support the proposition that Kathleen Folbigg killed her children, and instead a collection of random thoughts.
245. Of apparent interest to the Crown and the Inquiry are the words '*snapping my cog*.' Kathleen Folbigg answers in respect of this metaphor the following, "*Snapping my cog*", to me, could have been simply as even showing a slight frustration'.<sup>167</sup> It would not be unexpected in a person who has suffered the trauma of a SIDS death and has engaged in damaging self-blame and guilt at her acts and omissions which she feels has contributed to the death of her children.
246. "*Snapping my cog*" is an unknown metaphor therefore whatever interpretation Kathleen Folbigg places on it, is its meaning. For a tribunal of fact or lawyers to purport to place a meaning on this metaphor, when it has no accepted meaning, is objectively inappropriate.

**29 October 1997**

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<sup>167</sup> T 29.4.19, 636.25.

*Wonder if Craig was serious about trip to Melbourne. Would be great to see Lea's face, but also scary because it's a little too 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.*

247. This entry supports the proposition Laura is in safe hands. There is otherwise no adverse inference that can be drawn from it.

### **3 November 1997**

*Why is it when I'm so tired I'm 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 I'd not be human if it didn't get me down a little every now & then. It's because my release & enjoyment of the gym's been taken away. I have to take her with me most times now, which means I cant enjoy myself & turn off like I usually do because she's there & I worry about her. Someone's awake, yet to go lost it with her earlier. Left her crying in our bedroom & had to walk out. That feeling was happening & I think it was because I had to clear my head & prioritise. As I've done in here now. I love her, I really do, I don't want anything to happen.*

248. This entry is extremely important as it demonstrates Ms Folbigg's perception of "losing it" includes leaving her child crying in her bedroom. She gave this evidence at the Inquiry and it was met with a degree of ridicule and disbelief. Yet here is the clear contemporaneous example she told this Inquiry about activity she considered "terrible". This corroborates the evidence she gave at the Inquiry.

249. In any event, this extract is incomplete. This entry should read (including paragraphing):

*Why is it when I'm so tired I'm 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 I'd not be human if it didn't get me down a little every now & then. It's because my release & enjoyment of the gym's been taken away. I have to take her with me most times now, which means I cant enjoy myself & turn off like I usually do because she's there & I worry about her.*

*Trick is I need to learn to have confidence in whoever is caring for her. The \_\_\_\_\_ guy was right I truly am too over protective of her.*

*I need to get my life in order & my act together. Having her with me is just a side \_\_\_\_\_ that I have to get used to and enjoy having her being there waiting for me.*

*Look to the future – it might only be a few years & I'll have the days to myself again. When pre school starts, which is only 2-3 years away. I'll have 2 days to myself. So realistically it's not that long.*

*My inability to control my bad eating habits is driving me downhill as well. What I've eaten today is enough to \_\_\_\_\_ me all week. I just don't seem to learn. I need to set my goal, realise that sensible eating & hard work are the only way its going to happen.*

*I say this over & over again, but this time I must, for my sake, Craig's, Laura's, mean it. Starting tonight now. Smaller meals, no sugars, fats, oils, milks, cheese, all that stuff. I'll do a test, see where I get to my the time or girls nite out happens. It will either work or I'll of lost a few kgs at least or it wont \* I'll have to accept that this is it for me. Will have to go to the gym at least 3 times a week & really try for that walk each day if possible.*

*Someone's awake, yet to go lost it with her earlier. Left her crying in our bedroom & had to walk out. That feeling was happening & I think it was because I had to clear my head & prioritise. As I've done in here now.*

*I love her, I really do, I don't want anything to happen.*

*Kathy*

250. The most this entry showed is that Kathleen Folbigg loved Laura and did not want her to die. It also demonstrates her own inadequacies and her insistence that self-control will better her position.

### **9 November 1997**

*Craig was pretty drunk Friday nite. In his drunken stupor he admitted that he is not really happy. There's a problem with his security level with me. He has a morbid fear about Laura. He - well I know there's 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, once getting to me, to walk away and breathe 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.*

251. Sarah did in fact die. She may have died of natural causes. It matters not how Kathleen Folbigg wrote about her death. This is not evidence of murder. It reflects her self-blame and guilt, which has been the subject of previous submissions. Ms Folbigg has felt responsible for the deaths of all her children. She has told this to the Inquiry on numerous occasions. She has strenuously denied killing them.

252. There is no probative value in this entry other than the fact that Craig was drunk and had a morbid fear about Laura dying, which Kathleen also had.

**28 November 1997**

*Could get back into the gym, but I have to take her with me & it's too hard & I don't enjoy the classes anymore because she's there. And Craig doesn't like Mel or anyone else looking after Laura except me so gym out.*

253. The proposition that the gym was such a big part of Kathleen Folbigg's life that it provided a motivation to kill her children is ludicrous. It is obvious from her diaries she was seeking to lose weight for the good of her child and to keep Craig Folbigg interested in her. To suggest she was not a caring mother because she went to the gym is illogical. Many people go to the gym without criticism, and the gymnasium provided a creche to make it easier for mothers to attend.

**8 December 1997**

*Had a bad day today. Lost it with Laura a couple of times. She cried most of the day. Why do I do that. I must learn to read her better. She's pretty straight forwards. She either wants to sleep or doesn't. got to stop placing so much importance on myself. Much try to release my stress somehow. I'm staring to take it out on her. Bad move. Bad things & thoughts happen when that happen. It will never happen again.*

254. This entry should read (including paragraphing):

*Bub's 4 months old. Had a bad day today. Lost it with Laura a couple of times. She cried most of the day. Why do I do that. I must learn to read her better. She's pretty straight forwards. She either wants to sleep or doesn't. got to stop placing so much importance on myself. And realise this not until she's old enough to go & be with Craig more often.*

*Feeling better tonight. Didn't have to worry about putting her to sleep. Craig did it. Took the stress off me.*

*Down loaded for the first time myself today. Stuffed it up but finally managed to do it. Well sleep time hopefully she'll not stir \_\_\_\_\_ I can do with sleeping longer than 1.30 in the morning.*

*I'd love to have some time alone with Craig. An overnight stay. Actually I'd love to have the mystery flight without Laura but that will never happen. We will never again do anything that doesn't involve her.*

*Funny how, now she's here, we cant seem to imagine a life without her dominating every move. Much try to release my stress somehow. I'm staring to take it out on her. Bad move. Bad things & thoughts happen when that happen. It will never happen again.*

*Hope Craig likes his mower for xmas. I'll be paying it off for the next 2 months.*

*Kathy*

255. This entry is nothing more than a mother expressing normal frustration at how life changes when having children.

### **15 December 1997**

*Kaz sent a beautiful angel teddy for Laura. Both her and Craig are convinced that Laura's soul is not her own by the looks of it. Me well I'm sure she met everyone & they've told her, don't be a 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.*

256. Here is another example of Ms Folbigg's belief in spirituality and a soul. It was obviously a topic of discussion with Kaz and Craig Folbigg. This corroborates her other evidence. It is clear she has that belief system and she spoke to others about it.
257. The words that excited prosecutorial interest were 'crack it' and that she was 'warned' to be good. The use of the term "crack it" may mean 'giving way under pressure' if one understood meaning applies. It does not suggest killing or murder.
258. Kathleen Folbigg's answer to Counsel Assisting, is enlightening especially as it refers to her core beliefs:
- Q. You don't remember. Can I come to some evidence that you gave yesterday, now when answering a question put by his Honour, and this is at transcript 752 you were asked whether or not you believed there was some supernatural power, now this is 752 of the evidence that was given yesterday, if we can just have that on the screen, and you say, you were asked the question there at about line, "Now you're saying that you believe there was some supernatural power that took the other three children away from you, and you were concerned that the same supernatural power would take Laura away" and you answered "yes." Now is that a belief that you had when you wrote that entry in the diary?*



- A. *Yes. I took your Honour questioning me about that as trying to understand what it is I'm trying to - the message I'm trying to get out and across, which was my belief of a higher power, be that God, Mother Nature, fate, destiny, karma, all of those things, metaphysical combined, and when your Honour said the word "supernatural", I believed it's along the basis of the thinking that I had at the time yes.*
- Q. *Is that the view that you hold today, that some supernatural power took your first three children away?*
- 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.*
- Q. *So took Laura as well?*
- A. *Yes.*
- Q. *And you also gave evidence of your beliefs that the children who had died, communicated with Laura, who was then alive and warned her as to how she should behave, do you remember giving evidence to that effect yesterday?*
- A. *Yes.*
- Q. *And is it the case that today, you believe that that occurred?*
- A. *Yes, still believe that yes.*
- Q. *Do you believe that they warned their sister to be good or else you might "crack it" or some other expression that you used?*
- A. *I believed and believe that - how do I explain this, being brought up on the faith and the Christian based belief that I had as I was growing up*

*as a child, I've always believed in once you've died, your spirit rests or goes to another place, or is at peace. I've always believed that when it came to my children, it turned out to be a necessary belief for me, that they could speak to each other or that they were peaceful, they were happy. And when I was pregnant with Laura, I believed that it was possible that the spirits of my children could have spoken to my child and they had discussions about things.*

Q. *So in relation to those two matters, the belief that you had then, as reflected in your diaries, is the same as the belief you have now, that's right?*

A. *Yes, it hasn't changed.*

Q. *Is there any other aspect of the diaries that you have a view now that is different from the view that you expressed back in the late 90s?*

A. *I don't think so, I'm not foreseeing, my core beliefs are my core beliefs.*

Q. *I'm not talking about your core beliefs, I'm talking about whether or not you have a view now that's different from what was expressed in your diaries back in the 1990s?*

A. *No.*

Q. *You don't?*

A. *No. (T 1.5.19 804.45 to 806.15) (emphasis added)*

259. This evidence, seen in the light of this entry, demonstrates her belief system has been continuous and she maintains it. This is important context with respect to the interpretation of all the diary entries.

260. The Inquiry may form the view Ms Folbigg's belief system is irrational, but it cannot find she did not hold it and does not hold it now.

### **17 December 1997**

*Tell ya what don't think anyone could read this & find out all my secrets. I write like a 5 yr old. Disgusting to book.*

261. The entry reads in full (including paragraphing):

*Saw Tony & Gale & \_\_\_\_\_ tonight. Good to see them but reminds me that we have no friends that would just call in and see us for no other reason than a visit. Only people ..... always want something – one way or the other – must just be human nature. Still think that Craig & I are having trouble. Not enough to split us up but*

\_\_\_\_\_ well that another novel. There doesn't seem to be the spark anymore. I just don't enjoy it anymore. I've even fantasised about movie stars etc. but it just doesn't do it for me. I'd rather sleep.

What do I do? I can't tell Craig. He'll take it as a personal insult. I think I've had too many kids. My libido just hasn't bothered to return.

Tell ya what don't think anyone could read this & find out all my secrets. I write like a 5 yr old. Disgusting to book.

262. The more the diaries are read the more can be accepted that Kathleen Folbigg had a handwriting style to that of a child. Her secrets relate to everyday emotions and the sorts of challenges that people face when married. Her libido is down, her interest in Craig Folbigg is fluctuating. These are secrets but there is nothing sinister in that to suggest she is admitting to murder.

### **31 December 1997**

*Getting Laura to be next year ought to be fun. She'll realise a party is going on. 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 ..... saved her from the fate of her siblings. I think she was warned.*

263. The entry reads in full (including paragraphing):

*Not far, 98 is a coming. Wow. Got people here, but for some reason, am just tired & wish to be all alone.*

*Decided to write my last entry for 97 now.*

*Funny but if it wasn't for Laura, I'd feel as though I've wasted another year of my life. Everyone seems to be enjoying themselves. Pool is getting a real workout. Karen & Ray seem to of turned themselves back towards only because of Laura. Karen now thinks that we're normal people now.*

*Not sure about the friendship that is evolving with \_\_\_\_\_. I know its because she looks & behaves like \_\_\_\_\_. Craig is just gravitating towards her, because she's a bit of a lost soul. Could just fall asleep quite easily here, but I better go out, rude if I didn't see new year in with 'our friends'. Getting Laura to be next year ought to be fun. She'll realise a party is going on. 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 ..... saved her from the fate of her siblings. I think she was warned.*

*Well enough, next entry 98.*

264. If nothing else, this entry showed that Kathleen Folbigg was looking forward to having fun with Laura in the coming year. Again, it demonstrates her belief in fate, which is a continual feature of her diaries.

#### **4 January 1998**

*Sarah's missed. We watched her video. Made me realise how much I love Laura & cherish her like I never did the others. I don't take her for granted. I think with age has come a lot more patience & resignation that I cant fix or change things. If she doesn't sleep all night then so be it. Sure it shits me & makes me a little grumpy but I sort of just catch up during the day some time.*

265. This entry shows Kathleen Folbigg was missing Sarah. It is not reflective of a person who killed her children.

#### **16 January 1998**

*Been day dreaming again about life on my own. Wild, highly exaggerated, as if I would could or really want to. Always seem to when not really happy. Sorry to say I don't get excited anymore. Craig just doesn't do it for me any more. Has to be because of this last pregnancy. Plus I'm tired all the time. Want to do nothing but sleep. It's not Craig it me. Plus we don't get to go out to dinner or dance together anymore, there isn't much – well there's no romance between us anymore – its all lets make money, or raise Laura - we've forgotten ourselves in the process. Sad how that happens. One of my problems is I've lost me again. I'm just Mrs Craig Folbigg, now I'm just Laura's mother as well. Where's Kath gone, person in her own right who needs to have writing lessons but probably better if I don't, then no one, not even me, will be able to read this when I'm gone.*

266. This entry merely shows Kathleen Folbigg was ruminating on her role in and difficulties in her marriage. It would not be unusual for someone who wrote of her husband in these terms to consider her journals as “secret” and her entries as “secrets.”

#### **20 January 1998**

*The gym was a pivotal part of me & now because I cant go without taking Laura it's put a dampner on everything. I've had my one & only escape taken away from me.*

267. The full entry reads (including paragraphing):

*Great start to the day. Craig's fed up with me. Because of my weirdness with sex I've managed to drive him away. He thinks everything is his fault. Continually trying to explain myself doesn't work.*

*Not sure myself.*

*My weight problem is behind most of it, but it's a vicious circle, I don't have will power or discipline to do anything about it. Diet, exercise have gone out the window. He's right I suppose, the gym was a pivotal part of me & now because I can't go without taking Laura it's put a dampener on everything. I've had my one & only escape taken away from me. Tired most of the time doesn't help, but I reckon it's because I've began a lazy cycle again. Also how do I tell him he doesn't really turn me on any more. He always smelling of smoke and spends all his time in the pool away from me anyway. He talks to me mostly like I'm an idiot - something that he knows infuriates me. Yet he expects me to keep up the good wifey appearances all the time.*

*Oh what do I do with him now? Should I bother that's the point? Kathy*

268. This entry is worthy of comment as it demonstrates the deterioration in the relationship but the pressure on Ms Folbigg to remain in shape. It demonstrates the type of private rumination Ms Folbigg could properly describe as a "secret".

### **28 January 1998**

*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 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. Only seems to happen if I'm too tired. her moaning, bored, whingy sound drives me up the wall. I truly can't wait until she's old enough to tell me what she wants.*

269. In evidence in the Inquiry Kathleen Folbigg states:

Q. *You said that then it got so bad that you nearly purposely dropped her on the floor.*

A. *That's an exaggeration.*

Q. *Is it the case that you nearly on purpose dropped her on the floor?*

- A. *No. I - this is hard to explain. If you're that frustrated with a child and you can't figure out why they won't stop crying, you've got them in your arms, you go to put them on the floor, in my belief and my mind, putting her on the floor is almost dropping her on the floor.*
- Q. *So you've just kind of had her an inch off the floor and you just nearly drop, is that what you mean?*
- A. *Probably not even an inch but yes.*
- Q. *At all times you're just minimising what these entries mean aren't you?*
- A. *No, I'm trying to tell you exactly what was in my frame of mind when I wrote them.*
- Q. *Any reading of that indicates that you're saying you nearly purposely dropped her from waist height onto the floor.*
- A. *No, it doesn't - does it say anywhere there that it was from waist height?*
- Q. *No it doesn't, but you're saying now that you know that it was just somewhere close to the floor, is that what you can recall can you?*
- A. *Yes, yeah.*
- Q. *I put it to you that's not correct.*
- A. *Well I was there, that's correct. (T 29.4.19, 668.25-50)*

270. This entry is important as it demonstrates a number of matters:

- (a) That while Ms Folbigg may get angry, she is capable of restraining that anger. “Got so bad I nearly purposely dropped her on the floor ... I restrained enough to put her on the floor and walk away”. It did not have the meaning contended for by the cross-examiner. This is inconsistent with the Crown case;
- (b) Her solution was to leave Laura in her room and let her cry – something about which she felt terrible;
- (c) Ms Folbigg expressed her fear Laura would leave her. This imports her view that any departure was passive. This ties in with the diary entry of 26 June 1997 in which she expressed the belief some being was responsible for taking her children - for punishing her. Hence the

reference to “with a bit of help” would validly tie in with that belief system.

271. The entry shows that she was waiting for Laura to get old enough so they could communicate. This is not evidence of someone who planned to kill her child or who was likely to lose her temper and kill her child.
272. Emphasis was placed at the Inquiry her use of the word ‘cruel’. The first point that should be made is that there is no physical evidence that Kathleen Folbigg was physically cruel to any of her children. This is particularly important because she uses the word “cruel” which is then used by those cross examining as a weapon to suggest she smothered her children. It was not. It was a judgment of her own behaviour. The questions and answers to Maxwell QC are relevant and show that she was depressed but not to any degree that would indicate murderous intent:

*Q. Then you go on to say, "I feel like the worst mother on this earth, scared that she'll leave me now, like Sarah did" do you see that?*

*Yes.*

*Q. Do you see that?*

*A. Yes.*

*Q. Then you say, "I knew I was short tempered and cruel sometimes to her and she left", and you're talking about Sarah there, correct?*

*A. Yeah, that's Sarah.*

*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. *It just doesn't make any kind of sense at all does it?*

A. *It made sense to me at the time when I was writing it. (T 29.4.19, 669.5-40) (emphasis added)*

273. This is another example of Ms Folbigg's self-blame and guilt over minor matters and her compounding emotional disturbance over time. This emotional disturbance is referred to in the reports of Dr Giuffrida and Dr Diamond. One cannot assess her written ruminations without considering that context. When one does so, the meaning is not that contended for by the cross-examiner.

### **6 March 1998**

*Laura not well, really got on my nerves today, snapped & got really angry, but not nearly as bad as I used to get.*

274. The full entry reads (including paragraphing):

*Craig's at a strip show, hope he unwinds a bit. Worry about him coming home. Got spare room ready for him.*

*Laura not well, really got on my nerves today, snapped & got really angry, but not nearly as bad as I used to get.*



*Am tired of getting spewed on, but alas, comes with the territory. Hope she's alright tomorrow night or Craig wont be impressed at all. Really looking forward to it.*

*Hope Mel's \_\_\_\_\_can make it give her someone to relate to besides me. Be interesting is Debbie & \_\_\_\_\_anyway. I don't think she would. \_\_\_\_\_thinks her kids cant survive a night without her. Me, I can't wait to.*

*Kathy*

### **Further Submissions**

275. At the trial, the Crown ended its reading of diary entries at this point and advised the jury that Kathleen Folbigg had managed to restrain herself from killing Laura until March 1999.<sup>168</sup>
276. What the Crown equally could have said was that the diaries do not reveal any evidence of guilt in respect of Laura and that they had no evidence of smothering in respect of any of the children.
277. A number of very relevant words are missing from the diary entries, although they were inserted during cross examination of Kathleen Folbigg at the Inquiry. Some of the relevant words that are totally absent from the diaries include:
- (f) Kill or killed (except where reference is made to the death a cat by a dog which lived next door in an entry dated 22.2.98).
  - (g) Murder or murdered (except where reference is made to a 'murder mystery' night in an entry dated 14.8.96 and in another entry dated 17.8.96).
  - (h) Smother or smothered.
  - (i) Asphyxiate or asphyxiated.
278. The diaries do not contain any confession.

### **Submissions of Counsel Assisting**

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<sup>168</sup> T 2.4.03 66.10.

## Trial Evidence Outward Expression of Anger

279. Counsel Assisting appears to be primarily relies on selected evidence at trial to tease out extremely limited context. Kathleen Folbigg was not permitted to lead evidence of context. This has been addressed elsewhere. Counsel Assisting made the following submission:

*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) and Ms Bown (sic)<sup>169</sup> (in respect of Laura) 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).*
- 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."*
- c. Ms Folbigg's acceptance to police in July 1999 of having experienced feelings of frustration with the children, in particular Sarah and Patrick*
- 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. (paragraph 107)*

### **Proposition (a), (b), (c)**

280. The submissions of Counsel Assisting completely ignore the context of the entries within the diaries and the context of events.

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<sup>169</sup> Lea Brown, foster sister.

281. At the Inquiry, Ms Folbigg was not asked about the evidence of Craig Folbigg or Lea Brown. In the event their evidence was considered relevant to the interpretation of some words in a diary/journal, she should have been given the opportunity to respond as a matter of procedural fairness.

282. The actual evidence given by Craig Folbigg as referenced by Counsel Assisting was:

*Q. Did you notice anything at this stage about Kathy 's' attitude to Sarah?*

*A. Got very frustrated with her.*

*Q. How would she show that frustration?*

*A. She would - she had that growl. The growl would happen from time to time. She would become very domineering towards Sarah. (T 123)*

*. . . . .*

*Q. When you say pretty ordinary, what do you mean?*

*A. I was in the lounge room watching TV and I could hear Kathy in the bedroom with Sarah. I could hear Sarah crying and grumbling, and I could hear Kathy patting Sarah to try to comfort her. And I heard Kathy growl, that growl, and I went up to the bedroom and Kathy was on the bed - she had Sarah pinned to her.*

*Q. When you say "pinned to her", what do you mean?*

*A. In a bear hug, one arm bear hug, and with her other arm she was (witness indicated) patting her on the bum and she-*

*Q. The motion that you've described there, is it more than just a pat?*

*A. (Witness nodded yes).*

*Q. Could you describe to us in words?*

*A. You could hear it.*

*Q. Was it fairly hard?*

*A. (Witness indicated). About that loud. (T 126)*

*. . . . .*

*Q. Could you hear what was happening in the bedroom?*

A. *I could still hear Sarah was upset and I heard footsteps coming down the hallway and Kathy came through the archway from the hallway into the lounge room and walked to about, roughly. two or three steps short of me, 50 and threw Sarah at me.*

Q. *Did she literally throw Sarah at you?*

A. *Threw Sarah at me and said, "You fucking deal with her".*

Q. *Did you have to catch Sarah?*

A. *I caught her.*<sup>170</sup>

283. This evidence about dealings with Sarah if accepted at its highest does not show anger such as would indicate that Kathleen Folbigg harmed her children. It is a search for abuse where none existed.

A. *She - she was - she was happy being a mum, but she wasn't - it's hard to say.*

Q. *Could you explain what you mean by that?*

A. *She would get frustrated, cranky, yet she did the mum things as well.*

Q. *How often would she get cranky and frustrated?*

A. *Every day.*

Q. *And what sort of things would make her cranky and frustrated?*

A. *Me, Laura not doing what she was told.*

Q. *Is this right from the beginning or after a certain age?*

A. *Oh, after - it sort of kind of - when Laura started walking and carrying on, yeah, that's when it started to get worse.*

Q. *And when was that?*

A. *After she was about 11 months old.*

Q. *And the situation, as it appeared to you, with Kathy, was it static or was it, like, always the same, was it worse or getting better or what?*

A. *It was getting worse. Our relationship had fairly much packed it in. We were pretty much both living for Laura, or so I thought. Most of the time we lived in*

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<sup>170</sup> Exh F T 127.

*separate rooms. Towards the end of Laura's life we were in separate rooms, probably more for - by choice.*<sup>171</sup>

284. This evidence shows not more than that their relationship had broken down and Kathleen Folbigg is 'cranky' with her husband. It does not show any relevant actions in respect of Laura.

285. It is totally inappropriate to cite this evidence as somehow being relevant to the death of Laura.

*Q. Later that day, after Dean and Tanya had left your home, did you speak to Kathy about that?*

*A. I did, I brought it up. I asked Kathy what was going on.*

*Q. Yes?*

*A. I said to her - she said, "What do you mean?" I said, "What's going on between you and Laura? You know, you haven't been near her all day. The kid's kept away from you. Every time you have gone to go near her she's just come running to me." Kathy said, "Oh, she's got the shits with me." I said, "How does a baby have the shits with its mother?" Kathy said, "It's probably over what I did to her last night." I said, "Well, what did you do to her?" Kathy said, "I lost it with her." I said, "What do you mean you lost it with her?" Kathy said that Laura was following her around the house, behind her "Mum, Mum, Mum", whinging and moaning. Kathy said, "What?" She spun around to tell her to piss off or something and Laura was fairly close up behind her and when she spun around she knocked Laura over and she said, "screamed at her" and then I looked down and saw Laura laying on the ground in like an emotional wreck. So Kathy said that she had sat down with Laura because at that stage Kathy was upset that she had upset Laura and she said, "I settled her down and put her to bed. Then you came home, and I went to bed as well." And I just said to her, "Good on you." I couldn't believe it. Anyway -*

*Q. Did she relate that in any way to when you had come home at about ten to eight the previous night?*

*A. She told me that that was all just before I got home.*

*Q. All right. Now, did anything else happen on that day?*

*A. We - I bathed Laura. We gave her some dinner. I don't think Kathy and I were hungry that night. We gave Laura some dinner. We were watching TV and we were playing with her. The three of us were playing. We were playing hide and*

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<sup>171</sup> Exh F T 162.

*seek. Then Kathy put Laura to bed and she went to bed and then eventually I went to bed. (T 171)*

*. . . .*

*Q. That you were what?*

*A. Going to get ready for work. Laura got really agitated and upset. She came into my room and she was jumping up and down on the bed and I got her off the bed and she ran up the hallway crying. I went out. Kathy was losing patience with her. I heard-*

*Q. With Laura?*

*A. With Laura. I had heard Kathy growl. I didn't know what they were doing at the time. I wasn't in the room. I heard Kathy growl.*

*Q. In the same way you described yesterday?*

*A. Yes. I walked down the hallway to see what was happening because that alarmed me. I went down and Kathy had Laura in the highchair and she had both of Laura's hands pinned under her hand on the deck of the highchair and she was trying to feed her cereal.*

*Q. Was she force-feeding her?*

*A. Force-feeding her. Laura was twisting her head everywhere and whinging. I said to Kathy. "For Christ 's sake, she's a bloody baby. If she doesn't want to have breakfast, don't bother trying to make her."*

*Q. Was Laura still in the highchair?*

*A. She was still in the highchair. I just started sort of into the dining room. Kathy told me to "Fuck off". Laura would have breakfast if she said she would. I said, "You're just unreal. " I actually swore. I said, "You're fucking unreal Kathy. I just can't figure this out. "<sup>172</sup>*

*. . . .*

*Q. Can you tell us what it sounded like?*

*A. Oh, "grrh", and Kathy screamed, "I can't handle her when she's like this" and she had both her arms in the air and Laura fell to the ground and Laura was crying and I just scooped Laura up and tore off down to the bedroom.*

*Q. How was Laura crying?*

*A. She was hysterical, shaking and sobbing. I took her down to the bedroom and sat on the bed with her in my lap. I was rocking 'her and trying to settle her down.*

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<sup>172</sup> Exh F T 172.

*"Mummies and daddies argue. It doesn't mean they don't love you" and all that stuff. Kathy came to the door and said, "Give me that baby." And I said, "Just fuck off." She said, 'You give me that baby and get ready for work. Get out. You do this. This is your fault" and she grabbed Laura by the arm. I had Laura in my lap. I said, "Kath, just let her go. Just leave her. Piss off. You look like you're going to punch somebody." She said, "If I'm going to punch anybody I'd punch you. Just give me that bloody baby." So I let Laura go. followed her down the hallway. She told me to bugger off and get ready for work. So I went in - I had a shower. I got dressed for work. I was listening intensely down the house. I walked down the house to see how everybody was. Kathy met me at the breakfast bar, which was just short of the family room. You could see from the breakfast bar through the door into the family room. She said, "Look, she's fine now. She is just watching TV." She had Laura sitting on Laura's little banana lounge. She was eating dry cereal, just watching "Tele 'Tubby". Kath said, "She's fine. She's only like this when you're around. Blah, blah, blah. Just go to work". So I did.*

Q. *You gave evidence, I think, that it was before Sarah died that Kathleen's growling would happen on a daily basis?*

A. *It was-*

Q. *What about in the months before Laura died?*

A. *Same deal, yeah.*

Q. *Was it on an almost daily basis?*

A. *Daily.*<sup>173</sup>

286. The evidence can be briefly summarised as follows:

- (a) Kathleen Folbigg 'lost it' which involved accidentally knocking Laura over;
- (b) Then Kathleen Folbigg sat down with Laura 'because at that stage Kathy was upset that she had upset Laura' and she said, "I settled her down and put her to bed. Then you came home, and I went to bed as well." Put another way a mother was upset because she upset her child. This evidence is about Kathleen Folbigg describing something that had occurred. She was not hiding anything;

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<sup>173</sup> Exh F T 173.

- (c) Kathleen Folbigg said, 'Fuck Off';
- (d) Craig Folbigg and Kathleen Folbigg played hid and seek with Laura;
- (e) Kathleen Folbigg 'growled' at Laura;
- (f) Laura got upset;
- (g) Craig Folbigg said, 'Fuck Off';
- (h) Kathleen Folbigg said to Craig Folbigg: If I'm going to punch anybody, I'd punch you. Just give me that bloody baby."
- (i) Kathleen Folbigg fed Laura while they watched 'Tele Tubby';
- (j) Kathleen Folbigg would 'growl' at Sarah.

287. Assuming the evidence is accurate and truthful any submission that any of the interactions described are abnormal in the context of ordinary family life would require the maker of the submission to have lived a very sheltered family life. None of the evidence points to the guilt of Kathleen Folbigg of murder of Laura, let alone the other three children.

288. There are parts of Craig Folbigg's evidence that Kathleen Folbigg does not accept. This is obvious from the ERISP where those matters are raised by the police and Ms Folbigg gives her account. The cross-examination needs to be read to identify those parts of Craig Folbigg's evidence not accepted by Kathleen Folbigg. However, even without undertaking this exercise the evidence above does nothing to assist with the interpretation of the diaries. Indeed, the approach taken attempts to move the Inquiry well beyond the scope identified. If this approach is accepted as being legitimate, then additional evidence should have been brought before this Inquiry detailing Craig Folbigg's own behaviour at relevant times and why, at least some of his evidence, could be regarded as tainted.



289. The Counsel Assisting relies on the evidence Lea Bown, foster sister. The parts relied upon are included in full below.

Q. *What did you notice about the interrelationship between Kathy and Laura?*

A. *Sometimes it was good and sometimes Kathy wasn't, you know, in a very good mood.*

Q. *Did you notice any specific events regarding Kathy and Laura?*

A. *Yes.*

Q. *Would you tell us about that?*

A. *Kathy lost her temper with Laura when she was trying to feed her in the high chair.*

Q. *What did she do, what happened?*

A. *Laura didn't really want to eat her meal and Kathy got angry with her and put the food down on, because the high chair was close to the table so she put the food down on the dining room table and got Laura out, pulled Laura out by the arm.*

Q. *Can you describe to us how she pulled her out?*

A. *She has got her by the arm that way and yanked her out.*

Q. *Just by a single arm?*

A. *Yes.*

Q. *Did she say anything, or did you notice anything else about Kathy?*

A. *Just angry because Laura wouldn't eat, she didn't want to.*

Q. *Was that at a time when she was getting little sleep?*

A. *Yes. (T 769)*

. . . . .

Q. *Was there any other instance when you saw anger from Kathy towards Laura?*

A. *Yes.*

Q. *And was that during that holiday?*

A. *Yes.*

Q. *And would you tell us about that?*

A. *That was on Christmas Eve.*

Q. *Yes. What happened on Christmas Eve?*

A. *Laura didn't want to go to bed because there was a lot of excitement going around in the house with people coming to see us for Christmas and that and Laura didn't want to go down to sleep and when Kathy tried to put her down she still didn't want to get. down and Kathy got angry.*

Q. *Could you describe Kathy's anger?*

A. *She wanted Laura to go down when she wanted her to go down and she got angry because Laura wouldn't go down.*

Q. *How would you categorise her anger?*

A. *Just over the top.*

Q. *Why do you say that? What was it that you observed that led you to that?*

A. *I just didn't feel it was necessary to have been so angry with her, considering Laura's age and it is typical of a little girl of that age or any child of that age. There's a lot of excitement going on.*

Q. *What about the anger that she showed when she was trying to feed Laura. How would you categorise that anger?*

A. *That was uncalled for.*

Q. *Why do you say that? What was it that you saw that led you to that view?*

A. *Because Laura didn't want to eat, which is normal of a child of that age, and instead of forcing - if Laura had of just been left and allowed to eat when she was ready to eat she would have been okay, but Kathy just insisted that she was to eat when she said that she had to eat and Kathy just lost it with her. (T 770-771)*

290. This evidence demonstrates two people observing the same conduct of a child being difficult can have two quite different perceptions of what constitutes effective or appropriate parenting. In this regard, Bown demonstrates she is judgmental of a mother trying to deal with a child who is either not eating or over-excited. Parenting styles vary, and perceptions vary. In this regard, this evidence supports Ms Folbigg's evidence regarding her use of language. Further, Ms Folbigg gave evidence about the own belief about the importance of control. This evidence demonstrates how her perception was manifest. It also demonstrates why it is Ms Folbigg could have feelings of guilt and

self-blame about her own conduct. Her own conduct was not perfect and as a result it corroborates her own view her conduct could have impacted upon her children.

291. Apart from the evidence cited above not being sufficiently descriptive to warrant any concern, it is submitted by Counsel Assisting out of context. The cross-examination at trial needs to be read in full to properly identify Brown's view of the relationship between Kathleen Folbigg and Laura. For example:

Q. *You made observations yourself in the times you were with Laura that she was a happy child?*

A. Yes.

Q. *And very healthy?*

A. Yes.

Q. *In fact you thought she always seemed to be laughing?*

A. *She was a very happy little girl.*

Q. *And you would see her regularly in her mother's company?*

A. *Yes, and father.*

Q. *I beg your pardon?*

A. *And father.*

Q. *And she would appear happy in the company of her mother?*

A. **Yes.**

Q. *Now, again, did you observe or have dealings with Kathleen in the time after Laura died?*

A. Yes.

Q. *And it appeared to you that she was taking it pretty hard, didn't it?*

A. Yes.

Q. *You had a conversation with her over the telephone in the period very soon after the death of Laura, is that right?*

A. *That's right.*

Q. *And she sounded pretty bad?*

A. *Very upset.* (T 788)

292. Her evidence also shows a positive relationship between Kathleen Folbigg and her other children.
293. What is important is trial evidence relied upon by Counsel Assisting to demonstrate ill temper. This evidence does not relate in any way to Caleb and Patrick Folbigg. This presents an insoluble problem for the Crown postulate at trial and the submissions advanced by Counsel Assisting, Craig Folbigg and the DPP. Their case theory is that Kathleen Folbigg murdered each of her children in a blind rage. This first examples of temper only occur with Sarah.
294. With respect, it cannot be submitted that it necessarily follows that because there were examples of frustration with Sarah or Laura, that the same can be said for Caleb or Patrick. It does not follow as a matter of logic or the evidence. It fails to address Kathleen Folbigg's unchallenged statement that her frustration was not with the children but with Craig Folbigg. This is unsurprising given she felt unsupported and vulnerable in her relationship with him. So much is obvious from the entries in the diaries relating to her perception to lose weight to keep her husband interested in her. It is to be assessed in the context of discovering her husband had been caught in an affair with her best friend.<sup>174</sup> It does not address the fact that by the time of Sarah and Laura's deaths, her emotional state was likely to be, and was demonstrably affected by the deaths of two children. It does not address the fact that by the time of the writing of her diaries, she had developed pervading emotional difficulties surrounding her self-worth, appearance and fitness, abuse of food and her capacity as a mother.
295. There is a logical fallacy in characterising the interpretation as "benign" as one alternative to the postulated other. It introduces a false dichotomy. Kathleen Folbigg accepts she had issues with frustration and anger with Craig Folbigg

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<sup>174</sup> See Diamond report Exh BA page 17.

from time to time and with her children at times. By accepting this, this does not mean she has murdered her children and that the diaries should be interpreted with that focus in mind. She was a woman who was struggling with issues relating to her husband, the difficult relationship, her past failing, a perception of her own lack of self-worth, and dealing with small children as submitted elsewhere, this is not an unusual position for a mother.

296. Secondly, she has admitted she has suffered from frustration and anger from time to time. This should stand to her credit.
297. In any event, it does not assist in understanding the words she utilised in her diary. This submission merely demonstrates the exercise is being approached with a presumption of guilt.

**Proposition (d)**

298. Proposition (d) advanced by Counsel Assisting accepts that “context” is relevant as is “evidence of the surround circumstances”. The fact is Ms Folbigg was not permitted to give evidence of context. In such circumstances, the Inquiry should be highly reluctant to attempt to make a finding there was a *“lack of ambiguity in the meaning of the entries when considered in their context and ... surround circumstances”*. This submission should be rejected. In any event, in the entries there is a different interpretation to be placed on the words used depending upon the approach one takes. Ms Folbigg has denied killing her children at all times. She has had problems with grief, self-blame and guilt and depression. She was using language in a private document and she had her belief system that was influential on her thought processes, about which she has given evidence. The words are capable of more than one meaning when, such context as there is, is taken into account.

**Proposition (e)**

299. Ms Folbigg’s diaries were not for the purpose of communication. Proposition (e) accepts that base postulate. Accordingly, her use of words is and must be

judged in context of her own understanding and use of words, her mental state and belief system.

**Proposition (f)**

300. First, proposition (f) was not a matter that was ever put to Ms Folbigg when she gave her evidence at the Inquiry and ought to have been for this submission to be put. Ms Folbigg was asked whether she always had this belief system, to which she agreed. It was at this point the question could have been asked that such evidence was false, and it was not. The evidence is now closed, and she has no opportunity to address this submission after the evidence is closed.
301. Second, had there been such a question, it could have been answered by reference to the letter from Craig Folbigg to Nurse Tanner regarding Ms Folbigg's belief in fate by reference to her diary entry of 28 June 1997, by her visit to the clairvoyant, and other entries. She could have given evidence of the loss of her personal papers that may have demonstrated that belief.
302. Most importantly, if that evidence was false, one would have expected senior counsel for Craig Folbigg to put the proposition to her. Craig Folbigg was in court and clearly in a position to give instructions to his senior counsel on that topic. Yet not one question was asked of her to that effect and no positive assertion made to the contrary. This is the clearest indicator that the evidence she gave on that topic was true.
303. There has been great effluxion of time since the death of each child. Ms Folbigg ceased living with Craig Folbigg and she has been in prison with no access to her personal records (including letters and cards) that may have established she communicated this belief system to others.
304. Fourth, Ms Folbigg made reference to the same belief system in identical terms to police during her ERISP and within her diaries.

305. Fifth, the proposition is wrong as a matter of fact. She raised the issue of fate with Craig Folbigg with respect to Sarah, when Sarah was still alive. It is self-evident in her diary entry of 3 June 1996 and in other entries addressed above.

306. This submission by Counsel Assisting should be rejected.

### **Proposition (g)**

307. Proposition (g) demonstrates the presumption of guilt in the submissions of Counsel Assisting. It is a clear value judgement on whether Ms Folbigg's belief system is rational or not. It may not be rational for a highly-educated person in a courtroom. It may not be rational for a person who has not suffered the deaths of four of her children whether seen in the light of her subsequent divorce and imprisonment or not. It may not be rational for a person with deep medical understanding of cause of death and the clinical conditions of each of her children. However, that is not to the point. She has her belief system. It was never put to her she did not hold that belief system. As such, it is an accepted fact she has it, whether it is irrational or not. A finding cannot be made to this proposition in the terms proposed by Counsel Assisting, given she was not challenged on the matter.

308. As such, it is probable her belief system will pervade her own personal writings. A finding should be made to this effect.

### **Proposition (h)**

309. There is no entry in the diaries that give rise to any such concession. Further, the ERISP was given some years after the event and the risk of pollution of her memory on such a detail was high. Ms Folbigg sought the tender of transcript of a listening device that recorded a discussion between Craig Folbigg and Ms Folbigg that demonstrated the discussions that occurred between them that could have been highly influential on her recollection at the time of the ERISP.

That transcript has been excluded and the point can be taken no further in the light of that ruling.

310. More importantly, and on the same issue, the first recorded account of the events of that night come from Detective Senior Constable Ward who recorded Sarah was in bed with the parents at the time of her death. It is entirely probable the statement to police on the night are correct. Ms Folbigg may have been up with Sarah on the night before her death because Sarah was unsettled. Because she slept well whilst in bed with the parent, Ms Folbigg put her into bed with them.
311. In other words, there may be no inconsistency at all.
312. The evidence of Detective Senior Constable Ward is to be found elsewhere in these submissions in greater detail.

### **Disposal of the Diaries**

313. It is not surprising that a woman who has suffered the deaths of her four children and who has profound feelings of depression, self-doubt and guilt would see herself as a failure as a mother.
314. It is no surprising the arrival of Mothers' Day in such circumstances would deepen her sense of failure.
315. It is not surprising that in those circumstance, she would sever one of the links to those feelings of despair and dispose of her diaries on Mothers' Day.
316. It is not surprising that if she undertook that task, she may not throw away all her diaries and inadvertently miss one or two.
317. Contrary to that circumstance, if she was disposing of her diaries so as to "cover her tracks", then she would be diligent on that day and in the weeks and months subsequently, to root out every diary and destroy it. At the time, she was living in a small flat at Flat 2, 32 Andrew Street, having moved out of 8 Millard Close. When she moved out, she took her diaries with her. It is



inconceivable she would not have thrown them away when she was packing, or unpacking had she been intending to “cover her tracks”. This tends to indicate a rather casual attitude to the diaries which is consistent with their disposal on Mothers’ Day in the circumstances she described.

318. Further, it was never put to her that she was aware the diaries she disposed of contained incriminating material and that she disposed of them to “cover her tracks”.
319. Further, she denies she attempted to hide her diary from police at the time they conducted their search warrant. The fact the diary was in a bag under some clothing in a wardrobe is consistent with a casual disregard for the diary. Further, if she thought it was incriminating and sought to “cover her racks” rather than place it in a bag, she would have destroyed it.
320. Further, the reflective journals were not hidden from Craig Folbigg or anyone else. Craig Folbigg found a couple and was able to read them. According to the police one of them was easily found during a police search, there is no suggestion by any witness that any missing diary or journal contained anything recorded by Kathleen Folbigg that pointed to her guilt.
321. Any suggestion she deliberately hid diaries that contained admissions is nothing more than speculation. It is denied by her.

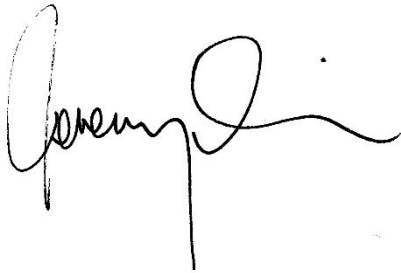
### **Conversations About Diaries with Police**

322. Ms Folbigg was asked by police whether she still kept a diary at the time of her ERISP. She answered in the negative. This does not give rise to a credit issue for the following reasons:
  - (a) The term diary could include an organised document, in the nature of a calendar, such as the 1989 one used for Caleb, or it could relate to a journal. It is unclear to which the police officer was referring and to which Ms Folbigg was referring;

(b) There is some confusion over times which makes the evidence uncertain.

323. Accordingly, no finding should be made with respect to Ms Folbigg's credit on this issue.

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