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SPECIAL INQUIRY

THE HONOURABLE REGINALD BLANCH AM QC

5 MONDAY 1 APRIL 2019

INQUIRY INTO THE CONVICTIONS OF KATHLEEN MEGAN FOLBIGG

NON-PUBLICATION DIRECTION

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Ms G B Furness SC, Senior Counsel Assisting, with Ms S McGee and
Ms A Bonnor

Mr J M Morris SC for Ms Kathleen Folbigg

Mr C Maxwell QC for the Office of the Director of Public Prosecutions

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Mr D Eid for Mr Craig Folbigg

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FURNESS: Your Honour, this directions hearing follows the completion of the first tranche of hearings concerning the forensic pathologists and I think at the commencement and at the end of that hearing there was discussion as to timetables and when various reports may or may not be provided. Since that time, indeed I think on Friday evening, a letter was received by the solicitors for Ms Folbigg providing various reports and setting out the specialties they had approached to provide further reports and indicating that there were still reports to come from people they had engaged.

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JUDICIAL OFFICER: Thank you. I see we have some other representatives at the bar table. Mr Maxwell?

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MAXWELL: Yes, your Honour, I am now briefed to appear for the Director of Public Prosecutions just as of today. Mr Everson, who has been appearing, is unable to appear on the 29th, which I think is the commencement of the week set down to, amongst other things, take evidence from Ms Folbigg, if she chooses to give evidence, and if she does then I am briefed to act and to cross-examine her to the extent necessary in accordance with the orders that your Honour has made.

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JUDICIAL OFFICER: Thank you, Mr Maxwell. Mr Eid, you have come to join us?

EID: May it please, your Honour, I seek leave to appear on behalf of Mr Craig Folbigg.

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JUDICIAL OFFICER: I grant you leave.

Mr Morris, first of all, I have got the letter from Mr Gray. There has been some issue about funding.

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MORRIS: Yes your Honour. We have got funding for the five days of hearing,

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but there is no funding at all for preparation and it is making it very difficult to pay for experts' reports and so on.

5 JUDICIAL OFFICER: I gather that Mr Gray wrote to the Legal Aid Commission on the 12th and the 27th I think of March.

MORRIS: Yes your Honour.

10 JUDICIAL OFFICER: The 27th, of course, was only last week, however, bearing in mind your difficulties, I have been in touch with the Legal Aid Commission and they assure me that they will provide an answer to your requests for supplementation today or tomorrow.

15 MORRIS: I am very grateful to your Honour, thank you.

JUDICIAL OFFICER: So hopefully that will iron out those problems and we will see what happens.

20 MORRIS: Thank you, your Honour.

JUDICIAL OFFICER: Now, insofar as any further reports are concerned from your point of view, what is happening?

25 MORRIS: Your Honour, I understand Mr Gray sent a letter explaining our current difficulties on Friday. We are hopeful that we may be able to get the electrophysiological assessment of Kathleen Folbigg performed in the next week with a report to follow. I think that will be fairly binary, it will either show something or it won't, so I don't expect that there will be an awful lot of detail in that. With respect to the other reports that we have indicated will be coming,
30 we are hoping to have those in the next week, but we are happy to let Ms Richards know how we are progressing with that and we will serve them as soon as we have got them.

35 JUDICIAL OFFICER: But you do expect them within the next week?

MORRIS: I am hoping, yes. Your Honour will understand the complexity in this case is considerable, the scientific complexity and it took a while--

40 JUDICIAL OFFICER: There is no need to tell me that.

MORRIS: I am sure it won't be the first time I tell your Honour, so thank you, your Honour.

45 FURNESS: Your Honour, one issue which may flow from my friend's comment that in the next week these reports may be received is the availability, should your Honour wish any of those witnesses to be called, to give evidence in the week set aside. They, in short, must be available to give evidence in that time for their reports to be of any real benefit to your Honour, firstly. Secondly, one
50 of those reports is from a psychiatrist, as I understand it, and your Honour indicated on the last occasion the view that the opinions of a psychiatrist would

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5 be of little assistance to your Honour in respect of the diaries which could be the only matter of issue given the scope of your Honour's Inquiry. I note that in the letter that the Inquiry received it was stated that the intention was to obtain a report in a matter unrelated to the diaries. Now, I don't pretend to know what that is, but your Honour may need to understand whether it is proposed that that report will be of use to your Honour in the Inquiry or otherwise.

10 JUDICIAL OFFICER: Yes, well, there is no doubt that is correct. Is it something that we need to discuss in an open hearing, Mr Morris?

15 MORRIS: I don't think so, your Honour. Again, that will be a binary issue and, depending on what the report is, we will submit it to Counsel Assisting and a determination can be made whether it will be useful or not. If it is determined that it is not useful it won't be admitted into evidence I am sure. If it is found to be useful to your Honour in helping your Honour resolve these issues, then it can proceed forward and it will be obvious from the face of the report.

JUDICIAL OFFICER: When do you expect that report?

20 MORRIS: I am hoping to have it within a week.

JUDICIAL OFFICER: It is a report from a psychiatrist?

25 MORRIS: Yes your Honour.

JUDICIAL OFFICER: They very often take a bit longer than might otherwise be expected.

30 MORRIS: We are in his hands, but we are pressing him.

JUDICIAL OFFICER: Well, it may be that if you find out what he is going to say you might be able to make a decision yourself.

35 MORRIS: We may be able to, yes.

JUDICIAL OFFICER: Whether to take it any further because, as I said, I am certainly not going to be helped by a psychiatrist's view of the meaning of entries in the diaries, et cetera.

40 MORRIS: I understand that, your Honour.

JUDICIAL OFFICER: Is there anything else?

45 MAXWELL: We would also want access to that psychiatrist's report as well, your Honour.

50 JUDICIAL OFFICER: Yes, if it turns up. I mean at the moment I can't begin to understand what it could possibly relate to that would be of any assistance to the Inquiry and it may turn out if that is the case nothing will ever come of it in any event.

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MAXWELL: We will meet that when it arises, yes, your Honour.

JUDICIAL OFFICER: All right. Then I will adjourn.

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