

Dr Richard Furst

MBBS, M Crim, FRANZCP
Forensic Psychiatrist
Level 8 Practice
235 Macquarie St
Sydney, NSW, 2000
P: 02 9221 0688
F: 02 9221 0544
M: 0412454477
ABN: 65 620 815 205

21 July 2021

Mr Mark O'Callaghan,
Solicitor,
MG O'Callaghan & Associates
Suite 49, Grand Horizon,
26 Watt St,
Gosford, NSW 2250

Phone: (02) 4321 1222
Fax: (02) 4321.1999

PRIVATE AND CONFIDENTIAL PSYCHIATRIC REPORT

Re: Kathleen Folbigg
DOB: 14/06/1967
Ref: MOC:2022flbg1

Dear Mr O'Callaghan,

I understand from your letter of instruction that Ms Folbigg is currently appealing her conviction and sentence in relation to the death of her four children, you details of her case being outlined in the letter of instruction and various judgements in the NSW Supreme Court and NSW Court of Criminal Appeal.

I was asked to provide an expert psychiatric opinion based on Ms Folbigg's diary/journal entries, copies of which were provided to me for review.

I note Kathleen Folbigg stood trial on five counts and was convicted of the below in 2003:

- Count 1: charged with having murdered, on 20 February 1989, Caleb.
- Count 2: charged with having maliciously inflicted, on 18 October 1990, grievous bodily harm upon Patrick with intent to do grievous bodily harm.
- Count 3: charged with having murdered, on 13 February 1991, Patrick.
- Count 4: charged with having murdered, on 30 August 1993, Sarah.
- Count 5: charged with having murdered, on 1 March 1999, Laura

Ms Folbigg appealed unsuccessfully to the Court of Criminal Appeal the following times:

R v Folbigg [2003] NSWCCA 17

Ms Folbigg appealed the decision of a single judge to refuse to have her charges tried separately (trying charges together can be highly prejudicial to an accused person).

Regina v Folbigg [2005] NSWCCA 23

Ms Folbigg appealed for the following reasons:

- The five charges should not have been heard together.
- The jury verdicts were unreasonable and could not be supported by the evidence.
- Prosecution experts said that they were unaware of previous cases in which three or more infants in one family died suddenly, and this was wrong.
- The judge did not properly direct the jury about coincidence and tendency evidence.

Folbigg v R [2007] NSWCCA 371

Ms Folbigg asked the court to reopen the appeal on the basis that jurors had obtained the following information that: Ms Folbigg's father killed her mother, and the length of time an infant's body remains warm after they die. Ms Folbigg said this impacted on the jury's decision significantly.

Ms Folbigg sought special leave to appeal to the High Court in 2005 but it was denied. One of the two judges incorrectly said there was evidence of smothering. He stated:

“. . . there was no clear, natural cause of death and all the children showed signs that were consistent with smothering with a pillow. When you add the diary entries to those facts, why was it not open to the jury to conclude that the applicant had murdered the children?” - McHUGH ACJ:

In 2015, Professor Stephen Cordner (forensic pathologist) provided an extensive report that detailed natural causes of death for each of the children. This report was the basis for the petition to the Governor for an inquiry in 2015.

An inquiry was granted by the Governor of NSW in August 2018, and the evidence was heard from March 2019 for three weeks.

During the inquiry, forensic pathologists Professors Corder, Duflou and Hilton were in consensus that each child died of an identifiable natural cause. Dr Allan Cala performed the autopsy on the last child Laura. At Ms Folbigg's trial, testified that her death was "undetermined" in light of the deaths of her previous siblings – and that myocarditis was not a reasonably possible cause of Laura Folbigg's death.

That view changed at the inquiry and he said that he could not exclude myocarditis as the cause of death of Laura Folbigg. The inquiry also heard evidence relating to infection and immunology, neurology, and genetics.

Professor Vinuesa and Dr Arsov (Canberra team) were engaged by Ms Folbigg's lawyers. The team engaged by Counsel Assisting the inquiry was Dr Colley, Dr Buckley and Professor Kirk (Sydney team). Both teams sequenced the genomes of the children but reached a different conclusion as to pathogenicity.

There were no subject matter experts (related to CALM or cardiac genetics) called to reconcile this tension between the two groups. Professor Schwartz (cardiac geneticist) wrote to the inquiry (after the hearings were over) to indicate the CALM2 variant identified by the Canberra team is “likely pathogenic”.

The Commissioner of the inquiry declined to re-open the inquiry to hear from Professor Schwartz. The Commissioner instead dealt with this in an Addendum to his report.

The Commissioner found no reasonable doubt as to Ms Folbigg’s conviction, stating, *inter alia*, “evidence which has emerged at the Inquiry, particularly her own explanations and behaviour in respect of her diaries, makes her guilt of these offences even more certain.”

With respect to the genetic evidence heard during the inquiry, he concluded that “there is no reasonable possibility that any of the Folbigg children had a known or recognised genetic variant which caused their deaths.”

Functional validation of the CALM2 variation was published by Professors Toft Overgaard, Schwartz, Vinuesa and colleagues on 17 November 2020 in the prestigious, peer-reviewed journal *EP Europace*. These authors concluded that the CALM2 variant was a likely explanation for Sarah and Laura Folbigg’s death.

Two variants found in Caleb and Patrick Folbigg are now under investigation by Professor Vinuesa and colleagues.

Ms Folbigg appealed the decision of the inquiry to the NSW Court of Appeal. On 24 March 2021, the Court upheld the findings of the Commissioner of the 2019 inquiry. The Australian Academy of Science and a number of experts have since publicly commented on the errors in the conclusion of the inquiry (and adopted by the NSW Court of Appeal) as it relates to science.^{1,2}

A petition for Ms Folbigg’s immediate release (written by Dr Robert Cavanagh and Rhance Rego and endorsed by 90 eminent scientists) is currently being considered by the Governor and the Attorney General.³

Context

At Ms Folbigg’s trial and later at an inquiry, the diaries were taken to be inculpatory and were an important basis for Ms Folbigg’s convictions. The inquiry concluded, *inter alia*, that “the plain meaning of the diary entries is virtual admissions of guilt for the deaths of Caleb, Patrick and Sarah, and admissions that she appreciated she was at risk of causing similarly the death of Laura.”

¹<https://www.science.org.au/news-and-events/news-and-media-releases/statement-australian-academy-science-kathleen-folbigg?fbclid=IwAR1x801dqUs65kutAizUOZCInI273sjLy3u165WVb3C94WHa1FyCOIo9btk>

²<https://mailchi.mp/90c365f461c0/expert-comment-on-dismissal-of-kathleen-folbigg-appeal?e=a3d1be9eda&fbclid=IwAR2BLYCKcy9kmf7K69tuGMoTLcmevunDlnUB6zVeQ1gA9S6dZIAr8qQ4s4A>

³<https://www.science.org.au/files/userfiles/events/news/documents/petition-to-governor-of-nsw-for-pardon-of-kathleen-folbigg-05-03-21.pdf>

Caleb was born on 1 February 1989 and died on 20 February 1989. The 1989 calendar is the most contemporaneous set of entries to the birth and death of Caleb. However, there are mentions of Caleb in the other diaries.

Patrick was born on 3 June 1990 and died on 13 February 1991. The diaries of 1990 and 1992 are the contemporaneous entries to the birth and death of Patrick. However, there are mentions of Patrick in the other diaries.

Sarah was born on 14 October 1992 and died on 30 August 1993. There is one calendar page from August 1993 that relates to Sarah. However, appears to be a number of mentions of Sarah in diaries from 1997-1998.

Laura was born on 7 August 1997 and died on 1 March 1990. The diaries of 1997-1998 are the most relevant to Laura.

Documentation

I was provided with the following:

1. Full copies of Ms Folbigg's writings from:
 - i. 1989
 - ii. 1990
 - iii. 1992
 - iv. August 1993 page
 - v. 1996-1997
 - vi. 1997-1998
 - vii. 1999

I was asked to review the diaries in question in order to provide an expert psychiatric opinion.

I currently work as a Consultant Forensic Psychiatrist at the Level 8 Practice, Sydney. I completed a Masters of Criminology at the University of Sydney in 2007 and report extensively to the Courts. I acknowledge for the purpose of Rule 31.23 of the Uniform Civil Procedure Rules 2005 that I have read the Expert Witness Code of Conduct in Schedule 7 to the said rules and agree to be bound by it.

REVIEW OF RELEVANT DOCUMENTS

Information extracted from R v Folbigg [2003] NSWSC 895:

Ms Folbigg was born on 14 June 1967. Her first name was Kathleen Donovan and she lived with her parents until January 1969, when she was 18 months old.

On 8 January 1969 her father murdered her mother. He was by all accounts a violent man who made his living from crime. He was arrested and on the following day Ms Folbigg was taken before a court and made a ward of the State. She was placed into the care of Mr and Mrs Platt, Mrs Platt was her mother's sister.

Departmental visits were satisfactory during the initial 18 months of the Ms Folbigg's care with the Platts. However, in 1970, at the age of 3, Ms Folbigg was described as having severe temper tantrums and being extremely aggressive, particularly towards other children who visited the home. She seemed to have a preoccupation with her sexual organs and had

been seen on a couple of occasions trying to insert various objects into her vagina. She would on occasions scream and cry incessantly and cause much embarrassment inside and outside the home.

She was assessed by Dr Spencer, at the Yagoona Child Health Clinic, who noted excessive sex play and masturbation reported by Ms Platt. Dr Spencer commented: "The social history is well known to you and it seems that (the offender) was misused by her father during infancy."

On 18 July 1970, when Ms Folbigg was 3 years old, she was withdrawn from the care of Mr and Mrs Platt and sent to Bidura Children's Home. She was described as unresponsive and withdrawn and rarely smiling or talking when shown individual attention in the month after her move to Bidura.

During the following month she was described as much less withdrawn, chattering to other children and staff and showing a greater interest in her environment. She was still aggressive with other children when she did not get her own way, however, and readily pushed and pulled at them to achieve her objects. There were no reports of continued masturbation.

Ms Folbigg was placed into the foster care of Mr and Mrs Marlborough in September 1970. She settled down reasonably well and though there were periods of moodiness she seemed a likable, friendly girl on the surface and showed considerable affection for both foster parents. Mr and Mrs Marlborough liked her and found her intelligent. They enquired whether they could adopt her.

From then until 1985, when the offender ran away, she and Mr and Mrs Marlborough got on reasonably well together. There were periods of difficulty. Ms Folbigg did not always find things easy in high school. In 1982 she was admonished and discharged on two stealing charges but she must have appeared for the most part to have overcome the very difficult start she had had. I note that such behaviour, in isolation, is not sufficient to make out a diagnosis of conduct disorder or one of an intellectual disability in Ms Folbigg.

In 1984 she was told that her father had murdered her mother. That was something that she had to be told [but had not previously known]. The news had a profound effect upon her. She got in touch with Mr and Mrs Platt, who gave her some baby photographs and a photograph of her mother, but she did not pursue her relationship with them. Her relationship with Mr and Mrs Marlborough became worse and the final break came after a disagreement about a boyfriend. She was seventeen when she left home.

She met Craig Gibson Folbigg in 1985, the year after she left home, and they began living together in 1986. They purchased a house in Mayfield, a suburb of Newcastle, in May 1987 and lived there. They married in September of the same year.

Mr Folbigg was in full-time employment and left to Ms Folbigg the responsibility of caring for the child day by day. She also cared for the children at night.

She and Mr Folbigg moved to a house in Thornton in the Hunter Valley in 1991.

Initially, Ms Folbigg appeared affected by the death of her daughter Sarah on 30 August 1993. She became despondent and aimless. She refused to discuss matters except to repeat

her story of having found Sarah dead. The relationship between her and Mr Folbigg deteriorated and there were several separations.

By early 1996 the couple were together again and living in Singleton. Their relationship had improved and they had made new friends.

By 1999, the relationship between Ms Folbigg and Mr Folbigg deteriorated again. They spoke and wrote to one another about separating and about what would happen to Laura in that event. Increasingly, Ms Folbigg spent her time at the gymnasium during the day and with friends at night.

Diary Entries

Caleb born 01/02/1989 - died 20/02/1989 (manslaughter)

Diary entries between 01/02/1989 and 20/02/1989 related mostly to feeding and sleeping routines of baby Caleb, dirty nappies, bills to be paid and other routine entries.

Patrick born 3/06/1990 - gbh 18/10/1990 & died 13/02/1991 (murder)

Patrick's birthday, 3 June 1990:

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

14 June 1990 - thanked God that nothing was found [Nothing was wrong] when she spent the night at the hospital with Patrick.

8 July 1990 - “hard to believe he's been around for over a month now. And I suppose I remained relatively calm about the situation. I suppose really he is a pretty good kid. If I'm truthful...”

12 July 1990 - reflecting about the possibility of returning to work

21-22 July 1990 - more decisive about her need to return to work and her financial situation

27 July 1990 – with respect to Patrick, Ms Folbigg wrote “he's been a good boy today.”

5 August - diary reminder about Patrick's immunization shots

20 August 1990 - Ms Folbigg wrote about her son and Craig have been positives in her life and not having much go going for her in her life otherwise. Reflecting on moving elsewhere for a better opportunities.

Sarah born 14/10/1992 - died 30/08/1993 (murder):

31 August 1992 - “getting very anxious. Want baby now. Not long to go.”

5 September 1992 - Ms Folbigg wrote on her 5th wedding anniversary that she has “no regrets” and “loves him more than she ever did” in relation to her husband Craig.

No specific entries about Sarah or her feelings in relation to Sarah noted, apart from the general entry in relation to sleep times and “not rushing everywhere” on Christmas Day 1992.

A one page ‘planner’ for August 1993 was noted, the only note relating to Sarah being on 30/08, the day of her passing, i.e. “Sarah left us 1pm”.

Her diary entries between 1989 and 1993 appear to reflect insecurity, periods of negative thinking and anxiety; however, there was a clear lack of emotional responses, most notably in the wall calendar entry of “Sarah left us 1pm” on 30/08/1993.

Diary entries between 1996-1997:

7 June 1996 - Kathleen wrote entries about her mood that day and about her marriage, including reflections about whether or not Craig might leave her for another woman one day and how she would respond if that were to happen: “whoever he was with could have him”.

Overall, her marital relationship appeared tenuous, marked by a lack of emotional closeness, Ms Folbigg’s insecurity and fears, and periods of separation.

She reflected her age and her appearance in entries in on 9 and 14 June 1996, her 29th birthday, including: “ has occurred to me that I’m no longer young and good-looking anymore. I’ve entered that mature age look. Wrinkle settling in. I seem to be having a problem with this. Heaven only knows how depressed I’ll be when I’m 30.”

That entry is suggestive of low self-esteem and issues with her self-image/insecurity.

18 June 1996 - “ ...I’m ready this time. And I know Ill have help & support this time. When I think Im going to loose control like last times Ill just hand baby over to someone else. Not feel so totally alone, getting back into my exercise after will help my state of mind & sleeping wherever possible as well. I have learnt my lesson this time...”

That entry is suggestive of Ms Folbigg having problems with emotional regulation and a lack of self-control in relation to Caleb and/or Patrick and/or Sarah, as she specified the plural ‘last times’.

22 June 1996 “...Craig’s been in a mood all week...He just regards me as a hinderance...I watched a movie today about schizopenia, wonder if I have a mild curse 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...then there are times I wish to be more of a homebody. Am I strange or is this behaviour normal. Guess I’ll never know..”

24 June 1996 ...Haven’t lost that maternal instinct. Emma seemed at peace with my presence. Maybe I shouldn’t be as worried as I was feeling. I had a thought that my own baby wouldn’t bond with me. Craig will have to do all the work??? Still. Craig’s reaction was a typical hand it to the woman – she knows what to do, truley hope that changes with (indecipherable) I’ll need all the support I can get if possible...”

Her entry suggests Ms Folbigg had some self-awareness into her need for support if and when she had another child.

11 July 1996 - reflecting on a Sexually transmitted disease and her marriage, but decided her marriage was “stronger” and she did not think Craig was being unfaithful.

16 July 1996 - “...Sometimes I feel life is a film scene, just practiced and rehearsed, each actor, perfect & surreal, times I don’t fit in the play, have never fit, but keep attempting to anyway for fear of being isolated & alone. Times – I feel alone anyway no matter who I’m with...learn and act from now on. Had 2 good days. Tomorrow will be another. Learns that it’s a day at a time process and to forget passed failures. Stop dwelling and worrying. Start now - Today.”

21 July 1996 Moved furniture and put cot back up today. Mixed emotions, sadness, nervousness, exciting. Looked at books I’ve got – never opened. I do hope & pray that the next child we have will get to have them read & read them also...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 & wouldn’t cope at all. Can’t be dwelling on what ifs. I truly deserve anything life throws at me so my philosophy is whatever happens, happens & it’s the way it shall be. I’m going to try my hardest, this time. If anything does happen I’ll just leave & try to let Craig go in peace & start again – no I wouldn’t I’m not that brave – Really I depend on people & other people’s help too much.

Her entries on 16 and 21 July 1996 are indicative of Ms Folbigg feeling lonely and being prone to low mood/anxiety.

25 July 1996 - Reflecting on her marriage, including: “...Having bad thoughts about him leaving me in the same way though. Strange he’s either died or left me for someone else. Doubtful. He wouldn’t have the guts for either unless it was an accident or a rich bitch who took an interest in him. I think it because I’ll probably be pregnant in the next couple months, thought of a baby & being left alone is a little frightening. Hope it never happens.”

31 July 1996 - “...was depressed, sad and sick Monday and yesterday put over it now. Moving on. going to have a good day.”

6 August 1996 - Katherine writes about gynaecological problems she was having at the time. She said, “...Is it a sign don’t bother, with having a child. Would be just desserts for me if it is – exactly what I deserve for my indiscretions of life. We’ll see.”

She wrote about attention she received from the person at the gym, Steve, being “welcome,” making her feel attractive. She also wrote she hasn’t felt that way for a while now, “no fault of Craig’s, just a mood I get in. My ego a little bruised with my problems that I seem to be having.” [p142]

9 August 1996 Been feeling weird lately – Depressed, indise, etc. not my usual self. Can’t seem to put a finger on what’s wrong...Feeling lonely! I know that’s silly because I have friends I can see but I suppose it’s because I want friends, that will come to see me & want to be with me, I usually feel that I’m intruding or pushing my way onto people. Okay enough self analysing. It’s my ego & weight problem that’s giving me a bashing. Rang to go back to J/C they haven’t bothered to return my call. Feeling left out, taken for granted, unattractive and self centered. There I’ve purged myself. Now to change all this, is up to me – as usual.

26 August 1996 Didn't end up going to work today. Was deeply depressed & thoughtful.

Her five diary entries above are consistent with Folbigg feeling depressed in mood, anxious and indecisive.

8 September 1996 ...Feel now is a time for us to have another baby. Have finally realised it is the right time for me. I have Craig & he wants a child. That I can give him. And I have enough friends now not to lose it like before.

Her entry suggests that she 'lost it' emotionally on prior occasions, presumably in relation to her prior children.

11 September 1996 ...Feeling inferior doesn't help. Feeling inadequate because I'm not pregnant yet. Feel as though it's my fault. Think it's deserved. After everything that happened. I suppose I deserve to never have kids again. I am just so depressed. don't know what to do. Feel like taking rest of the week off. But know my pay will be grossly affected if I do.

It is unclear whether her apparent attribution blame to herself is a function of her low self-esteem and negative thinking or a reflection of previous events.

14 October 1996 "...Children thing still isn't happening. Thinking of forgetting the idea. Nature, fate & the man upstairs have decided I don't get a 4th chance. And rightly so I suppose. I would like to make all my mistakes & terrible thinking be converted and mean something though. Plus I'm ready to continue my family time now. Obviously I am my father's daughter. But I think losing my temper stage & being frustrated with everything has passed. I now just let things happen & go with the flow. An attitude I should of had with all my children if given the chance I'll have it with the next one."

Ms Folbigg's reflection about being her 'father's daughter' appears to be a reference to her father's murderous ways, although it may mean something else, such as a reflection about his character or perceived failure in life. There was also reflection about losing her temper and becoming 'frustrated with everything', which is most likely a reflection on her previous temperamental/emotional problems in relation to her deceased children.

30 October 1996 So many things troubling me lately. Not sure where to start. Craig & I are fine as in our relationship, becoming pregnant or rather not in my case is starting to weigh me down. Think I must be suffering a stress reaction. I know as each month goes by depressions are getting worse...Work is truly depressing me most days...I think that the business with my mother is finally wearing me down. I just can't understand a hate so strong...Things I remember are not good about my upbringing but, one fact remains I had a safe home, food & clothing. I a person who had a choice of that or state orphanages all her life can't expect much more.

13 November 1996 ...Not sure why I'm so depressed lately. Seem to me suffering mood swings. I also have no energy lately either...Why is family so important to me? I now have the start of my very own, but it doesn't seem good enough. I know Craig doesn't understand. He has the knowledge of stability & love from siblings & parents even if he chooses to ignore them. Me – I have no one but him. It seems to affect me so, why should it matter. It shouldn't.

Those two entries are indicative of Ms Folbigg having ongoing stress in her life and apparent depressive symptoms.

4 December 1996 ...I'm ready this time. But have already decided if I get any feelings of jealousy or anger to much I will leave Craig & baby, rather than answer being as before. Silly but will be the only way I will cope. I think support & not being afraid to ask for it will be a major plus. Also - I have & will change my attitude & try earnestly not to let anything stress me to the max. I will do things to pamper myself & just deal with things. If I have a clingy baby, then so be it. A catnapper so be it. That will be when I will ask help & sleep whenever I can. To keep myself in a decent mood. I know now that battling wills & sleep depravaision were the causes last time.

1 January 1997 ...But I feel confident about it all going well. This time. I am going to call for help this time & not attempt to do everything myself any more – I know that that was the main Reason for all my stress before & stress made me do terrible things.

14 January 1997 Not happy with myself lately. Finally starting to physically show that I'm pregnant. Doesnt do much for the self esteem. Don't get me wrong. I couldn't be happier its just Craigs roving eye will always be of concern to me. I suppose this is a concept known by all women. We are vulnerable emotionally at this stage. So everything is exaggerated 10 fold...I think its stress related. I must learn to calm down & be rational & worry about things as they happen not if they do...Im sure this is training for when baby arrives. Thats okay. Im pretty sure this time Ill handle it better. Hope so.

This diary entry reflects her low self-esteem, insecurity and jealousy issues. She also sounds anxious about how she will cope when her next baby arrives.

4 February 1997 “Still can't sleep. Seem to be thinking of Patrick & Sarah & Caleb. Makes me generally wonder wether I am 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 wether 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 – thats how I feel & that is what I think Im 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 its too late to realise now. Im sure with the support Im going to ask for I'll get through. What scares me most will be when Im alone with baby. How do I overcome that? Defeat that?”

17 February 1997 Found out hes jealous already of bub. He says he only has 6 mnths left to be with me & for me. Hopefully Ive explained thats not true 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 ones not going in the same fashion. This time Im prepared & know what signals to watch out for in myself. Changes in mood etc. Help I will get if need be...I also know that my lethargy & tiredness & continued rejection of him had a bad effect.

The entries above on 4 December, 4 February 1997 and 17 February 1997 were suggestive of Ms Folbigg feeling jealous and angry in relation to the previous children and insecurity/anxiety about how she would cope the next time around as a mother. She was also reflecting on ways in which you could support herself/avoid negative outcomes when

next faced with motherhood. The entries of Ms Folbigg in relation to “doing terrible things,” “how responsible I feel for them all” and “What scares me most will be when I’m alone with baby,” would suggest she was blaming herself for the death of her three children in 1989, 1991 and 1993 and was worried about what she might do in the future is faced with similar stresses/feelings/emotions.

24 February 1997 ...Very emotional now, upset- feeling useless, not myself, no confidence at all, with any decision...What do I do, I want to keep earning money for Craig, but theyve decided it’s not with them. Ive let everyone down...To upset to keep writing. Crying all the time.

This entry is consistent with Ms Folbigg negative self-image and ongoing and/or recurrent symptoms of depression.

13 March 1997 ...Told Craig about my concerns of being alone in Sydney. But he wasn’t impressed. Its something I’ll just have to get over & deal with myself...Today I got the impression he just didnt want to be or have me around.

5 April 1997 ...Don’t hear from any of my family now, sometimes I feel as abandoned again, with no real family roots...I don’t have that security and now now that I never really did. I’m a true loner. Without the roots & family I provide myself Ide be totally alone.

Those two entries reflect Ms Folbigg real and/or perceived isolation, abandonment issues and loneliness. It would appear her husband Craig was not emotionally supportive or understanding.

28 April 1997 ...I think this baby deserves everything I can give her. Conidering I really gave nothing to the others. I think even my feelings towards this one are already deeper. Shame, but thats the way it is. I think its because Im 30 now and time to settle & bring up a child. Obviously I wasnt ready before at all.

16 May 1997 ...Night time & early mornings such as these will be the worst for me, thats when wishing someone else was available with me will happen. Purely because of what happened before. Craig says he will stress & worry but he still seems to sleep okay every night & did with Sarah. I really needed him to wake that morning & take over from me. This time Ive already decided if ever feel that way again I’m going to wake him up. Im glad I don’t have to stay down in Sydney by myself. That prospect was really nerve racking. I would have felt so vulnerable & exposed. Relying on total strangers all the time.

The two entries above likely reflect Ms Folbigg’s perception of herself as an inadequate mother who was not emotionally bonded to her other three children and her anxiety about bad things happening again/how she might cope in future.

18 May 1997 Not feeling good about anything. Tired, achey, exhausted, can’t breath properly, sick of everyone, everything, life in general.

30 May 1997 ...Got myself in quite an emotional state last night....Felt, feeling very alone, unattractive & now uncomfortable with the many thoughts that are running through my mind about the stability of our relationship. This is not the time to be upset & stressing over everything. He pulls away from me if I touch him in any other way than comforting.

Feel as though I've lost him, that his feelings for me aren't the same any more. Never felt so alone in all my life.

These two entries are indicative of her ongoing emotional problems and an emotionally distant marriage.

6 June 1997 ...From now on though I'm sure his attention & focus will change from me to his child. & so it should. I couldn't see that before. I was very selfish when it came to Craig's attention. Hopefully this time we have both learned how to share it but still manage to keep a little something aside for just each other. we will see...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 surley will.

Reference to "babies survival," two months prior to her giving birth to Laura, appears to draw a connection between her own emotional state, available supports and the survival of her baby.

11 June 1997 If it wasn't for my baby coming soon, I'de sit & wonder again what I was put on this earth for, what contribution have I made to anyones life. Only person I think I've made a difference too is Craig. And at 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, Tradgedy, happiness, mixed emotions of all desires. Maybe from now on I'll be able to settle a little. But no. Imediate future brings turmoil, happiness, sad memors, 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 alzimers 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 to lock me up & throw away the key. Something I'm sure will happen one day.

14 June 1997 I have no family of my own to acknowledge me, except Lea & more & more she's proving that I really really don't matter to her...Depresses me that everyone else has a fair idea, where & what time they were born. I don't, have never been told.

26 June 1997 ...This time I'm positive with support from friends etc & Craig this time everything will work out fine & the sight and visions of the future I've been having will come true this time...most of my life has been turmoil, sadness, anger etc. I think now I might of actually realised it was mostly of my own making, & stupidity that made it that way. Now I understand truley that your life & how it turns out is in your control, no one elses.

Her reflection about "most of my life has been turmoil, sadness, anger etc" is indicative of an unhappy woman, dissatisfied with her life and prone to both poor coping under stress and emotional dysregulation.

2 July 1997 ...Was very upset yesterday evening, crying & being totally emotional. Couldn't think of anything else to do but cry...Was just so and still am, Scared is the word. I know that it won't be long now. 4 weeks? sounds a fair amount of time but he/she could decide to come earlier than that. If it's got any sense it will, my poor bod isn't handling it all well at all anymore.

...I already know that he won't take any time off. My not working has hit him hard, all he sees is 15 grand less in his hand/bank a year now. He's already starting to worry about it. Like I stressed that he would. I'll have to accept, he won't be as much support to me as I thought he might. Change is a coming. A big one. Well just have to take day by day hour by hour & cope. Hopefully everything will prove to be different this time. It has to be. I have to be.

Her diary entry is reflective of her anxiety five weeks prior to Laura's delivery.

18 July 1997 Curious as to what happened or who is responsible for her having such a low opinion of herself. I think Steve partly, he calls her stupid, etc. Jokin or not, all comments like that hurt. Its what made me believe I was nothing or a nobody. Craig even was partly responsible for making me feel that way. He doesn't do it as often anymore. I've learnt to pull him up on it.

Laura born 07/08/1997 - died 01/03/1999 (murder)

12 August 1997 ...Craig is home with me, will be so different when the time comes for him to be gone all day. That will be my test but I hope by then I'll be able to walk okay & get back to my exercise. It will make me feel better I'm sure.

25 August 1997 Scary feelings, I've realised I actually love her & have bonded with her, wish to protect her etc. Maternal instinct is what they call it. I now know I never had it with the others. Monitor is a good idea. Nothing can happen without the monitor knowing & since I'm not game enough to not plug it in because theyde want to know why I hadn't. Everything will be fine this time.

This entry also reflects the lack of emotional bonding Ms Folbigg had with the three children who died between 1989 and 1993 and a closer attachment to Laura, the longest surviving of her four children.

20 September 1997 I can't even trust or depend on him to look after her properly. He refuses to bother to learn anything about her. He doesn't pay attention when feeding her, hasn't changed a nappy, doesn't do washing or ironing. only washes up once in a while. His life continues as normal. Work, come home & I look after him. He doesn't even cook tea every now and then unless I ask him too. 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 these are times is not enough. I know, my feelings are normal I'm just venting. But at the moment, I (indecipherable) wish 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 and out of bed now. Complaining he can't sleep, I have to keep disturbing him because he snores and grinds teeth too badly.

This entry reflects her unhappiness with her husband, Craig, and the lack of help he was providing.

3 November 1997 ...Lost it with her earlier. Left her crying in our bedroom and had to walk out - that feeling was happening. And I think it was because I had to clear my head and prioritise. As I've done in here now. I love her I really do I don't want anything to happen.

Ms Folbigg appears to be reflecting about her emotional dysregulation, both in relation to Laura and most likely with her other babies, by making reference to 'that feeling'.

8 November 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 forward. 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 starting to take it out on her. Bad move. Bad things & thoughts happen when that happen. It will never happen again.

Ms Folbigg again appears to be reflecting about her emotional dysregulation and previously responses, most likely with her other babies, by making reference to "bad things and thoughts happen."

9 November 1997 ...Think I handle her fits of crying better than I did with Sarah. I've learnt to, (?) ace getting to me, to walk away & 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.

28 November 1997 Of course that shouldn't be stopping me from walking and eating properly & less But I just don't seem to have the heart anymore. I think I knew that its all cyclolgical & connected to feelings of neglect, rejection, loneliness which brings on a depression which I disguise by eating chocolate & junk food & feeling sorry for myself most of the time. I need to get back to basics find me & the reasons for losing this weight.

11 December 1997 ...depression seems to get me more now too. Must control it, not it me.

28 December 1997 Feeling depressed, unhappy with myself, know why, need will power & I'll succeed. Ward getting engaged. Goal to work towards? Something wrong with Craig and I? Haven't figured it out yet. Laura keeping us together I think. Think if I hadn't of had her, not sure we'de of survived as a couple.

31 December 1997 Funny but if it wasn't for Laura, I'de feel as though I've wasted another year of my life. Everyone seems to be enjoying themselves. Pool is getting a real workout.

12 January 1998 Not doing well, need to get some will power! Eating rong-not exercising. Too inactive. But how do I overcome; inherent laziness. Would be happy to be a sloth. Tired 90% of the time too makes life a little tougher. Must try to stope lounging around all the time. Get machines should use them.

The entries in November January 1998 suggest that Ms Folbigg has relapsed into a depressive phase/depressed mood again.

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 purposly 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. Im ashamed of myself. I can't tell Craig about it because he'll worry about leaving her with me. Only seems to happen if Im too tired her

moaning, bored, wingy sound, drives me up the wall. I truly can't wait until she's old enough to tell me what she wants.

Ms Folbigg's entry is indicative of an obvious loss of emotional control and anger when caring for Laura and she draws a comparison with Sarah's death. Her lack of emotional control, anger and feelings of responsibility in relation to Sarah's death are contained in the words: "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."

7 February 1998 Long days. Tiring & have been extremely short tempered. Cryed today. Told Craig lack of sleep & constant worry about Laura has got too me felt better after. Craig has tried to be helpful today. Doing chores that I have always wanted to do but never found time. What I wanted though was for him to just take her off my hands for a while. Or me go for a drive away, And be by myself. But she's not well, had her shots & feeling crappy. She's just a baby & doesn't understand. Hopefully she'll be back to normal soon.

13 March 1998 Feeling very dissatisfied tonight. With myself, my life, Craig. What can I do...I need him to take some of the stress of looking after her off me, He seems to be failing lately.

Those entries relate to Ms Folbigg's ongoing emotional problems and feeling unsupported when caring for Laura, then aged 6-7 months.

Justice Barr, on reviewing these diary entries, was of the following opinion that they: "...show her constant concerns about isolation, her fear of being unable to bond with her children, her fear of being left alone with them, her fear of the danger of losing her temper with them, her feelings of unworthiness and depression, her desire not to let it happen again and, later on, anxious concerns about having lost her temper with Laura in spite of her desire not to do so."

Having reviewed the same entries, I would concur with that summary and the issues articulated by Justice Barr.

Earlier Psychiatric Opinions extracted from R v Folbigg [2003] NSWSC 895

Dr Giuffrida, forensic psychiatrist, regarded as compelling the evidence that Ms Folbigg was seriously disturbed at eighteen months of age. He thought she was probably neglected and brought up in an emotionally and physically abusive relationship. He thought it was highly likely that her father abused her mother and that Ms Folbigg was exposed to that violence. He thought that she was possibly sexually abused. She was a seriously disturbed and regressed little girl. Dr Giuffrida believed she had been severely traumatised.

He found no evidence of PTSD or psychosis. He noted a remarkable 'inertness of emotional response' [emotional detachment] in relation to discussions about the deaths of her children. He noted "an almost total absence of normal grief and bereavement in relation to her emotional responses" after the death of all four children, but she did become depressed in the sense of becoming emotionally blunted and withdrawn.

Dr Giuffrida noted her father had a history of assault and malicious wounding before he ultimately killed his wife [Kathleen's mother], and was abusive to his wife in the first 18 months of Kathleen's life, making it likely that Mrs Folbigg would have been exposed to such violence.

Dr Giuffrida noted that given the likely trauma and neglect suffered by Ms Folbigg as a very young child, it is very highly likely that she herself failed to experience any true bonding or attachment to her own mother, reinforced by her mother giving her care up to her aunt for periods of time before then retrieving her.

Dr Giuffrida found the diary entries revealing. He thought that they were the writings of a greatly tormented and exceedingly disturbed woman. He noted the prevailing theme of intensely depressed mood, expressions of worthlessness and low self-esteem and repeated references to feelings of rejection and abandonment by her husband, family and friends.

Dr Giuffrida is of the view that the diary entries well demonstrate that the offender suffered intense feelings of shame and guilt over the death of the children. He thinks that the second part of the diary note of 11 June 1997 extracted above is a good indication of the degree of torment that she was suffering. However, he observes, she did everything she could to suppress and contain her feelings of guilt, shame and remorse.

Dr Giuffrida thinks that the entry of 25 August 1997 poignantly describes the offender's inability to bond with her first three children. A remarkable thing about the entry is that in it the offender records her realisation that she loves Laura and says that she has bonded with her and wishes to protect her.

"...overall theme of the diaries is of a woman always coping at the margins of her capacity to bond, relate to, provide for and care for her children, a woman easily roused to panic and readily defeated by any perception on her part that she might fail to provide for her children."

In relation to her diagnostic formulation, Dr Giuffrida was of the opinion Ms Folbigg was suffering from a serious and persistent depression; at least average, if not above average intelligence; but remarkably little evidence to implicate any of the serious personality disorders commonly seen in female offenders (borderline, dependent and/or antisocial personality disorders).

He opined that Ms Folbigg shows none of the typical features of borderline personality disorder or specific psychopathy. In relation to the latter, there is a very significant absence of antisocial conduct or behaviour in adulthood. There is no criminal history or antisocial behaviour in adulthood. Mrs Folbigg was noted to have 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."

He opined there was a 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. This seemed to be equally true of her relationship with her husband and with her foster mother.

He ultimately concluded that Ms Folbigg 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.”

Although I would broadly agree with the emotional issues identified by Dr Giuffrida, I would suggest that the origin of emotional deficits, including difficulties bonding with her own children, tendencies towards anger, low self-esteem and her lack of emotional bonding/loving feelings remains unclear. Those tendencies/traits were not necessarily directly related to her mother being killed by her father in December 1968, an act she did not witness and/or was only an 18-month old infant at the time [so she did not retain any direct memory of this], but only found out about many years later. Rather, Ms Folbigg’s emotional deficits, including in relation to bonding, may well have been a product of inadequate mothering/bonding related more to the absence of her own mother and/or other carers/adoptive parents. Furthermore, her mother may well have struggled emotionally, especially considering the reported behaviour of Thomas Britton towards her, making it likely that emotional deficits, tendencies and traits evident in Ms Folbigg were inherited from one or both parents, as opposed to conscious and/or traumatic memories affecting her personality and emotional development.

Dr Bruce Westmore, forensic psychiatrist, noted Ms Folbigg denied feelings of anger towards the children but confirmed feelings of inadequacy in the marriage. He observed that she spoke spontaneously and expansively but with a relatively flat tone and restricted affect.

Dr Westmore did not believe Ms Folbigg was psychotic. He opined that her childhood history of trauma/neglect is likely to have influenced her personality development and that she probably experienced significant disturbances in mood state from time to time. She was probably mostly depressed, but at times the depression was likely to have expressed itself as anger and aggression. He thought her over-controlled in view of the serious circumstances in which he was assessing her, rarely showing emotional distress or any emotional response despite the traumatic nature of the charges and the result of the trial. He is of the opinion that individuals who are over-controlled may be prone to episodes of extreme angry outbursts and thinks it possible that the offender has personality characteristics of that type. He ultimately concluded that Ms Folbigg likely had a diagnosis of a severe personality disorder of an unspecified kind.

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

He observed that she made in her diary a positive association between her present feelings and the rejection and isolation she felt when younger. He thought that the effect of the first three years was to make her vulnerable to depression. He thought that the diary entries showed fairly consistent, persistent depression of a woman able to function at a superficial level but maintaining profoundly disturbed internal feelings. He also discussed the possible relationship between depression, anger and her offending.

In oral evidence, he indicated that his overwhelming impression from the diaries were feelings of depression, followed closely by anger and frustration, followed by her sense of isolation and loneliness. Dr Westmore opined that her capacity to control her behaviour was severely impaired.

I would concur with the opinions expressed by Dr Westmore in this respect.

ERISP Evidence viewed/summarised by Justice Barr:

Justice Barr observed Ms Folbigg to be “expansive, voluble, chatty, almost detached for the most part. Her appearance was quite out of keeping with the gravity of the occasion.”

She told the police her father [Thomas John Britton] stabbed her mother some 20 odd times and was one of Lenny McPherson’s hitmen/right hand lieutenant.

I understand Thomas John Britton was a hoist driver and stabbed her mother, Kathleen Mary Donovan, 24 times in December 1968 in a drunken state. He was convicted of the murder and was sentenced to life imprisonment by Justice Le Gay Brereton in the NSW Supreme Court on 26 May 1969. He served 14 years of his sentence before being deported to the United Kingdom, subsequently living in Pontypool, Wales, eventually dying on 23 February 1999.

The fact that her father was a murderer also suggests that genetic influences are relevant in the formulation of Ms Folbigg’s temperament/tendencies, with more recent research showing strong associations/higher rates of murder in family clusters, linked the deficits in the MAO-A gene, commonly referred to as the ‘Warrior Gene’.⁴

I do not believe Ms Folbigg was ever tested for this gene, as the recognition/association was not evident at the time of her trial in 2003 and was certainly not evident at the time of her father’s trial in 1969. People with this so-called “warrior gene” display higher levels of aggression in response to provocation. Low-activity MAOA subjects displayed slightly higher levels of aggression overall than high-activity MAOA subjects and these tendencies tend to be expressed more in traumatic environments, such as the environment Ms Folbigg was raised in his her infancy/early childhood.

OTHER ISSUES

Justice Barr indicated in his judgement that “throughout her marriage the offender was affected by the abuse perpetrated upon her during her first eighteen months of life. The effects included an inability to form a normal, loving and forbearing relationship with her children. Although she realised that shortcoming she lacked the resources to remedy it. She was unable to confide in Mr Folbigg. He never knew that she was at the end of her tether. The result was that he continued to leave everything to her and her fear of the consequences became settled. Her depression went unrelieved and on occasions turned itself into anger. The offender was not by inclination a cruel mother. She did not systematically abuse her children. She generally looked after them well, fed and clothed them and had them appropriately attended to by medical practitioners. Her condition and her anxiety about it left her unable to shrug off the irritations of unwell, wilful and disobedient children. She was not fully equipped to cope.

⁴ Brown University. "'Warrior Gene' Predicts Aggressive Behavior After Provocation." ScienceDaily. ScienceDaily, 23 January 2009. <www.sciencedaily.com/releases/2009/01/090121093343.htm>.

On occasions she appeared cool, detached, self-interested and unaffected by the fate of the children. In truth, she suffered remorse which she could not express.”

Although some uncertainties remain in relation to diagnosis and causation, I believe that the summary outlined above by Justice Barr is consistent with the available psychiatric evidence/opinion and the extensive diary entries, all of which points towards Ms Folbigg being a woman with emotional deficits, especially difficulties in relation to forming close loving bonds, insecurity, anxiety and tendencies towards depression.

Although not yet genetically tested, she is likely to have inherited vulnerability towards emotional deficits, possibly linked to the MAO-A gene, from one or both parents, with this mechanism accounting for her tendency to lose control emotionally when provoked, including when she found herself overwhelmed and largely isolated as an inadequate mother.

I trust this report is of assistance.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'RM Furst'.

Dr Richard Furst
MBBS, M Crim, FRANZCP
Consultant Forensic Psychiatrist