

Inquiry into the Convictions of Ms Kathleen Folbigg

Written submissions on behalf of Dr Allan Cala

Introduction

1. No submissions were proffered on behalf of Dr Allan Cala in response to the 263 pages of detailed submissions prepared by Counsel Assisting dated 4 April 2023 (**CAWS**).
2. On 18 April 2023, almost 550 pages of written submissions were served on behalf of Ms Folbigg (**FWS**). That document makes numerous unwarranted complaints about Dr Cala. This document comprises a short submission on behalf of Dr Cala in response to the matters in FWS insofar as they concern Dr Cala.
3. The vices in the FWS fall into two categories:
4. *First*, in seeking to impugn his evidence, the FWS repeatedly misstates Dr Cala's evidence. A glaring example is at pages 328-329, [241]-[242]. Despite the chapeau of [241] suggesting that what followed was a summary of Dr Cala's evidence, none of what follows in those paragraphs was evidence given by Dr Cala. At no point did Dr Cala give evidence that:
 - a. Laura Folbigg could not have died of myocarditis; or
 - b. That it was not possible for four children to die of natural causes in the one family.
5. There are many other such examples throughout the FWS¹.
6. *Second*, in seeking to traduce Dr Cala's opinions, the FWS contain repeated assertions about Dr Cala's conduct, motivations, biases or beliefs. Dr Cala gave evidence on 23 February 2023. Ms Folbigg was represented by senior counsel, who asked him a total of 4 questions, none of which touched on these matters. These contentions, not having been put to Dr Cala in his evidence, ought not to have found a home in written submissions.
7. Dr Cala is gratified that the Inquirer will not be making any findings against Dr Cala in respect of matters that were not put to him at the hearing.

¹ See for example [722] at pg 496 and [725] at pg 497

Meadow's Law

8. The FWS repeatedly describes Dr Cala as an advocate of Meadow's Law and contends that his evidence ought be rejected because of his obvious bias and his so called "*Meadow's Law credentials*": [728] pg 498. This is first seen at FWS pg 340 [277] and thereafter is the focus of approximately 250 pages of written submissions including traversing:
 - a. Dr Cala's evidence given in the case of Carol Matthey in Victoria;²
 - b. Dr Cala's opinion in relation to Patrick's death which the FWS describe as highly speculative '*using Meadow's Law type reasoning*'. The FWS do not condescend to identifying and responding to Dr Cala's opinion, but rather simply assert – without ever having put the allegation to Dr Cala - that his opinion was infected by his so called preference for Meadow's Law ahead of science³.
9. At no point was it put to him that his evidence at trial had been influenced by Meadow's law.
10. Despite this, the FWS repeatedly assert that Dr Cala opinions and evidence ought be rejected because of his so called called "*Meadow's Law credentials*": [728] pg 498. There is no justification for these egregious criticisms made of Dr Cala. They properly ought be withdrawn.

Laura Folbigg

11. The submission concerning Laura Folbigg, insofar as they concern Dr Cala, contain numerous vices:
12. *First*, the submission at page 470 [658] is meaningless.
13. *Second*, the submission at page 487 [705] overstates Dr Cala's evidence at trial – evidence that was of course subject to cross-examination at trial by Ms Folbigg's legal representatives.
14. *Third*, the criticism of Dr Cala's evidence at page 490 in [708]-[710] is entirely unfair. The allegations were not put to Dr Cala and they ignore that a witness' job in a trial is to answer the questions put to them. No doubt if it was thought that his evidence at trial went beyond his expertise (which is not conceded) then that would have been the subject of an objection.
15. *Fourth*, the submission at page 491 [712] is entirely misleading, ignoring as it does, the repeated references to myocarditis in this autopsy report.

² pages 365-372

³ pages 435 and following

16. *Fifth*, the criticism of Dr Cala's competence at page 493 [715] for not taking sections of the conductive system in Laura's heart was never put to him.
17. *Sixth*, the criticisms of Dr Cala at pages 494-495 [718]-[719] concerning myocarditis are most unfair. Dr Cala was not confronted with those allegations, and the submissions reflect a distinct lack of understanding about the role of a forensic pathologist.
18. *Seventh*, the submissions at [742]-[749], [760] misstate Dr Cala's evidence. Dr Cala has always stated that there was myocarditis which he could not exclude as a cause of death. Again, this was not put to Dr Cala.
19. *Eighth*, the submissions at [762]-[764] and following concern matters not put to Dr Cala and again display a fundamental misunderstanding concerning the job of a forensic pathologist.
20. *Ninth*, the submission at [766], in seeking to impugn Dr Cala's evidence, selectively ignores the contemporaneous records created in 1999, being the cut sheets.
21. *Tenth*, the submission at [768] relies upon an email submitted by Professor Duflou on 23 February 2023, submitted to the Inquiry after Dr Cala had given evidence. The appropriate approach to Professor Duflou's evidence on this topic is as submitted by Counsel Assisting at [237]-[241] and [260] in the CAWS.
22. Dr Cala's evidence in relation to myocarditis is fairly and appropriately summarised by Counsel Assisting at [245]-[253] in the CAWS.

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