
Kathleen Folbigg Chronology of Events.

On 21 May 2003, in the NSW Supreme Court, Ms Kathleen Folbigg was found guilty by jury of the following charges in respect of her four children:

- the manslaughter of Caleb Gibson Folbigg, aged 19 days, on 20 February 1989
- maliciously inflicting grievous bodily harm upon Patrick Allen Folbigg with intent to do grievous bodily harm, aged four months and 15 days, on 18 October 1990
- the murder of Patrick Allen Folbigg, aged eight months and 10 days, on 13 February 1991
- the murder of Sarah Kathleen Folbigg, aged ten months and 16 days, on 30 August 1993
- the murder of Laura Elizabeth Folbigg, aged 18 months and 22 days, on 1 March 1999.

Ms Folbigg was sentenced to 40 years imprisonment, with a non-parole period of 30 years. On appeal, this was reduced to 30 years, with a non-parole period of 25 years. Ms Folbigg maintained her innocence, claiming the four children died from natural causes. She continued to serve her sentence of 30 years imprisonment and would not have been eligible to apply for parole until 2028 at the conclusion of her 25 year non-parole period.

On 16 June 2015, the University of Newcastle Legal Centre petitioned the Governor of NSW on behalf of Ms Folbigg for a review of conviction under section 76 of the *Crimes (Appeal and Review) Act 2001*.

On 22 August 2018, as the petition appeared to have raised a doubt or question as to the evidence of the case, the Attorney General recommended to the Governor that an inquiry be conducted into the convictions pursuant to section 77(2) of the *Crimes (Appeal and Review) Act 2001*.

The then Governor of NSW, His Excellency General David Hurley AC DSC, on the advice of the Executive Council, directed an inquiry into the convictions of Folbigg, under section 77(1)(a) of the *Crimes (Appeal and Review) Act 2001*. Specifically, the direction provided that:

“whereas it appears that there is a doubt or question as to part of the evidence... and whereas that doubt or question concerns evidence as to the incidence or reported deaths of three or more infants in the same family attributed to unidentified natural causes’ pursuant to section 77(1)(a) of the [*Crimes (Appeal and Review) Act 2001*], that ‘an inquiry be conducted’ into the convictions in accordance with the provision of Part 7 of the Act.”

His Excellency appointed the former Chief Judge of the District Court, the Hon Reginald Blanch AM QC, to conduct the inquiry.

On Friday 19 July 2019, Mr Blanch furnished the Report of the Inquiry into the convictions of Ms Folbigg to the Governor of NSW. Mr Blanch found the evidence of

the inquiry reinforced Ms Folbigg's guilt, and that he did not have any reasonable doubt as to the guilt of Ms Folbigg for the offences of which she was convicted.

On 21 October 2019, an application was filed in the Supreme Court on behalf of Ms Folbigg for the judicial review of Mr Blanch's findings and decisions regarding the conduct of the first Inquiry. The Attorney General joined the proceedings as contradictor. The matter was listed for hearing on 15—16 February 2021 in the Court of Appeal before Justices Basten, Leeming and Brereton. Jeremy Morris SC, with Terry Ower, appeared for Ms Folbigg, and Stephen Free SC, with Brendan Lim, appeared for the Attorney General. Judgment was delivered on 24 March 2021. The Court of Appeal delivered a unanimous judgment and dismissed Ms Folbigg's summons with costs.

On **3 March 2021**, the Governor's Office received a petition (**2021 petition**) requesting that the Governor pardon Ms Folbigg by exercising the pardon power pursuant to section 76 of the *Crimes (Appeal and Review) Act 2001*.

The 2021 petition raises new scientific material that had become available since the Blanch Inquiry. The 2021 petition notes that, during the 2019 Inquiry into the convictions of Ms Folbigg before the Honourable Reginald Blanch AC KC, the genomes of the Folbigg children were sequenced and it was found that the two female Folbigg children (Sarah and Laura) had a novel mutation in the CALM2 gene. The new scientific material concerns that CALM2 genetic variant and is primarily found in a paper that was published in the peer reviewed scientific journal, *EP Europace*, Volume 23, Issue 3, March 2021, Pages 441–450 (**Europace paper**).

The Europace paper reports on tests conducted on the functional consequence of the specific CALM2 mutation found in Sarah and Laura Folbigg. The paper states that that genetic variant has biophysical and functional consequences that may cause cardiac arrhythmias and sudden unexpected death. At the time of the Blanch Inquiry, there was no analysis of the biophysical and functional impacts of that CALM2 genetic variant.

On 18 May 2022, the Attorney General announced that, upon his recommendation, Her Excellency the Hon Margaret Beazley AC KC, Governor of NSW, directed a second inquiry into the convictions of Folbigg pursuant to section 77(1)(a) of the *Crimes (Appeal and Review) Act 2001* and the Honourable Thomas Frederick Bathurst AC KC (**the Inquirer**) was appointed to conduct the Inquiry. Directions were made in the following terms:

WHEREAS it appears that there is a doubt or question as to part of the evidence in the proceedings leading to the conviction of Kathleen Megan Folbigg on 21 May 2003 of the following offences:

1. the manslaughter of Caleb Folbigg on 20 February 1989;
2. maliciously inflicting grievous bodily harm upon Patrick Folbigg on 18 October 1990, with intent to do grievous bodily harm;
3. the murder of Patrick Folbigg on 13 February 1991;
4. the murder of Sarah Folbigg on 30 August 1993; and
5. the murder of Laura Folbigg on 1 March 1999;

AND WHEREAS that doubt or question concerns evidence that a genetic variant (CALM2-G114R) identified in DNA samples from Sarah Folbigg and Laura Folbigg has biophysical and functional consequences that may cause cardiac arrhythmias and sudden unexpected death in young children, such consequences being the subject of research published in March 2021 following the completion in July 2019 of the previous inquiry into the said convictions directed pursuant to s 77(1)(a) of the *Crimes (Appeal and Review) Act 2001*.

PURSUANT to section 77(1)(a) of the *Crimes (Appeal and Review) Act 2001*, I direct that an inquiry be conducted into the said convictions in accordance with the provisions of Part 7 of the said Act; and

PURSUANT to section 81(1)(a) of the said Act I hereby appoint the Hon Thomas Frederick Bathurst AC QC formerly a judicial officer within the meaning of the *Judicial Officers Act 1986*, to conduct an inquiry into the said convictions, having particular regard to the consequence of the said evidence for all of the convictions referred to above, with the powers and authorities conferred on a commissioner by Division 2 of Part 2 of the *Royal Commissions Act 1923* (except for section 17).

Directions hearings were held on 24 June 2022, 27 July 2022, 6 September 2022 and 3 February 2023.

The first hearing block in the Inquiry commenced on Monday, 14 November 2022 and was listed for two weeks. Evidence was adduced from cardiac and genetic experts and it was intended that the remainder of this evidence would be adduced during the second hearing block. On 15 November 2022, the hearing was adjourned to Monday, 13 February 2023.

The second hearing block in the Inquiry commenced on Monday, 13 February 2023. The remainder of the cardiac and genetic evidence was adduced at this hearing block, as well as psychology, psychiatry and other evidence relevant to Ms Folbigg's diaries.

The hearing was adjourned until 26 April 2023 for the delivery of final oral submissions which concluded the inquiry.

On Tuesday 30 May 2023 his Honour Tom Bathurst KC AC telephoned the Attorney General and advised he had formed a firm view about the matters heard during the inquiry. Mr Bathurst suggested that rather than waiting another two months until the Mr Bathurst had completed writing the Inquiry Report, he provide a summary to the Attorney General that outlined his views.

A six-page summary was provided to the Attorney General on Friday 2 June 2023.

Over the weekend the Crown Solicitor provided advice that based on Mr Bathurst's memo, the Attorney General could call a meeting of the Executive Council to recommend to the Governor that a pardon be granted. The Executive Council meeting took place on Monday morning 5 June 2023 so that Ms Folbigg could be released from prison.