



# Kathleen Folbigg Procedural History: Overview

**Content Warning:** The following case note includes potentially distressing material such as discussions of murder, the deaths of children and SIDS. Teachers and students must be prepared before proceeding

This document serves as a brief overview of the procedural history of the Folbigg case.

## Procedural History Overview

### Application for Individual Trials:

#### R v Folbigg [2003] NSWCCA 17

- Folbigg applied for an order that the counts relating to the alleged murders be heard individually and separately from the counts relating to Patrick.
- The appeal was dismissed, and all counts were to be heard in the same trial.

### Murder Trial at First Instance:

#### R v Folbigg [2003] NSWSC 895

- Trial by jury in the Supreme Court of NSW overseen by Justice Barr.
- A number of medical experts were called by the Crown and defence to provide their opinion on the death of the four children.
- The Crown submitted into evidence Folbigg's diaries, which were argued to be an expression of her guilt.
- Jury found Folbigg guilty of the manslaughter of Caleb, the intentional infliction of grievous bodily harm upon Patrick, and the murders of Patrick, Sarah, and Laura.

- Justice Barr sentenced Folbigg to 40 years imprisonment and a non-parole period of 30 years.

#### Appeal #1: R v Folbigg [2005] NSWCCA 23

- Took place in the NSW Court of Criminal Appeal before Justices Sully, Dunford and Hidden.
- Folbigg appealed against all 5 convictions and applied for leave to appeal her sentences.
- Convictions appeal was dismissed.
- Leave was granted to appeal against the sentences for the murders of Sarah and Laura.
- Resentenced to 30 years imprisonment and a non-parole period of 25 years.

#### Special Leave Application to the High Court in 2005

- A special leave application to appeal Folbigg's convictions.
- Acting Chief Justice (ACJ) McHugh AC KC dismissed the application.

#### Appeal #2: Folbigg v R [2007] NSWCCA 371

- Appealed to the NSW Court of Criminal Appeal against convictions due to jurors informing themselves away from the trial.
- Heard by Chief Justice McClellan and Justices Simpson and Bell.



- The appeal was dismissed as the information was not so prejudicial as to cause a miscarriage of justice [62].

### 2015 Petition for an Inquiry into Folbigg's Convictions

- A Petition was submitted to the Governor of NSW seeking an inquiry into Folbigg's convictions with the aid of fresh medical evidence.
- Sought to review the evidence given at Folbigg's murder trial that resulted in her convictions.

### 2019 Judicial Inquiry

- Held over three weeks and Former Chief Justice of the District Court of NSW, Reginald Blanch was appointed to hear the evidence.
- Evidence that there was a mutation in Folbigg's genes that could cause cardiac arrhythmia and heart attacks was presented.
- Justice Blanch rejected the new scientific evidence and found that there was 'no reasonable doubt' as to Folbigg's guilt of the offences [508].

### Application Seeking Judicial Review of the Determination in the 2019 Inquiry:

#### Folbigg v Attorney-General of NSW [2021] NSWCA 44

- Applied to NSWCA for a review of the 2019 judicial inquiry findings.
- Before Basten JA, Leeming JA and Brereton JA.
- Appeal was dismissed and Their Honours stated that the inquiry's conclusions were not at odds with the scientific evidence.

### 2021 Petition for Pardon

- A Petition was sent to the Governor of NSW requesting Folbigg's pardon.
- 91 Australian and world-renowned scientists and medical practitioners endorsed the Petition.

### 2022 Judicial Inquiry

- Inquiry before Former Chief Justice of the NSW Supreme Court, Tom Bathurst KC.
- In his summary findings, His Honour expressed how there to be reasonable doubt as to Folbigg's guilt.

### 2023 Folbigg's Unconditional Pardon

- Following the summary findings from the 2022 Judicial Inquiry, the NSW Attorney General recommended Folbigg be pardoned.
- Folbigg received an unconditional pardon by the Governor of NSW, Her Excellency the Honourable Margaret Beazley AC KC.

### Application to Quash Convictions and Enter Verdicts of Acquittal:

#### {2023} Folbigg v R NSWCCA 325

- Applied to the NSW Court of Criminal Appeal to have convictions quashed and verdicts of acquittal entered on all charges
- Heard before Bell CJ, Ward P and Harrison, CJ
- December 14 2023 – appeal was successful and the NSWCCA ordered her convictions be quashed and verdicts of acquittal entered.