

# Miscarriages of Justice: The Role of Expert Evidence

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Miscarriages of justice can occur for many reasons, often for multiple reasons in the one case. The failure of justice can also occur at every level of the legal system. The focus of this paper is on one issue – expert evidence that is misleading, not based on facts and/or simply worthless, and that results in miscarriages of justice.

I have written a number of papers on the topic of miscarriages of justice, including:

1. *Prosecutors, Admissibility of Expert Evidence and Miscarriages of Justice*, Sir Owen Dixon Chambers Conference, 17 December 2021
2. *Criminal Laws and Procedure, Expert Evidence and Legal System Failure Case Examples: Kathleen Folbigg, Lindy Chamberlain and Gordon Wood*, ANZAP Ethics Webinar, 27 July 2024
3. *Prerogative of Mercy, Pardons, and Criminal Law Review Commissions: Why bother changing a system that has been in existence for 100 years?*, NSW Bar Association Lecture, 24 April 2024
4. *Mercy Begins Where Legal Rights End – Kathleen Folbigg and the Royal Prerogative of Mercy*, Law Society of NSW Annual Conference, 11 October 2024
5. *Mercy Begins Where Legal Rights End – Kathleen Folbigg and the Royal Prerogative of Mercy*, Law Society of South Australia Annual Conference, 14 February 2025

Other papers can be found on the Injustice Law website.

This paper is shorter than some of those listed above and is designed to introduce a new element that has not been included in the other papers: an emphasis is placed on worthless opinions given by those claiming to have specialised knowledge. I list some examples of where experts caused injury and death, and where their views resulted in the gaoling of the innocent.

The many problems caused by expert evidence are sufficient to require real law reform; however, this is very unlikely to occur.

Having made this criticism of experts who provide worthless and often misleading opinions, it is important that I acknowledge at least some of those experts who have made significant contributions to overcoming miscarriages of justice. The Australian Academy of Science became involved in the Kathleen Folbigg case and many of its members endorsed the pardon petition that ultimately led to the second inquiry and her release. The Academy also offered to give the then Attorney General, Mark Speakman, a briefing by some of the best experts in cardiac genetics to inform his assessment of the petition. It also offered to assist Mr Speakman to engage his own experts. This offer was made by the Academy free of charge, but it was not accepted. There was also substantial assistance given by Professor Carola Vinuesa at the first and second inquiries. The pardon petition can be found at Attachment A. The list of experts who assisted with the Folbigg case can be found at Attachment B.

Lindy Chamberlain was also greatly assisted by University of Newcastle's Professor Barry Boettcher who revealed that the tests for blood conducted by forensic biologist, Joy Kuhl were worthless and did not reveal any type of blood. In an understated report in a newspaper, Joy Kuhl acknowledged the failure. The Canberra Times reported, inter alia:

A key forensic witness to the Chamberlain inquiry said yesterday that she had given wrong evidence in the Darwin trial of Lindy and Michael Chamberlain. A forensic biologist, Mrs Joy Kuhl, who examined the Chamberlains' car in 1981, told the trial of positive reactions for foetal blood which supported the Crown case that Mrs Chamberlain had slit her nine-week old daughter Azaria's throat in the car.

In a statement made last month and tendered to the Sydney inquiry yesterday, Mrs Kuhl said when she had given evidence at the trial she believed she had used adult controls on each of her tests. However, from looking at the result book she now saw she did not use an adult control on 28 items, including scrapings from under the glovebox, the seam area of the camera bag and a chamois. (Canberra Times, 14 October 1986)

### **Specialised Knowledge**

The possession of 'specialised knowledge' allows experts to provide opinions in the courts of New South Wales, if such knowledge is based on training, study or experience. Section 79 of the *Evidence Act 1995* states:



### **79 Exception: opinions based on specialised knowledge**

(1) If a person has specialised knowledge based on the person's training, study or experience, the opinion rule does not apply to evidence of an opinion of that person that is wholly or substantially based on that knowledge.

(2) To avoid doubt, and without limiting subsection (1)—

(a) a reference in that subsection to specialised knowledge includes a reference to specialised knowledge of child development and child behaviour (including specialised knowledge of the impact of sexual abuse on children and their development and behaviour during and following the abuse), and

(b) a reference in that subsection to an opinion of a person includes, if the person has specialised knowledge of the kind referred to in paragraph (a), a reference to an opinion relating to either or both of the following—

- (i) the development and behaviour of children generally,
- (ii) the development and behaviour of children who have been victims of sexual offences, or offences similar to sexual offences.

Section 79 of the *Act* overcomes the restrictions imposed by s76(1) that deals with opinion rule.

Section 76 states:

### **76 The opinion rule**

(1) Evidence of an opinion is not admissible to prove the existence of a fact about the existence of which the opinion was expressed.

(2) Subsection (1) does not apply to evidence of an opinion contained in a certificate or other document given or made under regulations made under an Act other than this Act to the extent to which the regulations provide that the certificate or other document has evidentiary effect.

#### **Note—**

Specific exceptions to the opinion rule are as follows—

- summaries of voluminous or complex documents (section 50 (3))
- evidence relevant otherwise than as opinion evidence (section 77)
- lay opinion (section 78)
- Aboriginal and Torres Strait Islander traditional laws and customs (section 78A)
- expert opinion (section 79)
- admissions (section 81)
- exceptions to the rule excluding evidence of judgments and convictions (section 92 (3))
- character of and expert opinion about accused persons (sections 110 and 111).

Other provisions of this Act, or of other laws, may operate as further exceptions.

#### **Examples:**

<sup>1</sup> P sues D, her doctor, for the negligent performance of a surgical operation. Unless an exception to the opinion rule applies, P's

neighbour, W, who had the same operation, cannot give evidence of his opinion that D had not performed the operation as well as his own.

<sup>2</sup> P considers that electrical work that D, an electrician, has done for her is unsatisfactory. Unless an exception to the opinion rule applies, P cannot give evidence of her opinion that D does not have the necessary skills to do electrical work.

Justice Gaudron in *HG v The Queen* [1999] HCA 2 at 58 observed that ‘specialised knowledge’ was a test that was no more restrictive than what existed at common law.

So far as this case is concerned, the first question that arises with respect to the exception in s 79 of the Evidence Act is whether psychology or some relevant field of psychological study amounts to “specialised knowledge”. The position at common law is that, if relevant, expert or opinion evidence is admissible with respect to matters about which ordinary persons are unable “to form a sound judgment ... without the assistance of [those] possessing special knowledge or experience ... which is sufficiently organized or recognized to be accepted as a reliable body of knowledge or experience”.<sup>1</sup> There is no reason to think that the expression “specialised knowledge” gives rise to a test which is in any respect narrower or more restrictive than the position at common law.

In New South Wales, Schedule 7 of the *Uniform Civil Procedure Rules 2005* provides an expert witness code of conduct. The Victorian Law Reform Commission, Civil Justice Review Report 14, 2008 contains some interesting insights into why experts may have difficulty avoiding bias and becoming advocates. The New South Wales Law Reform Commission, Report 109, Expert Witnesses, 2005, at 2.23 when dealing the historical context in the 19th century and bias comments, inter alia:

It is interesting to question why, at this time, there was little judicial comment or perturbation about the possible “adversarial bias” that may attach to experts called on behalf of parties. Perhaps there was at that time an inherent confidence in the objectivity of science, as well as the moral integrity of the “gentlemen” who gave such evidence. Similarly, it could be argued that there remained vestiges of the notion, still prevalent in the mid-18th century, that experts were called as an aid to assist the court.

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<sup>1</sup> *R v Bonython* (1984) 38 SASR 45 at 46-47 per King CJ; *Clark v Ryan* [1960] HCA 42; (1960) 103 CLR 486 at 491 per Dixon CJ; *Murphy v The Queen* [1989] HCA 28; (1989) 167 CLR 94 at 111 per Mason CJ and Toohey J, 130 per Dawson J; *Farrell v The Queen* (1998) 72 ALJR 1292 at 1295 per Gaudron J; 155 ALR 652 at 655; *Osland v The Queen* [1998] HCA 75; (1998) 159 ALR 170 at 184 per Gaudron and Gummow JJ.



I recommend reading the case of *Velevski v The Queen*.<sup>2</sup> In *Velevski*. Gummow and Callinan JJ refer, *inter alia*, to:

1. If forensic pathologists can give opinion evidence about whether wounds are self-inflicted or not. They conclude that such evidence can be regarded as expert evidence if there is a suitable foundation of experience, study and training.
2. The fact that it is for the jury to determine the cogency of conflicting expert opinions.
3. Even if an expert gives evidence that he or she is not entitled to give, a miscarriage of justice does not automatically arise.
4. Failure to call all expert witnesses referred to in evidence does not necessarily lead to a miscarriage of justice.
5. Conflicting expert evidence always calls for careful evaluation, and a trial judge has an important role in directing a jury about how they should consider the evidence.

### **Historical Expert Failures**

The basic requirement for specialised knowledge allows the expert to provide evidence that can be very persuasive in determining the outcome of a jury trial. Of even greater importance, such experts can cause physical and mental harm and in many cases death where their specialised knowledge is worthless and dangerous.

History is replete with examples of expert opinions being translated into actions that have caused injury and death.

Apart nine examples listed below Knut Haeger's book on the history of surgery provides examples of a number of violent surgical procedures including arm removal for breast cancer, and testicle removal for hernia operations.<sup>3</sup>

The Hunter Region of New South Wales also has a long history of corporate greed that embraces experts who are willing to expand and protect projects that cause harm.

I start the examples with the once well accepted practice of bleeding the sick to 20<sup>th</sup> and 21<sup>st</sup> century examples.

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<sup>2</sup> [2002] HCA 4.

<sup>3</sup> Knut Haeger, *History of Surgery*, Harold Starke, London 1989.

**(a) Bleeding**

George Washington died on 14 December 1799.



Apart from having a throat infection 40 percent of his blood was removed.

Back in 1799, Washington's physicians justified the removal of more than 80 ounces of his blood (2.365 liters or 40 percent of his total blood volume) over a 12-hour period in order to reduce the massive inflammation of his windpipe and constrict the blood vessels in the region. Theories of humoralism and inflammation aside, this massive blood loss — along with the accompanying dehydration, electrolyte imbalance, and viscous blood flow — could not have helped the president's dire condition.

*14 December 1799: The excruciating final hours of President George Washington | PBS News*

The practice of bloodletting continued into the 1920s.

## (b) Phrenology

Very popular in the 19th century, and by idiot racists into the 20<sup>th</sup> century.

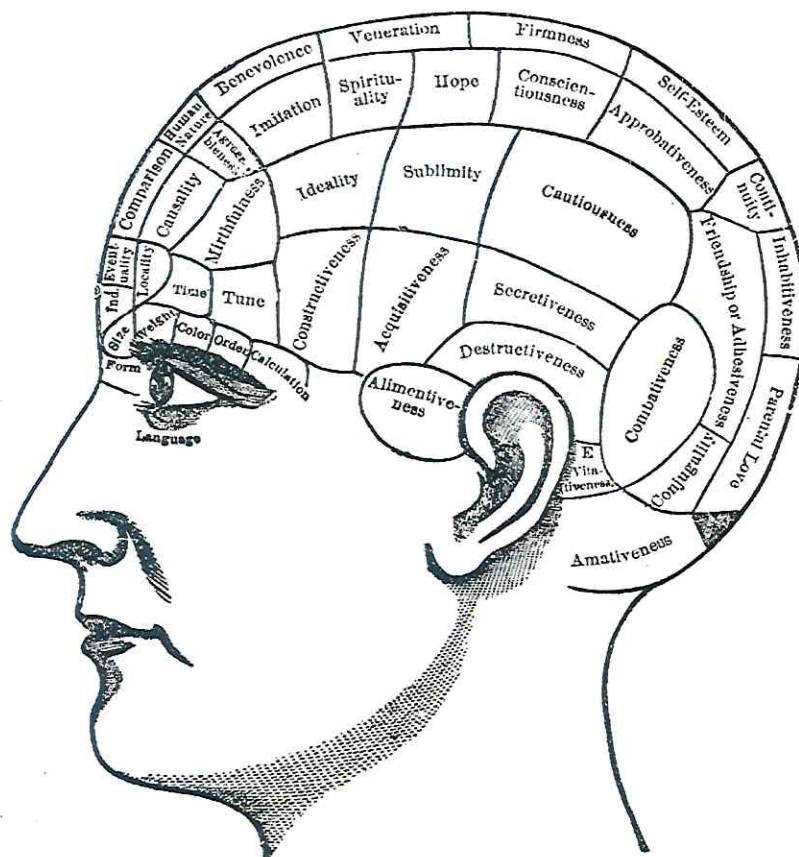


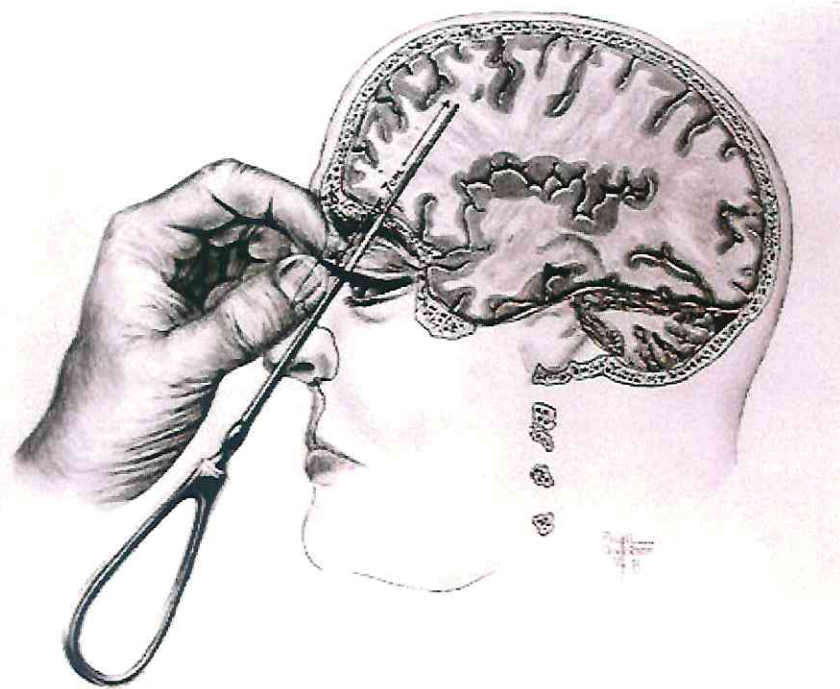
Fig. 6. THE PHRENOLOGICAL ORGANS.

See: Phrenology was a racist pseudoscience and it took Australia by storm in the 19th century  
- ABC News



### (c) Lobotomies

A very popular operation, carried out on many thousands of people, designed for the mentally ill and others caught in the savage psychiatrists' net.



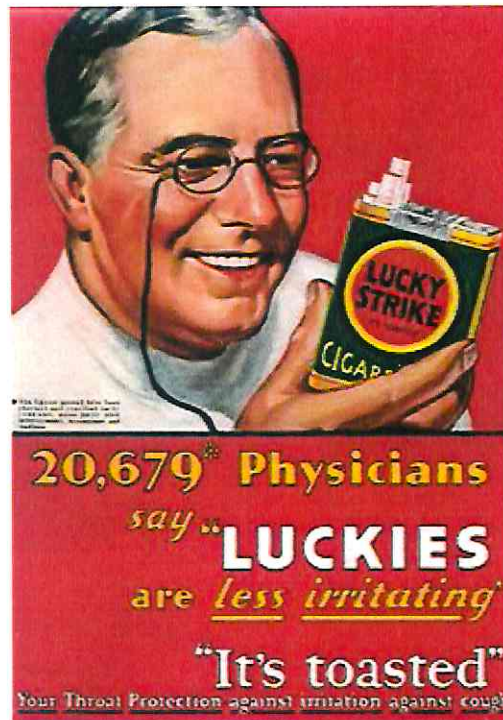
An active advocate of the abuse who even received a Nobel Prize for his work in severing brain white matter.

Frontal lobotomy, the sectioning of the prefrontal cortex, and leucotomy, the severing of the underlying white matter, for the treatment of mental disorders, reached a peak of popularity after World War II. But, as we have seen, development of this surgery began in the 1930s with the work of the celebrated Egas Moniz, who also made his mark in neuroradiology as the father of cerebral angiography. Moniz and Lima performed their first frontal leucotomy in 1935. The following year Dr. Moniz presented a series of 20 patients, and by 1949 he had received the Nobel Prize for his pioneering work on frontal leucotomy in which, specifically, the white matter connections between the prefrontal cortex and the thalamus were sectioned to alleviate severe mental illness, including depression and schizophrenia in long-term hospitalized patients.

Miguel A Faria Jr, Violence, mental illness, and the brain – A brief history of psychosurgery: Part 1 – From trephination to lobotomy, 2013 Violence, mental illness, and the brain – A brief history of psychosurgery: Part 1 – From trephination to lobotomy - PMC



**(d) Refusal to find smoking a health hazard**



It is not necessary to say any more about medical professionals who promoted smoking.

**(e) Asbestos does not cause harm**

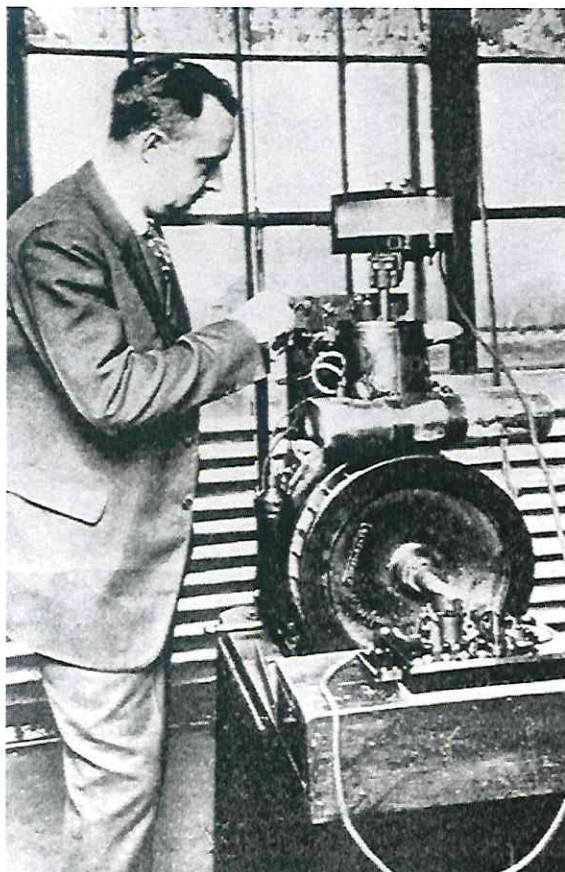
Unfortunately, experts can be bought. The literature available shows connections between companies and scientists to get results that are not only worthless but also very dangerous. See, for example: Friendly fibre? How the asbestos industry turns to British scientists - Hazards magazine

**(f) Lead in petrol is good for you**

A soft way of saying how lead came to be introduced into petrol can be found on the Environmental and Energy Study Institute website: [Fact Sheet | A Brief History of Octane in Gasoline: From Lead to Ethanol | White Papers | EESI](#)

In the early 20th century, automotive manufacturers were searching for a chemical that would reduce engine knock. In 1921, automotive engineers working for General Motors discovered that tetraethyl lead (better known as lead) provided octane to gasoline, preventing engine knock. While aromatic hydrocarbons (such as benzene) and alcohols (such as ethanol) were also known octane providers at the time, lead was the preferred choice due to its lower production cost. Leaded gasoline was the predominant fuel type in the United States until the U.S. Environmental Protection Agency (EPA) began phasing it out in the mid-1970s because of proven serious health impacts.

Another way of describing how lead got into petrol is: there was a most dangerous mechanical and chemical engineer who worked for the corporate profits of General Motors. The chemist's name was Thomas Midgley.





This very dangerous person was fully supported by his corporation and many very stupid politicians.

Midgley died in 1940 at the age of 51. Apparently, he committed suicide.

See: Thomas Midgley and the toxic legacy of leaded fuel | Feature | Chemistry World

### **(g) Homosexuality**

A combination of experts and moral crusaders who infect parliaments caused the persecution of people who engaged in at least one type of sexual activity.

In the first edition of the Diagnostic Manual of Mental Disorders (DSM) first published in 1952 described homosexuality as a 'sociopathic personality disturbance'.

In 1973 the DSMII described homosexuality as a 'sexual orientation disturbance'.

In 1980 the DSMIII used the term 'ego dystonic homosexuality'.

In 1987 the DSMIII-R used the term 'sexual disorder, not otherwise specified'.

In 2005 the DSM-5 finally removed the unhelpful terms.

See: "Gay Is Good": History of Homosexuality in the DSM and Modern Psychiatry | American Journal of Psychiatry Residents' Journal

As of 31 October 1900, the *Crimes Act 1900* allowed for penal servitude for life or a term not less than five years for buggery. Section 79 of the *Act* stated:

79. Whosoever commits the abominable crime of buggery, or bestiality, with mankind, or with any animal, shall be liable to penal servitude for life or any term not less than five years.

Before the section was repealed in 1984<sup>4</sup> section 79 of the *Crimes Act 1900* stated:

**79 Buggery and bestiality**

Whosoever commits the abominable crime of buggery, or bestiality, with mankind, or with any animal, shall be liable to penal servitude for fourteen years

**(h) Deep Sleep therapy**

Dr Harry Bailey during the years 1962 to 1979 at Chelmsford Private Hospital in Sydney was using Deep Sleep Therapy on patients who did not know what a brutal and dangerous activity he was conducting. He also used electroconvulsive therapy for psychiatric and non-psychiatric illness. People died and suffered permanent injury.

Eventually, a Royal Commission was started in 1988 and ended in 1990. Its findings have been summarised as follows:

The hospital records showed that there were acts of deliberate deception or fabrication to induce voluntary patients into the programme without their knowing what was involved. (13) The Royal Commission “found that informed consent was not given, patient records and death certificates were illegally altered by doctors, and that drugs routinely administered by nurses were all restricted substances which could by law only be supplied by a medical practitioner, dentist or veterinary surgeon.” (14)

“DST as practised at Chelmsford was not acceptable treatment. Communication between referring doctors and specialist left a great deal to be desired with no system of referral, no system of reporting, and no system of aftercare and supervision.” (15)

“The commissioner concluded that events at Chelmsford were deplorable, and found evidence of fraud, obstruction of justice and serious medical negligence. He condemned all the doctors involved but concluded that Bailey was central and that without him there would have been no deep sleep therapy. The New South Wales parliament banned the treatment and enacted stricter regulations governing the admission and treatment of mental health patients.” (16) The commissioner mentioned that the “Royal Commission developed into a Royal Commission of ideas. This was one reason for its length and complexity”. (17)

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<sup>4</sup> *Crimes (Amendment) Act 1984*.



See: Royal Commission into the former Chelmsford Private Hospital and Mental Health Services in New South Wales [known as Chelmsford Royal Commission] - State Records Authority of New South Wales



I can find nothing good to say about psychiatrist, Dr Harry Bailey. So, best to just note that he was born on 29 October 1922 in Picton, New South Wales, and died on 8 September 1985 at Mt White, New South Wales, he was 62 years old. He committed suicide.

#### **(i) Meadow's Law**

Sir Roy Meadow was once regarded as an eminent British paediatrician. Meadow's Law can be summed up in the following way, 'one infant death is a tragedy, two is suspicious and third is murder until proven otherwise.'<sup>5</sup> This creates a virtually irrefutable position that four infant deaths in the one family from natural causes is so impossible that murder is the only reasonable conclusion. The evidence Sir Roy Meadow gave in multiple cases similar to that of Kathleen Folbigg's was rejected in the successful appeal by Sally Clark<sup>6</sup> in the United Kingdom in April

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<sup>5</sup> Named after paediatrician, Sir Roy Meadow. He made famous the proposition (originally by DiMao and DiMao) 'one infant death is a tragedy, two is suspicious and three is murder until proven otherwise.' 'Meadow's Law' was discredited in the successful UK appeal by Sally Clark, which quashed her conviction for murdering her two sons. Sir Roy Meadow's statistical testimony regarding the low probability of Sally Clark's sons having died of Sudden Infant Death Syndrome (SIDS) was held to be misleading (see *General Medical Council v Meadow* [2006] EWCA Civ 1390). Professor Philip Dawid's expert statistical report for the appeal provides a concise explanation as to the flaws in Meadow's Law style reasoning: see <http://www.statslab.cam.ac.uk/~apd/>. Other ways of expressing 'Meadow's Law' is labelling four deaths in one family to be so rare to be virtually impossible, or an undue focus on rarity of recurrent infant deaths in the one family.

<sup>6</sup> *R v Clark* [2003] EWCA Crim 1020.

2003. Other women convicted on this basis were also soon freed. The evidence given by Meadow was criticised heavily by the British Royal Statistical Society in 2001.<sup>7</sup>

Professor Ray Hill describes the ‘law’ and correctly identifies its sources and the fact that it was not supported by any data, case histories or references. He notes:

Whilst ‘Meadow’s Law’ is quoted frequently in the UK, I am grateful to Dr Glynn Walters for pointing out the following:

‘Professor Meadow did not originate the law. It appears to be attributable to D.J. and V.J.M. Di Maio, two American pathologists who state in their book:

*It is the authors’ opinion that while a second SIDS death from a mother is improbable, it is possible and she should be given the benefit of the doubt. A third case, in our opinion, is not possible and is a case of homicide.*

It is clear that the statement is the authors’ *opinion*. It is not a *conclusion* reached by analysis of their observations; no supportive data are presented and there are no illustrative case histories, or references to earlier publications. This is in striking contrast with the rest of the book which is replete with illustrative case histories and cites many references throughout. A recent examination of Meadow’s own contributions to the medical literature has likewise failed to uncover supportive pathological evidence or references to it.’<sup>8</sup>

Sir Roy Meadow did not get away unscathed, but he was barely scratched when compared with the damage his worthless evidence caused in a number of cases to women who had lost their children.

There still remain ‘experts’ in Australia who believe in the discredited dogma of Meadow’s Law.

### **Expert Failures that Caused Miscarriages of Justice**

#### **Alexander McLeod-Lindsay**

On 5 March 1965, Alexander McLeod-Lindsay was found guilty by a jury at the Central Criminal Court, Sydney, New South Wales, of feloniously wounding his wife Pamela Frances

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<sup>7</sup> See Royal Statistical Society ‘Royal Statistical Society concerned by issues raised in Sally Clark case’ (News Release, 23 October 2001).

<sup>8</sup> R Hill, ‘Multiple sudden infant deaths – coincidence or beyond coincidence?’, *Paediatric and Perinatal Epidemiology* (2004) 18, 320–326, 326.



McLeod-Lindsay with intent to murder her. Feloniously wounding with intent to murder can otherwise be called attempted murder. The trial commenced on 1 March 1965 before Justice Athol Moffitt. He was convicted. Alexander McLeod-Lindsay was sentenced to penal servitude for 18 years. On 3 August 1973, he was released on parole from gaol having been in custody since his arrest on 28 September 1964. His parole expired in 1982.

His case was appealed to the New South Wales Court of Criminal Appeal in 1965. The Court upheld the jury's verdict.<sup>9</sup>

The Lieutenant-Governor of New South Wales on 21 July 1969, following a petition from Mr McLeod-Lindsay, gave directions to Justice Lee to hold an Inquiry into the conviction pursuant to Section 475 of the *Crimes Act 1900*.<sup>10</sup> On 2 October 1969, Justice Lee presented a report in which he said he considered the whole of the evidence and formed the opinion that the jury's verdict of guilt was correct.

In July 1990, an application was made to the Supreme Court on behalf of Mr McLeod-Lindsay to have a second Inquiry, again pursuant to section 475 of the *Crimes Act 1900*. This application was considered by Justice Loveday on 27 August 1990. He directed that an Inquiry be conducted by a Justice of the Peace nominated by the Chief Justice. On 28 August 1990 the Chief Justice nominated Justice Loveday to conduct the Inquiry.

On 29 July 1991, Justice Loveday provided a report to the Governor of New South Wales in which he concluded the following:

At the first inquiry the medical evidence could be said to have given some support to the Crown case that the attack took place just before 9.30pm on 14 September although Lee J regarded this support as of a 'rather insubstantial nature' 2(Fr 48). Before me there was substantial medical evidence suggesting that the attack took place much later, probably between 11pm and midnight.

This substantial medical evidence would, however, be insufficient to overcome the Crown case if that case on the blood stains had remained as it was before Lee J. No doctor was prepared to say that 9.30pm was an impossible time for the assault to have occurred. I would have been compelled to find the new evidence as a probable time was insufficient to raise a reasonable doubt.

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<sup>9</sup> *Regina v McLeod-Lindsay*, Judgement, Court of Criminal Appeal, No 38, 6 August 1965.

<sup>10</sup> Report of the Inquiry, Alexander Lindsay (formerly Alexander McLeod-Lindsay), 29 July 1991, page 1.

Having found that there is a reasonable doubt on the Crown case however, I can say this new evidence increases that doubt.<sup>11</sup>

There was no direct evidence of an assault by Mr McLeod-Lindsay on his wife or son and the Crown had to rely on blood stains on his clothing, especially his wind jacket and trousers. It seems that the blood on his white shirt had an innocent explanation. The way the Court of Criminal Appeal overcame the problem of, at best, an extremely weak Crown case was to rely upon the evidence of experts about blood splatter. Justice Brereton stated:

... there was the evidence of Sgt Merchant, of the Scientific Bureau, who on this matter was treated as an expert by both sides, and by Dr Cramp that blood jetting from an artery could not have produced the spray of droplets exhibited on the wall, wardrobe, trousers and windjacket. Sgt Merchant in cross-examination, and in reply to some theoretical and hypothetical questions showed perhaps some understandable lack of conviction but Dr Cramp was positive and adamant.<sup>12</sup>

The evidence of blood was further considered with Justice Brereton concluding:

Over and above these individual answers to individual hypotheses, there was the dominating fact that the pattern and nature of the drops on the windjacket and trousers was in complete conformity with what appeared on the walls and wardrobe. It was exactly what one would expect to find on the attacker.<sup>13</sup>

Justice Loveday found in the second inquiry other possible theories, stating the following:

The emergence of so many new theories throws open the possibility that there may be other (perhaps yet undiscovered or unrecognised) explanations for the blood stains on Mr Lindsay's clothing. It is tempting, especially having regard to the exhaustive examination of a large number of experts at this inquiry, to conclude that no other explanation is possible. But "blood stain dynamics" is a new branch of forensic science most of the learning in the subject seems to have been acquired in the last 10 to 15 years. It is for the Crown to disprove the reasonable possibility of any other innocent explanation. It is at least arguable that it has not done so in the present state of scientific knowledge even disregarding the theories already advanced.<sup>14</sup>

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<sup>11</sup> Report of the Inquiry, 29 July 1991, p 169.

<sup>12</sup> *Regina v McLeod-Lindsay*, Judgement, Court of Criminal Appeal, No 38, 6 August 1965, pp. 15 – 16.

<sup>13</sup> *Regina v McLeod-Lindsay*, Judgement, Court of Criminal Appeal, No 38, 6 August 1965, p. 17.7.

<sup>14</sup> *ibid*



At his trial, Mr McLeod-Lindsay had undermined the blood splatter position taken by the Crown and had established that he was not present when his wife was attacked. This should have been sufficient to have resulted in the jury and the Court of Criminal Appeal determining that the Crown had not proved its case beyond reasonable doubt.

### **Ziggy Pohl**

Johann (Ziggy) Pohl was a builder who had a number of building projects in Canberra and who employed subcontractors.

The Crown case against Johann Pohl was that on the morning of 9 March 1973, at Flat 2, Ground Floor, corner of Booth and Atkinson Streets, Queanbeyan, NSW, that he strangled his wife between 9.30am and 9.45am. The claim was that he then concealed her body and kept various appointments establishing alibis for his movements.

On 2 November 1973, he was found guilty by a jury and convicted in the Central Criminal Court, Sydney of maliciously murdering his wife, Kum Yee Pohl. He was sentenced to penal servitude for life.

On 2 August 1974, he appealed his conviction which was heard by McClemens, CJ at CL, Isaacs and Lee JJ and his appeal was dismissed.

Mr Pohl was released from gaol on licence on 25 February 1983. He was discharged from his licence on 24 February 1988.

At about 8.30pm on 8 September 1990, Roger Graham Bawden, entered Queanbeyan Police Station and spoke to the officer in charge, Detective Sergeant Pulsford. Mr Bawden said:

Sergeant, I killed a woman here in Queanbeyan 16 or 17 years ago I've been living with it all this time and it's been hell. I have been having nightmares every night and I've come up from Melbourne to confess to the murder. (Report of Inquiry, May 1992, p.1)

An inquiry was held into Mr Pohl's conviction pursuant to s475 of the *Crimes Act 1900*. On 10 July 1991, the Governor of New South Wales appointed a Judge of the Supreme Court to 'inquire into doubts or questions as to the guilt of Johann Siegfried Earnst Pohl'. On 1 May

1992, Justice McInerney reported on the conviction of Mr Pohl and recommended that he be granted a pardon.

On 17 December 1993, the Court of Criminal Appeal quashed the conviction of Mr Pohl, and a judgment of acquittal was entered.

An essential part of the prosecution case was that the time of death was within a 15-minute period. Evidence of the time of death was given by Government Medical Officer, Dr Gillespie. Dr Gillespie examined the body of Kum Yee Pohl at 12.45pm at the flat on 9 March 1973. He performed a post-mortem examination later that day.

The evidence of Dr Gillespie, Government Medical Officer, about the time of death was tested at the inquiry and a report obtained from Professor Hilton, Associate Professor of Pathology, Sydney University, and Director of the NSW Institute of Forensic Medicine. Professor Hilton determined that death could have taken place one or two hours prior to 12.45pm at 10.45 or 11.45 am. His evidence was not supportive of Dr Gillespie's claim that the time of death was between 9.30am and 9.45am. Professor Hilton was supported in his evidence by Dr Oettle, Deputy Director of the NSW Institute of Forensic Medicine.

### **Lindy Chamberlain**

One of the most infamous case in Australia, certainly the case that had received the most publicity, which revealed the fragility of the criminal justice system, is the Chamberlain case. On 17 August 1980 Azaria Chamberlain went missing from a camp site at Ayres Rock (Uluru) in the Northern Territory. Azaria Chamberlain was nine-weeks old when she was taken from the family tent by a dingo.

A coronial inquest was held to try and determine the manner and cause of death. The inquest was to turn out to be just the first into her death. It was held from 15 December 1980 to 20 February 1981 in Alice Springs. The coroner was Stipendiary Magistrate, Denis Barritt. He found that a dingo snatched and killed Azaria Chamberlain. The parents, Michael and Lindy Chamberlain, were not implicated in any way with the disappearance of their child.

Later after being charged and having a trial on 29 October 1982 the jury returned a unanimous verdict of guilty for both parents. On 19 October 1982, Lindy Chamberlain was sentenced to



life imprisonment for murder. On 30 October 1982 Michael Chamberlain was sentenced to 18 months' gaol, this was suspended on the basis that their children Aidan and Reagan needed to have a parent to look after them.

Coroner Barritt's findings were to ultimately be shown to be correct. But it required three further inquests, an appeal to the Federal Court, an appeal to the High Court and a Royal Commission before the legal system finally got it right. The Chamberlains were to be harshly punished for a crime they did not commit.

Lindy Chamberlain was convicted of murdering her baby Azaria, based on the proposition that she cut her throat in the front seat of the family car. The evidence of Joy Kuhl, Forensic Scientist, was essential to ensuring the convictions of the Chamberlains. She identified blood where it did not exist. In particular, Kuhl identified blood under the dashboard area of the Chamberlain's vehicle. This was in fact a sound deadening spray. Commissioner Morling noted a series of problems with Kuhl's record keeping, including 12 occasions when results of tests had been changed or crossed out. He found in respect of her finding of blood under the dashboard that: 'The fact that she could come to such a conclusion about something, which was, very probably, sound-deadener, casts doubt upon the efficacy of her testing generally and upon the accuracy of her other results'.

Professor Barry Boettcher, who gave evidence at the trial and was attacked by the prosecution for being an academic rather than a practicing forensic pathologist, went to the Behringwerk company in Germany that produced the anti-serum used in the testing for blood and got confirmation that he had used the same anti-serum as Kuhl. This confirmed that her testing was flawed. Professor Boettcher also in May 1986 tested dust from a variety of places in Mt Isa, Queensland and found that they all gave positive readings for blood. The blood tests, which were central to the prosecution case, could not be relied upon.

### **Gordon Wood**

The case involves an accused, Gordon Wood, who was convicted of murder. It was alleged he threw his girlfriend, Caroline Byrne, off a well-known cliff called the Gap, often used by people to commit suicide, onto rocks of the shore of the Pacific Ocean adjacent to the southern side of Sydney harbour, New South Wales.



Following the conviction, the case was appealed to the New South Wales Court of Criminal Appeal: the citation for the appeal case is *Wood v R* [2021] NSWCCA 21. The case against Gordon Wood was entirely circumstantial.

The Court of Criminal Appeal found that Associate Professor Cross (expert called by the prosecution) was allowed to express opinions outside his field of specialised knowledge. Some relevant comments made by McClellan CJ at CL are:

It was submitted to this Court by the applicant, no doubt in recognition that no objection had been taken at the trial, that if a fact upon which a particular opinion was based was not established by the evidence, then the opinion should have been given little or no weight: *Ramsay* at 648-9; *Paric v John Holland (Construction) Pty Ltd* [1985] HCA 58; (1985) 59 ALJR 844 at 846; *ASIC v Rich* [2005] NSWCA 152 at [155]; (2005) 218 ALR 764. [465]

The challenge to the admissibility of A/Prof Cross' evidence at the trial was confined to his views on the issue of the likelihood of injury being caused to Ms Byrne as she landed on the rocks at the base of the cliff. Although his evidence was not otherwise challenged, significant and important aspects of his evidence were concerned with biomechanics, which required an understanding of the functioning and capacity of the human body. In *HG v The Queen* [1999] HCA 2; (1999) 197 CLR 414 at [44] Gleeson CJ said:

"Experts who venture 'opinions', (sometimes merely their own inference of fact), outside their field of specialised knowledge may invest those opinions with a spurious appearance of authority, and legitimate processes of fact-finding may be subverted." [466]

To my mind A/Prof Cross was allowed, without objection, to express opinions outside his field of specialized knowledge. [467]

It was submitted to this Court that at the very least A/Prof Cross' lack of expertise in these areas diminished the weight that could reasonably be attributed to his evidence. A/Prof Cross' qualifications are in physics and his primary area of expertise is in plasma physics. He has spent some time since his retirement assisting the police in the investigation of incidents of persons falling and has published alone, or with others, some papers concerned with the physics of sport. In the course of these tasks he has applied his knowledge of basic physics. He has no qualifications or experience in biomechanics. [468]

Gordon Wood was freed.

The State has yet to compensate him for its failure.

## **Kathleen Folbigg**

On 24 October 2003 Kathleen Folbigg was sentenced by Barr J in the following way:

102 Kathleen Megan Folbigg, for the manslaughter of Caleb Gibson Folbigg I sentence you to imprisonment for ten years. The sentence will be taken to have commenced on 22 April 2003 and will expire on 21 April 2013. I decline to fix a non-parole period.

103 For the intentional infliction of grievous bodily harm upon Patrick Allen Folbigg I sentence you to imprisonment for fourteen years. The sentence will commence on 22 April 2005 and will expire on 21 April 2019. I decline to fix a non-parole period.

104 For the murder of Patrick Allen Folbigg I sentence you to imprisonment for eighteen years. The sentence will commence on 22 April 2006 and will expire on 21 April 2024. I decline to fix a non-parole period.

105 For the murder of Sarah Kathleen Folbigg I sentence you to imprisonment for twenty years. The sentence will commence on 22 April 2013 and will expire on 21 April 2033. I decline to fix a non-parole period.

106 For the murder of Laura Elizabeth Folbigg I sentence you to imprisonment for twenty-two years. The sentence will commence on 22 April 2021 and will expire on 21 April 2043. I fix a non-parole period of twelve years, which will expire on 21 April 2033.

107 You will be eligible for release on parole on 21 April 2033.

Kathleen Folbigg spent 20 years in gaol because a jury and judges had significant difficulty understanding that her case was based on Meadow's law, and there were no facts upon which she could be found guilty beyond reasonable doubt.

The police and prosecution relied on experts influenced by Meadow's Law to charge and indict Ms Folbigg: Dr Susan Beal (paediatrician); Professor Peter Berry (paediatric pathologist); Professor Barry Herdson (forensic pathologist); Dr Janice Ophoven (paediatric forensic pathologist); Dr Robert Ouvrier (paediatric neurologist). Their opinions were used despite the clear influence that an unscientific dogma had on the provision of their opinions. Some of the opinions and information supplied by them were also clearly wrong.

The police investigation and any thoughts about charging her should have stopped on 2 February 2001 the Office of the Director of Public Prosecutions, Newcastle, advised the detective in charge of the investigation that ‘the matter should be referred to the State Coroner, in order for a full inquest to be held’.

It could (and should) have also stopped on 6 April 2001 when a deputy state coroner could have held an inquest rather than recommending murder charges without hearing any evidence.

Thoughts of prosecution should have stopped when Dr Alan Cala, forensic pathologist in a letter dated 19 June 2001 to Detective Senior Constable Bernard Ryan stated, inter alia, ‘If I had examined the body of Laura Folbigg in isolation, without the knowledge I had at the time of previous infant deaths in the family, *I might give the cause of death as Myocarditis*’

The latest book on the Kathleen Folbigg case is: Quentin McDermott, *Meadow’s Law*, ABC Books, 2025.



## Attachment A

### Petition to Governor of New South Wales for Pardon of Kathleen Folbigg

These submissions are made to request that the Governor exercise the pardon power pursuant to s 76 of *Crimes (Appeal and Review) Act 2001* (NSW) for the release of Kathleen Folbigg.

#### Background

In 2003, Kathleen Folbigg was convicted of murdering three of her children; Patrick, Sarah and Laura and of the manslaughter of Caleb. She was also convicted of inflicting grievous bodily harm on Patrick. Ms Folbigg was sentenced on 24 October 2003 to imprisonment for 40 years with a non-parole period of 30 years. It was later reduced on appeal to a 25-year non-parole period.

Ms Folbigg's convictions were based on the prosecution's theory that she smothered all four children. Yet there is no medical evidence to indicate smothering.<sup>15</sup>

A petition for a review of her convictions was received by the Governor of New South Wales on 16 June 2015. This petition raised a reasonable possibility that Ms Folbigg was innocent,<sup>16</sup> based on the findings of Professor Stephen Cordner (forensic pathologist) that natural causes of death could be found for Caleb, Patrick, Sarah, and Laura.<sup>17</sup>

An inquiry commenced on 28 October 2018, and the substantive hearings were held over a period of three weeks from March 2019. During this inquiry, the genomes of the Folbigg children were sequenced and it was found that the two female Folbigg children had a novel mutation in the *CALM2* gene. Mutations in this gene are one of the best recognised causes of sudden death in infancy and childhood, both while asleep and awake.<sup>18</sup>

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<sup>15</sup> Dr Cala: "There's nothing in the medical records that indicates homicide" see inquiry transcripts page 286 line 28 (21.03.19). Also see evidence that there were no signs of physical abuse in any of the children: Professor Cordner at page 253 lines 5-11 (21.03.19); Professor Duflou at page 253 line 15 (21.03.19); Professor Hilton at page 252 line 50 (21.03.19). Available at: <https://www.folbigginquiry.justice.nsw.gov.au/Pages/transcripts.aspx> Reports of Professor Cordner undated (Exhibit C); Report of Professor Duflou dated 13 February 2019 (Exhibit L); Report of Professor Hilton dated 22 January 2019 (Exhibit O); Affidavit of Professor Hilton dated 13 November 2018 (Exhibit P). Available at: <https://www.folbigginquiry.justice.nsw.gov.au/Pages/exhibits.aspx>

<sup>16</sup> A reasonable possibility consistent with innocence needs to be negated by the prosecution before an individual can be found guilty of a criminal offence: see *Moore v R* [2016] NSWCCA 185 [43], [94], [125]; *Pell v The Queen* [2020] HCA 12 [42]. The prosecution at trial did not negative the reasonable possibility that the Folbigg children died of natural causes. The Commissioner of the 2019 inquiry did not adequately address this necessary condition beyond stating that he could not exclude the possibility of smothering.

<sup>17</sup> Report of Professor Stephen Cordner (undated) (Exhibit C). Available at: <https://www.folbigginquiry.justice.nsw.gov.au/Documents/Exhibit%20C%20-%20Report%20of%20Stephen%20Cordner%20undated%20and%20report%20of%20Michael%20Pollanen%20dated%201%20June%202015.pdf>

<sup>18</sup> Lia Crotti, Carla Spazzolini, David J Tester, Alice Ghidoni, Alban-Elouen Baruteau, Britt-Maria Beckmann, Elijah R Behr, Jeffrey S Bennett, Connie R Bezzina, Zahurul A Bhuiyan, Alpay Celiker, Marina Cerrone, Federica Dagradi, Gaetano M De Ferrari, Susan P Etheridge, Meena Fatah, Pablo Garcia-Pavia, Saleh Al-Ghamdi, Robert M Hamilton, Zuhair N Al-Hassnan, Minoru Horie, Juan Jimenez-Jaimez, Ronald J Kanter, Juan



Furthermore, in May 2019, it was reported by the Calmodulin (CALM) registry that a mutation in the exact same residue of calmodulin, as the one present in the Folbigg girls, caused lethal cardiac arrhythmias or cardiac arrest in two US children.<sup>19</sup> Unfortunately, functional validation of the Folbigg mutation could not be completed before the end of the inquiry but has since been completed by a group of international experts who concluded that the Folbigg *CALM2* mutation is likely pathogenic and arrhythmogenic.<sup>20</sup>

A report was handed down by the Commissioner of the inquiry in July 2019. The Commissioner found that there was no reasonable doubt as to Kathleen Folbigg's convictions. He made these findings based on his interpretation of Ms Folbigg's journal entries.<sup>21</sup> His conclusion runs counter to the scientific and medical evidence that now exists. This is because a natural cause of death for each of the children has been ascribed by qualified experts, and there was no evidence of smothering.

The legal proceedings commenced by Ms Folbigg could take years to finalise. She has already spent three years waiting for approval for an inquiry, and a further year while the inquiry proceedings were heard and resolved. This was followed by a year waiting for an application for judicial review of the inquiry to be heard by the Court of Appeal. It is also likely to take further years until the new scientific evidence is considered by the courts and the convictions are quashed.

The Governor should have no doubt that the case against Kathleen Folbigg is entirely circumstantial. It is based on the proposition that the likelihood of four children from one family dying of natural causes is so unlikely as to be virtually impossible. This flawed logic, otherwise known as 'Meadow's Law', permeated the trial and the 2019 inquiry.<sup>22</sup> It resulted in medical evidence being rejected in favour of inculpatory interpretations of Ms Folbigg's vague journal entries, which contained no admissions of guilt.

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P Kaski, Maria-Christina Kotta, Najim Lahrouchi, Naomasa Makita, Gabrielle Norrish, Hans H Odland, Seiko Ohno, John Papagiannis, Gianfranco Parati, Nicole Sekarski, Kristian Tveten, Matteo Vatta, Gregory Webster, Arthur A M Wilde, Julianne Wojciak, Alfred L George, Jr, Michael J Ackerman and Peter J Schwartz, 'Calmodulin mutations and life-threatening cardiac arrhythmias: insights from the International Calmodulinopathy Registry' (2019) 40(35) *European heart journal* 2964-2975. Available at: <https://doi.org/10.1093/eurheartj/ehz311>

<sup>19</sup> Ibid.

<sup>20</sup> Malene Brohus, Todor Arsov, David A. Wallace, Helene Halkjær Jensen, Mette Nyegaard, Lia Crotti, Marcin Adamski, Yafei Zhang, Matt A. Field, Vicki Athanasopoulos, Isabelle Baro, Barbara B. Ribeiro de Oliveira-Mendes, Richard Redon, Flavien Charpentier, Hariharan Raju, Deborah DiSilvestre, Jinhong Wei, Ruiwu Wang, Haloom Rafehi, Antony Kaspi, Melanie Bahlo, Ivy E. Dick, Sui Rong Wayne Chen, Matthew C. Cook, Carola G. Vinuesa, Michael Toft Overgaard and Peter J. Schwartz, 'Infanticide vs. inherited cardiac arrhythmias' (2020) *Europace* 1-10. Available at: <https://academic.oup.com/europace/advance-article/doi/10.1093/europace/eaab272/5983835>

<sup>21</sup> In the inquiry report, the Commissioner at page 480 para 89 states, 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." Available at: <https://www.folbigginquiry.justice.nsw.gov.au/Pages/report.aspx>

<sup>22</sup> Named after paediatrician, Sir Roy Meadow. Meadow's Law was discredited in the successful UK appeal by Sally Clark, which quashed her conviction for murdering her two sons. Sir Roy Meadow's statistical testimony regarding the low probability of Sally Clark's sons having died of Sudden Infant Death Syndrome (SIDS) was later held to be misleading (see *General Medical Council v Meadow* [2006] EWCA Civ 1390). Professor Philip Dawid's expert statistical report for the appeal provides a concise explanation as to the flaws in Meadow's Law style reasoning: see <http://www.statslab.cam.ac.uk/~apd/>



Based on evidence presented to the inquiry and the fresh scientific evidence obtained by the international group of experts that studied the *CALM2* mutation, a reasonable person should have doubt about Ms Folbigg killing her four children. Deciding otherwise rejects medical science and the law that sets the standard of proof.

### Grounds for Pardon

Ms Folbigg should be granted a pardon based on the significant positive evidence of natural causes of death for Caleb, Patrick, Sarah, and Laura. The further developments to support this are:

1. Professor Schwartz (world's leading cardiac geneticist) concluded that the *CALM2* mutation found in Sarah and Laura Folbigg is 'likely pathogenic'. Whenever a sudden death occurs without obvious causes and a 'likely pathogenic' mutation of this nature is found, it is scientifically appropriate to consider the mutation as the likely cause of death. This important evidence was not given the opportunity to be heard at the inquiry as the Commissioner declined to reopen the hearings to consider the evidence of Professor Schwartz.
2. The likely role of the novel *CALM2* mutation in Sarah and Laura's death was confirmed in a world leading study by Professor Toft Overgaard, Professor Schwartz, Professor Vinuesa and colleagues published on 17 November 2020.<sup>23</sup> In this ground-breaking research the authors concluded that a fatal cardiac arrhythmia caused by the *CALM2* mutation and triggered by intercurrent infections, was a reasonable explanation for Sarah and Laura's death. This paper has been published in *EP Europace* (Oxford University Press), a highly respected, peer reviewed journal. This indicates that the international medical and scientific communities find the role of the *CALM2* mutation in cardiac death a reasonable and likely explanation for Sarah and Laura's deaths.

The following are the current medical explanations from the leading experts in their field for each of the Folbigg children's deaths:

- a. Caleb died on 20 February 1989 at 19 days of age. His death was classified as Sudden Infant Death Syndrome (SIDS), category 2, with a finding of laryngomalacia.<sup>24</sup>

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<sup>23</sup> Brohus et al (2020) (n 6).

<sup>24</sup> Evidence from Professors Cordner, Duflou and Hilton. See inquiry transcript references: Professor Cordner at page 130 lines 23-35, page 132 line 5 (19.03.19), page 278 lines 12-16 (21.03.19); Professor Duflou at page 130 lines 8-14 (19.03.19), page 245 lines 25-31 (21.03.19); Professor Hilton at page 130 lines 18-20 (19.03.19), page 244 lines 7-16 (21.03.19). Available at:

<https://www.folbigginquiry.justice.nsw.gov.au/Pages/transcripts.aspx>  
Reports of Professors Cordner, Duflou and Hilton (n 1).



- b. Patrick died on 13 February 1991 at 8 months from asphyxia due to airway obstruction due to epileptic fits from an encephalopathic disorder of unknown cause (associated with blindness), as reported in his death certificate.<sup>25</sup>
- c. Sarah died on 30 August 1993 at 10 months of age. Her death was classified as SIDS, category 2. She died four days after seeing her general practitioner for a croupy cough and starting a course of antibiotics (flucloxacillin). Autopsy findings included a congested and haemorrhagic uvula and profuse alpha-haemolytic *Streptococcus* in lung cultures. Further investigation identified she carried the likely pathogenic and arrhythmogenic *CALM2* mutation.<sup>26</sup>
- d. Laura died on 1 March 1999 at 18 months old. She died two days after being treated for a respiratory infection with paracetamol and pseudoephedrine (a medication known to trigger cardiac arrhythmias). At autopsy she was found to have florid myocarditis. Her death was initially recorded by Dr Cala as “undetermined” in light of the previous deaths of her siblings. At the inquiry, Professors Cordner, Duflou and Hilton indicated that they would have recorded Laura's myocarditis as the cause of death. Dr Cala acknowledged at the inquiry that myocarditis could have been the cause of Laura's death.<sup>27</sup> Further investigation identified that Laura carried the likely pathogenic *CALM2* mutation.<sup>28</sup>

Myocarditis, medications like pseudoephedrine, and fever, are well established triggers of arrhythmia in children with a genetic susceptibility,<sup>29</sup> such as a likely pathogenic *CALM2* mutation.<sup>30</sup> A summary of the conditions of each of the Folbigg children is set out on page 16 of the Supplementary Materials to the paper by Brohus et al (2020).<sup>31</sup>

<sup>25</sup> Evidence from Professors Cordner, Duflou and Hilton. See inquiry transcript references: Professor Cordner at page 161 line 49 (20.03.19); Professor Duflou at page 162 lines 30-35 (20.03.19); Professor Hilton at page 147 lines 12-22 (20.03.19), page 164 lines 12-22 (20.03.19). Available at:

<https://www.folbigginquiry.justice.nsw.gov.au/Pages/transcripts.aspx>

Reports of Professors Cordner, Duflou and Hilton (n 1).

Reports of Professor Monique Ryan dated 15 March 2019 (Exhibit AJ) and Report of Associate Professor Michael Fahey dated 30 March 2019 (Exhibit AK). Available at:

<https://www.folbigginquiry.justice.nsw.gov.au/Pages/exhibits.aspx>

<sup>26</sup> Evidence from Professors Cordner, Duflou and Hilton. See inquiry transcript references: Professor Cordner at page 179 line 25 (20.03.19), page 280 line 15 (21.03.19); Professor Duflou at pages 179-180 (in full) (20.03.19), page 280 line 3 (21.03.19); Professor Hilton at page 280 line 7 (21.03.19). See also Dr Cala at page 280 line 11 (21.03.19). Available at: <https://www.folbigginquiry.justice.nsw.gov.au/Pages/transcripts.aspx>

Reports of Professors Cordner, Duflou and Hilton (n 1).

See also Brohus et al (2020) (n 6).

<sup>27</sup> Evidence from Professors Cordner, Duflou and Hilton. Professor Cordner at page 276 line 6 (21.03.19); Professor Duflou at page 276 line 3 and lines 30-35 (21.03.19); Professor Hilton at page 275 line 50 (21.03.19). See also Dr Cala: “I think, with Laura, there's undoubtedly myocarditis and I've said I can't exclude that as being the cause of death” see page 281 line 20 (21.03.19). Available at:

<https://www.folbigginquiry.justice.nsw.gov.au/Pages/transcripts.aspx>

Reports of Professors Cordner, Duflou and Hilton (n 1).

<sup>28</sup> Brohus et al (2020) (n 6).

<sup>29</sup> Peter J. Schwartz, Michael J. Ackerman, Charles Antzelevitch, Connie R. Bezzina, Martin Borggrefe, Bettina F. Cuneo and Arthur A. M. Wilde, ‘Inherited cardiac arrhythmias’ (2020) 6(1) *Nature Reviews Disease Primers* 1-22.

<sup>30</sup> Brohus et al (2020) (n 6).

<sup>31</sup> Brohus et al (2020) (n 6): <https://academic.oup.com/europace/advance-article/doi/10.1093/europace/euaa272/5983835#supplementary-data>

The medical evidence that exists, especially in light of the Brohus et al (2020) functional studies, creates a strong presumption that the Folbigg children died of natural causes. A presumption that should only be displaced by overwhelming evidence to the contrary, which we submit there is not. This presumption is endorsed by numerous world leading scientists, medical practitioners and science advocates as set out below in the form of a Scientific Consensus Statement.

### **Conclusion**

The entire time that Kathleen Folbigg has been in custody is a result of a miscarriage of justice. This year, Ms Folbigg has been incarcerated for 18 years of her life.

The executive prerogative of mercy is designed to deal with failures of the justice system such as this one. It is incumbent on the Governor to exercise her power to stop the ongoing miscarriage of justice suffered by Ms Folbigg. Not to do so is to continue to deny Ms Folbigg basic human rights and to decrease faith in the New South Wales justice system. Ms Folbigg's case also establishes a dangerous precedent as it means that cogent medical and scientific evidence can simply be ignored in preference to subjective interpretations of circumstantial evidence.

Ms Folbigg has suffered and continues to suffer emotional and psychological trauma and physical abuse in custody. She has endured the death of her four children and has been wrongfully incarcerated because the justice system has failed her. We the undersigned seek her immediate pardon and release from gaol.

**Dr Robert Cavanagh**  
Barrister-at-law

**Rhane Rego**  
Solicitor

**2 March 2021**



## Scientific and Medical Consensus and Endorsement

The scientists, medical practitioners, and science advocates set out below endorse this petition on the basis that the scientific and medical evidence referred to herein creates a strong presumption that the Folbigg children died of natural causes.

<u>Name</u>	<u>Expertise</u>	<u>Location</u>
<b>Professor John Shine AC</b> FRS PresAA	<b>President, Australian Academy of Science</b> Emeritus Professor, Garvan Institute of Medical Research 2010 Prime Minister's Prize for Science	NSW, Australia
<b>Emeritus Professor Elizabeth H Blackburn AC</b> PhD FRS	<b>2009 Nobel Laureate</b> (Physiology or Medicine) Morris Herztein Professor Biology and Physiology Professor Emerita, Department of Biochemistry and Biophysics University of California, San Francisco	California, USA
<b>Professor Peter Doherty AC PhD</b> FRS FMedSci	<b>1996 Nobel Laureate</b> (Medicine) Expertise in Viral Immunity Australian of the Year in 1997	VIC, Australia
<b>Emeritus Professor Ian Chubb AC</b> FAA FTSE FACE FRSN	Former Chief Scientist for Australia Vice Chancellor of ANU and Flinders University Expertise in neuroscience	ACT, Australia
<b>Professor Fiona Stanley AC</b> FAA FASSA FAHMS	Patron, Telethon Kids Institute Distinguished Research Professor, University of Western Australia Expertise in child and maternal health, and birth disorders	WA, Australia
<b>Professor Ian Frazer AC</b> FRS FAA MC ChB(Edin) MD(Melb) FAHMS	Australian of the Year 2006 Prime Minister's Prize for Science 2008. International Life Award for Scientific Research 2007	QLD, Australia
<b>Professor Peter J. Schwartz</b> MD	Head of the Centre for Cardiac Arrhythmias of Genetic Origin Cardiologist specialist in arrhythmology, the genetic causes of arrhythmia and sudden cardiac death	Milan, Italy
<b>Professor Michael Toft Overgaard</b> Phd MSc	Head of Department, Department of Chemistry and Bioscience, Aalborg University Expert in protein science and calmodulinopathies	Aalborg, Denmark
<b>Professor Carola G Vinuesa</b> MD PhD FFS(ACPA) FAHMS FAA	Co-Director, Centre for Personalised Immunology, ANU. Genomic medicine. Elizabeth Blackburn NHMRC Principal Research Fellow	ACT, Australia

<b>Dr Todor Arsov</b> MD MGC PhD	Genetics, Genetics Counselling Hon Senior Research Fellow, The John Curtin School of Medical Research, ANU Genetic Counsellor, Department of Immunology and Genetics, Medical School in Skopje, North Macedonia	Skopje, North Macedonia
<b>David Wallace</b> BSc(Hon) LLB(Hon)	Health Lawyer Genomic evidence	NSW, Australia
<b>Professor S.R. Wayne Chen</b> PhD	Expertise in cardiac arrhythmias and sudden death Professor, Department of Physiology and Pharmacology, Cummings School of Medicine, University of Calgary	Alberta, Canada
<b>Associate Professor Mette Nyegaard</b> PhD MSc	Expertise in human genetics and genomics Identified the first calmodulin mutations in humans Department of Biomedicine, Aarhus University	Aarhus, Denmark
<b>Assistant Professor Ivy E. Dick</b> PhD	Department of Physiology, University of Maryland School of Medicine Expertise: Calcium channelopathies and calmodulinopathies	Maryland, USA
<b>Professor Chris Semsarian AM</b> MBBS PhD MPH FRACP FRCPA FAHMS FAHA FHRS FCSANZ	Professor of Medicine, University of Sydney Genetic Cardiologist & NHMRC Practitioner Fellow, Royal Prince Alfred Hospital Head, Agnes Ginges Centre for Molecular Cardiology, Centenary Institute Director, Hypertrophic Cardiomyopathy & Genetic Heart Disease Clinics, RPAH	NSW, Australia
<b>Professor Reza Razavi</b> MD FRCP FRCPCH FRCR	Professor of Paediatric Cardiovascular Science at Kings College London and Consultant Paediatric cardiologists at Evelina Children's Hospital (part of Guys and St Thomas' NHS Foundation Trust)	London, UK
<b>Professor Matthew Cook</b> MB BS PhD FRACP FRCPA FFSc (RCPA)	Professor of Medicine, ANU Director of Immunology, The Canberra Hospital Co-Director, Centre for Personalised Immunology, The John Curtin School of Medical Research	ACT, Australia
<b>Dr Hariharan Raju</b> MBChB ECES PhD FRACP	Cardiologist & Electrophysiologist, Concord Hospital Associate Professor, Macquarie University	NSW, Australia
<b>Laureate Professor Ingrid E Scheffer AO</b> MBBS PhD FRACP FAES FAA FRS PresAHMS	President, Australian Academy of Health and Medical Sciences Melbourne Laureate Professor Paediatric Neurologist Department of Medicine, Austin Health	VIC, Australia



	<p>Department of Paediatrics, Royal Children's Hospital, University of Melbourne</p> <p>Director of Paediatrics, Austin Health</p> <p>NHMRC Practitioner Fellow and NHMRC Senior Investigator Fellowship</p> <p>Senior Principal Research Fellow, The Florey Institute of Neuroscience and Mental Health</p> <p>Senior Fellow, Murdoch Children's Research Institute</p>	
<p><b>Anna-Maria Arabia</b> BSc(Hon)(Melb)</p>	<p>Chief Executive of Australian Academy of Science</p> <p>Former General Manager of Questacon – the National Science and Technology Centre</p> <p>Former CEO of Science &amp; Technology Australia</p>	ACT, Australia
<p><b>Emeritus Professor Richard Larkins AC</b> MDBS PhD LLD (Hon) Melb LLD (Hon) Monash DUniv (Hon) LaTrobe FAHMS FTSE FRACP FRCP</p>	<p>Former Dean of Medicine, Dentistry and Health Sciences, University of Melbourne</p> <p>Former Vice-Chancellor, Monash University</p> <p>Former Chancellor, LaTrobe University</p> <p>Former Chair NHMRC</p> <p>Former President RACP</p>	VIC, Australia
<p><b>Professor John Funder AC</b> MD PhD FRACP FRCP</p>	<p>Vice-Chancellor's Professorial Fellow, Monash University</p> <p>Former president of the Australian Society for Medical Research</p> <p>Former director of the Baker Medical Research Institute</p> <p>Senior fellow at Prince Henry's Institute of Medical Research at Monash Medical Centre</p> <p>Professorial fellow at the Centre for Neuroscience, University of Melbourne</p>	VIC, Australia
<p><b>Professor Johan Duflou</b> MBChB MMed FRCPA FFFLM DAvMed</p>	Forensic Pathologist	NSW & ACT, Australia
<p><b>Professor Flavien Charpentier</b> PhD</p>	<p>Research Director and Cardiac electrophysiologist, Institut du thorax</p> <p>Expertise in inherited cardiac arrhythmias</p>	Nantes, France
<p><b>Professor Douglas J. Hilton AO</b> PhD FAA FTSE FAHMS</p>	<p>Director, Walter and Eliza Hall Institute of Medical Research</p> <p>The Lorenzo and Pamela Galli Chair in Medical Biology</p> <p>Professor of Medical Biology,</p> <p>Head, Department of Medical Biology and</p> <p>Honorary Principal Fellow, Department of Zoology, University of Melbourne</p>	VIC, Australia
<p><b>Professor Jonathan Carapetis</b> MBBS BMedSc PhD FRACP FAFPHM FAHMS</p>	<p>Paediatrician, public health and infectious diseases physician</p> <p>Executive Director, Telethon Kids Institute</p> <p>Professor, University of Western Australia</p>	WA, Australia

	Paediatrician, Perth Children's Hospital	
<b>Adjunct Professor Paul N Goldwater</b> BSc (Hons) MBBS FRACP FRCPA	Professor of Paediatric Infectious Diseases and Clinical Microbiology, SIDS Researcher, University of Adelaide	SA, Australia
<b>Professor Angel F Lopez AO</b> MBBS PhD FRCPA FAHMS FAA	Head, Division of Human Immunology, SA Pathology Centre for Cancer Biology, SA Pathology and UniSA	SA, Australia
<b>Professor Graham Mann</b> MBBS PhD FRACP FAAHMS	Director, The John Curtin School of Medical Research, ANU Director, National Centre for Indigenous Genomics Expertise in human (cancer) genetics	ACT, Australia
<b>Professor Jozef Gecz</b> PhD FAA FAHMS FFSc(RCPA)	Paediatric geneticist Channel 7 CRF Chair for the Prevention of Childhood Disability NHMRC Senior Principal Research Fellow	SA, Australia
<b>Professor Hamish S Scott</b> PhD FFSc(RCPA) FAHMS	Head, Department of Genetics and Molecular Pathology Centre for Cancer Biology SA Pathology and UniSA Alliance Scientific lead of study "Genomic autopsy of perinatal death", a national study funded by the MRFF Genomics Health Futures Mission (GHFM) Expertise in human genetics and genomics in both diagnostics (Head of Dept) and research	SA, Australia
<b>Dr Malene Brohus</b> PhD MSc	Postdoctoral fellow, Department of Chemistry and Bioscience, Aalborg University Expertise: protein science and calmodulinopathies	Aalborg, Denmark
<b>Dr Marcin Adamski</b> PhD	Senior Lecturer, Research School of Biology, ANU Quantitative Biology and Genomics	ACT, Australia
<b>Dr Helene Halkjær Jensen</b> PhD MSc	Postdoctoral fellow. Department of Chemistry and Bioscience, Aalborg University Expertise: protein science and calmodulinopathies	Aalborg, Denmark
<b>Professor Matt Brown</b> MBBS MD FRACP FAHMS FAA	Professor of Medicine, King's College London Director, Guy's and St Thomas' NHS Foundation Trust and King's College London NIHR Biomedical Research Centre Expertise in Human Genetics and genetics of rare diseases	London, UK
<b>Dr Dan Andrews</b> PhD	Laboratory head, Genome Informatics, John Curtin School of Medical Research, ANU	ACT, Australia
<b>Associate Professor Hugo Gold</b>	Founding medical director, Children's Bioethics Centre, Royal Children's Hospital, Melbourne	VIC, Australia



MBBS(Melb) FRACP MRCP(London) FACT(Melb)	Retired consultant paediatrician Honorary clinical ethicist, RCH RCH gold medal 2008	
<b>Conjoint Professor Matthew Edwards</b> MD FRACP FACMG	Clinical geneticist	NSW, Australia
<b>Professor Leanne Dibbens</b> PhD BscHons	Research Professor of Human Genetics, NHMRC Senior Research Fellow Head of Genetics and Genomics, Australian Centre for Precision Health	SA, Australia
<b>Dr Michael Ricos</b> PhD	Senior Research Fellow Epilepsy and Molecular Neurogenomics Research Group Australian Centre for Precision Health University of south Australia	SA, Australia
<b>Associate Professor Tracy Dudding-Byth</b> BMed FRACP PhD	Senior Consultant Clinical Geneticist, Hunter New England Health Service Conjoint Associate Professor, The University of Newcastle	NSW, Australia
<b>Professor David Balding</b> FAA	Professor of Statistical Genetics, Director of Melbourne Integrative Genomics, University of Melbourne President-elect, International Genetic Epidemiology Society	VIC, Australia
<b>Professor Melanie Bahlo</b> PhD FAHMS	Laboratory Head. Human Genetics. Leader, Healthy Development and Ageing Theme	VIC, Australia
<b>Professor Terence Speed</b> PhD FRS FAA	Laboratory Head, Bioinformatics Division, WEHI 2013 Prime Minister's Prize for Science Mathematical expertise been used in several high-profile court cases	VIC, Australia
<b>Professor Cheryl E Praeger AC</b> DPhil DSc FAA	Emeritus Professor of Mathematics University of Western Australia 2019 Prime Minister's Prize for Science	WA, Australia
<b>Professor Ian H Sloan AO</b> PhD DUniv(UNSW) AO FAA FRSN	President, Royal Society of NSW Expertise in mathematics and physics	NSW, Australia
<b>Emeritus Scientia Professor Eugenie R Lumbers AM</b> Dist FRSN FAA MD DSc MBBS	Systems physiology and pharmacology, cardiovascular and renal fetal and development physiology (human)	NSW, Australia
<b>Professor Wendy Hoy AO</b> FAA FRACP MB BS (HI) BScMed(HI)	Professor of Medicine Physician/Nephrologist Director, Centre for Chronic Diseases, University of Queensland	QLD, Australia
<b>Professor E Marelyn Wintour-Coghlan AO</b> FAA	Honorary Professor, Monash University Expertise in Physiology	VIC, Australia

<b>Scientia Professor George Paxinos AO</b> DSc FASSA FAA(Dist) FRSN FAHMS	NHMRC Senior Principal Research Fellow, Neuroscience Research Australia Expertise in psychology and neuroanatomy	NSW, Australia
<b>Professor Jane Blood-Siegfried</b> PhD CPNP FAAN	Director of Global Education Programs and Initiatives, Duke University School of Nursing Expertise: Paediatric practitioner and SIDS researcher	NC, USA
<b>Dr Orna Berry</b> BSc MStat PhD	Former Chief Scientist, government of Israel	Tel Aviv, Israel
<b>Professor Stephen Alexander</b> MBBS PhD MPH	Paediatrics, University of Sydney	NSW, Australia
<b>Emeritus Professor Barry Boettcher AM</b> BSc PhD	Genetics, Formerly Foundation Professor of Biological Sciences, University of Newcastle	NSW, Australia
<b>Professor Ira Shoulson</b> MD BA(Psych)	Professor of Neurology, University of Rochester (NY, USA) Adjunct Professor of Neurology, Georgetown University (DC, USA) Expertise in neurology and experimental therapeutics	DC, USA
<b>Professor George Fink</b> MB BS(Hons) MD DPhil FRCPE FRSB FRSE	Florey Institute of Neuroscience and Mental Health, University of Melbourne	VIC, Australia
<b>Dr Leon Kempner AM</b>	Chair Questacon, The National Science and Technology Centre President, Museums Victoria National Chairman, the Australia Israel Chamber of Commerce	ACT, Australia
<b>Dr Peter Yates AM</b> PhD FTSE FAICD BCom Master of Science(MGT)	Chairman, Centre Personalised Immunology Member of the Advisory Board, Australian Genomics Health Alliance Executive Chairman, Roadknight Investments (Aust)	VIC, Australia
<b>Erica Kneipp</b> BA(Hons) PolSci MA(EnviroHealth) AICD	Head of Research Strategy, TRANSFORM Lead, ANU College of Health and Medicine	ACT, Australia
<b>Professor David J Tremethick</b> PhD	Head, Department of Genome Sciences, The John Curtin School of Medical Research, ANU	ACT, Australia
<b>Professor Greg Stuart</b> PhD FAA	Head, Eccles Institute of Neuroscience John Curtin School of Medical Research	ACT, Australia
<b>Professor Ruth Arkell</b> BSc PhD	Professor of Genetics and Embryology, ANU	ACT, Australia
<b>Dr Sue D Meek AO</b> PhD FAICD FTSE	Former Chief Executive of the Australian Academy of Science	ACT, Australia