

NEWCASTLE HERALD H1

SATURDAY
October 26, 2013

NEWSPAPER OF THE YEAR \$2.10 (GST inc)



POWER AND THE PASSION

BACK PAGE



ROCKY'S AMAZING RESCUE

PAGE 3

PITTS FOR THE HUNTER

PAGE 7



Legal Centre in push for judicial inquiry

FIGHT TO FREE FOLBIGG



EXCLUSIVE
JOANNE MCCARTHY

CONVICTED child killer Kathleen Folbigg will seek a judicial inquiry into her case by late this year or early 2014, with the support of the University of Newcastle Legal Centre.

An extensive submission will argue there is "serious disquiet" about her 2003 convictions for the manslaughter of one of her children, and the murder of another three babies at Singleton between 1989 and 1999.

Legal Centre director Shaun McCarthy, who has met with Folbigg in jail, said it was "an appropriate case for the Legal Centre to be working on".

"It's restating our commitment to public interest advocacy," explained Mr McCarthy.

The Legal Centre became involved after academic lawyer Emma Cunliffe concluded Folbigg had been wrongly convicted of killing her children in a thesis that became the 2011 book, *Murder, Medicine and Motherhood*.

It also followed *Newcastle Herald* articles in which Helen Cummings, the daughter of former Newcastle lord mayor Joy Cummings, confirmed that she had written to NSW Attorney-General Greg Smith seeking a judicial inquiry after regularly visiting with Folbigg, pictured, in Silverwater prison.

Reports, Pages 4-5



□ Incredible value
Incredible quality □

When you build with McDonald Jones you benefit from over 25 years experience along with a dedicated approach to making sure you enjoy your building journey.

Find out more about our fantastic packages today

DISPLAY HOMES OPEN EVERY DAY

mcdonaldjoneshomes.com.au

Ph: 1300 555 382



mcdonald jones
YOUR HOME, YOUR DREAM

Legal centre stages fight for Folbigg Chamberlain case cited

Reports by
JOANNE MCCARTHY

THE University of Newcastle Legal Centre will seek a judicial inquiry into Kathleen Folbigg's convictions for killing her four children in a case that "may well have parallels with the Lindy Chamberlain case".

The centre will lodge a submission with NSW Governor Marie Bashir and Attorney-General Greg Smith either late this year or early in 2014 seeking a judicial inquiry after "serious disquiet" over the 2003 convictions.

The centre has acted for Folbigg since July.

Director Shaun McCarthy, who has met with Folbigg in jail and communicated with her by letter, said it was "an appropriate case for the Legal Centre to be working on".

"It's restating our commitment to public interest advocacy," he said.

Folbigg was sentenced to 30 years' jail for the manslaughter of her first child Caleb, 19 days, and the murder of Patrick, eight months, Sarah, 10 months, and Laura, 19 months, at Singleton between 1989 and 1999, but has always maintained her innocence.

"I have been misquoted, my diaries misunderstood and inferred incorrectly, my personality and demeanour savagely attacked, thus my character assumed to be anything other than what I really am," she wrote in a letter to a newspaper immediately after her sentence in 2003.

Despite losing appeals including leave to appeal to the High Court, Folbigg's questioning of her convictions gained support after a 2011 thesis by Australian academic lawyer Emma Cunliffe.

She concluded Folbigg had been wrongly convicted of killing her children because of the lack of proof beyond reasonable doubt, and despite real expert disagreement at trial about the cause of death in each of the Folbigg children.

One of Australia's leading forensic science legal experts, Gary Edmond, supported a review, saying Folbigg's case was tainted by unreliable, misleading and outdated medical evidence.

Early this year Newcastle woman Helen Cummings confirmed she had appealed to Attorney-General Greg Smith about Folbigg's case after visiting her in jail over a lengthy period.

The daughter of former Newcastle lord mayor Joy Cummings, and the first wife of a man who went on to kill his second wife, child and himself, compared Folbigg's case with the wrongful jailing of Lindy Chamberlain over her daughter Azaria's death in 1980.

"I always had an uncomfortable feeling during Kathleen's trial that it was actually her mothering that was on trial," Ms Cummings said.

On Thursday Mr McCarthy, who is acting as Folbigg's instructing solicitor, said the Legal Centre was "a fair way advanced" on the submission seeking a judicial review.

"I've met with her in jail and I spoke to her at length, and we've communicated by letter," Mr McCarthy said.

"She's thankful the Legal Centre is assisting her in the case and we're pursuing a judicial inquiry."

The centre is supported by three Newcastle barristers providing unpaid assistance to compile the submission.

Fourth year Newcastle University law students have undertaken detailed research on scientific and medical advances since the 2003 trial, supporting concerns raised about the reliability of the original evidence.

"The students are in their fourth year of a five-year combined degree and are heavily involved," Mr McCarthy said.

"This is a public interest case they're working on, a miscarriage of justice case, and an opportunity for students to work on a very high profile case while completing their studies."

Public interest advocacy cases are taken on by law clinics at major universities around the world such as Harvard.

The final submission will include extensive reports from both Australian and international experts. If the case for a judicial review is accepted by the NSW Governor a NSW Supreme Court judge will be appointed to undertake the review.

Mr McCarthy said judicial reviews were rare and took time, but he believed the Folbigg case had "reasonable prospects" of success.



SYMPATHETIC: Shaun McCarthy, the director of University Of Newcastle Legal Centre, is the instructing solicitor on the Kathleen Folbigg case. Picture: Max Mason-Hubers

"This case may well have parallels with the Lindy Chamberlain case," he said. "It really goes to the heart of the rule of law."

"The Legal Centre takes the view it's the human right of every person to have their day in court if there is fresh evidence which casts doubt over the original convictions."

"The Legal Centre believes this case has reasonable prospects of gaining a judicial review."



KATHLEEN FOLBIGG



HELEN CUMMINGS

TAKE AN AFFORDABLE COACH HOLIDAY . . .

New Zealand

14 DAYS FROM **\$3634*** PER PERSON, TWIN SHARE

BONUS OFFER* Valued at up to \$370 per couple

All coach tours include airfares, taxes, accommodation, most meals, sightseeing & attractions.

Crisis Carers needed for babies.

There is a shortage of foster carers in the Central Coast & Newcastle Region for children 0-5 years. We provide training, 24 hour support and a \$385 allowance per week.

Find out if you can help today.
1800 663 441
barnardos.org.au

ABN 18 068 557 906 | A Company Limited by Guarantee
Registered Charity | Modelused to protect privacy

For a 48 page brochure call **1800 622 768** or visit www.grandpacifictours.com

GRAND PACIFIC TOURS

*Conditions apply. See www.grandpacifictours.com/keypartners.asp for full terms and conditions. Lic No 32046.



“The Legal Centre takes the view it’s the human right of every person to have their day in court if there is fresh evidence which casts doubt over the original convictions.”

– Newcastle University Legal Centre director SHAUN MCCARTHY

200 jobs on track for Hexham

By MICHELLE HARRIS

ABOUT 200 jobs are set to be created when construction starts next month on rail company Aurizon’s plans for a \$100-million train maintenance hub at Hexham, following its approval by the state government.

Aurizon, formerly known as QR National, will build, on a 225-hectare site, a two-track train provisioning facility, a train maintenance line, and a combined locomotive and wagon maintenance workshop.

The project had been in the pipeline for years, with an application lodged in 2007.

It has now been approved by the Department of Plan-

ning and Infrastructure.

Ports and Roads Minister Duncan Gay said yesterday that such investment was critical for developing an efficient and effective freight network.

“The Aurizon facility represents a major investment in the local community and a vote of confidence in the long-term outlook for the Hunter Valley coal industry,” he said. “[It] consolidates maintenance and provisioning activities that will improve overall efficiency of the supply chain and reduces shunting and provisioning activities in and around Carrington.”

The department was told the company planned to increase its train sets from 11

to 38 by 2019, which is why it needed the new site.

An Aurizon spokesman said about 200 jobs would be created during construction and a range of work would be available for tender by local contractors.

The site would support about 30 long-term jobs when operational.

Eleven public submissions lodged with the department objected to the proposal, over concerns about various potential environmental impacts.

The Department of Planning found that “on balance, the proposal is in the public interest”.

And the long-term effect on the community and environment were thought minimal.

Four deaths in one family obscure search for truth

IN her thesis, which became the book *Murder, Medicine and Motherhood*, academic lawyer Emma Cunliffe stated plainly that the Folbigg case was “not a case that accurately lends itself to easy answers”.

Four babies had died in one Singleton family in 10 years between 1989 and 1999.

The first three deaths were originally attributed to natural causes, most likely sudden infant death syndrome (SIDS) in the case of two of the children, and asphyxia related to diagnosed epilepsy in Patrick’s case.

After Laura died in 1999, aged 19 months, forensic pathologist Dr Allan Cala found she had been suffering from myocarditis, a heart condition that can cause sudden death.

But the three earlier deaths led Dr Cala to write Laura’s cause of death as “undetermined”, and a murder investigation was launched.

Dr Cala later wrote that “without the knowledge I had at the time of previous infant deaths in the family, I might give the cause of death as myocarditis”.

But there were Folbigg’s diaries, with subtle admissions of guilt.

Even Cunliffe agreed she



ANSWERS: Dr Emma Cunliffe wrote *Murder, Medicine and Motherhood*, about Kathleen Folbigg’s trial.

would “always find those entries troubling”, but “I’m not sure that standing alone they add up to murder”.

“And I’m not sure that in combination with the other evidence they’re enough to make me satisfied that this was murder.”

But four deaths in one family?

The jury in Folbigg’s trial heard each of the experts say they had never come across three or more unexplained deaths in one family, either personally or in medical literature.

But Cunliffe found that in 2003 there were accounts in medical literature of eight cases in which a family had experienced three or more unexpected infant deaths found to have occurred through natural causes.

“In this book, I suggest that Folbigg has been wrongly convicted of killing her children,” Cunliffe wrote after an exhaustive study of Folbigg’s trial, the expert evidence and an

investigation of related cases and medical knowledge about sudden infant death.

“However, I cannot say how the Folbigg children died.”

“To write this story as one of factual innocence vindicated would oversimplify it as much as the narratives of guilt that are most often constructed around Folbigg.”

“Instead, I ask what constituted proof beyond a reasonable doubt in Folbigg’s case.”

Cunliffe noted that academic commentators on child homicide often remarked it was difficult to persuade judges and juries that a mother had killed her children.

“Seemingly contradicting this assertion, a number of wrongful convictions of mothers suggests that prosecutors and courts may, for a period of time, have been too ready to accept allegations of homicide,” she said.



Quality Childcare Coming soon to Cameron Park

Go Kindy Early Education Centres has announced plans to develop a state-of-the-art Childcare Centre in Northlakes Estate at Cameron Park.

Go Kindy has 15 years experience and has teamed with local architects Jackson Teece to create a 106 place centre to meet growing demand.

This brand new centre will feature a dedicated dining room, alfresco shaded play areas, specific education and craft rooms, smartboards and highly qualified educators.

The Go Kindy philosophy is to help prepare children for school by providing an enriching social and educational platform.

The new childcare centre will open around June 2014 but parents or carers can register their children for enrolment now.

For more information visit
www.gokindy.com.au
or call us on 0434 087 166



Enriching your child’s future

