



IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: **COR 2022 005263**

IN THE MATTER OF THE PASSING OF CLINTON WILLIAM AUSTIN

RULING REGARDING THE SCOPE OF INQUEST

BACKGROUND

1. On 11 September 2022, Clinton William Austin, a proud Gunditjmara and Wiradjuri man (hereinafter referred to as '**Clinton**'), was 38 years of age when he passed away while in custody at Loddon Prison in central Victoria.

PROCEDURAL HISTORY

2. An initial directions hearing was held at the Coroners Court of Victoria (hereinafter '**Coroners Court**' or '**Court**') in relation to Clinton's passing¹ on 7 October 2022 in accordance with '*Practice Direction 5 of 2020 - Directions Hearings in Mandatory Inquests*'² and '*Practice Direction 6 of 2020 – Aboriginal Passings in Custody*' (hereinafter '**PD 6 of 2020**').³ Coroner Catherine Fitzgerald, who then had carriage of the proceedings, presided over this hearing.
3. On 18 January 2023, the autopsy report of the Forensic Pathologist, Dr Brian Beer (**Dr Beer**), was finalised. The cause of Clinton's passing was formulated as *1 (a) unascertained*. Dr Beer further opined that the passing was due to natural causes.
4. In July 2023, I assumed carriage of the investigation into Clinton's passing.

¹ The term 'passing' is generally more accepted and sensitive terminology to use when discussing the death of Aboriginal and Torres Strait Islander people due to the spiritual belief around the life cycle (see 'Sad News, Sorry Business: Guidelines for caring for Aboriginal and Torres Strait Islander people through death and dying', Queensland Government, December 2015, available [here](#)). I shall use it in the present ruling except when referring to the language of relevant statutes, coronial findings or caselaw.

² State Coroner Judge John Cain, '*Practice Direction 5 of 2020 - Directions Hearings in Mandatory Inquests*' dated 17 September 2020; available [here](#).

³ State Coroner Judge John Cain, '*Practice Direction 6 of 2020 – Aboriginal Passings in Custody*' dated 22 September 2020, and re-issued on 14 May 2024; available [here](#).

5. On 1 November 2023, a proposed draft working scope of investigation (hereinafter ‘**draft scope**’) was circulated to Interested Parties, with written submissions to be filed by 29 November 2023 in relation to the draft scope.
6. Interested Parties to these proceedings include Clinton’s Family, who is legally represented, along with the Secretary to the Department of Justice and Community Safety (inclusive of Justice Health and Corrections Victoria), Correct Care Australasia, the National Disability Insurance Agency and the Victorian Institute of Forensic Mental Health (hereinafter ‘**Forensicare**’).
7. On 22 December 2023, a further Directions Hearing was convened to hear, amongst other things, submissions on the draft scope.

JURISDICTION

8. Clinton’s passing was reported to the coroner because it appeared to be unexpected and because he was, immediately before passing, a person in custody. His passing is therefore reportable under both s 4(2)(a) and (c) of the *Coroners Act 2008* (hereinafter ‘**the Act**’).
9. Further, pursuant to s 52(2)(b) of the Act, an inquest into Clinton’s passing is mandatory on the basis that immediately before he passed, he was in custody. However, per s 52(3A) of the Act, the coroner is not required to hold an inquest if the coroner considers that the death was due to natural causes.
10. A coroner investigating such a death must find, if possible: (a) the identity of the deceased; and (b) the cause of death; and (c) the circumstances in which the death occurred (s 67 of the Act).

FIRST DRAFT SCOPE

11. The draft scope circulated on 1 November 2023 is at **Appendix A** to the present determination. In summary, the following issues were included in the draft scope:
 - a) The **cause** of Clinton’s passing;
 - b) **Health care provision** to Clinton while in custody, including the adequacy of assessment, treatment, care, and management of his health from a clinical and cultural perspective from his reception on 31 January 2020 until 11 September 2022;
 - c) **Disability supports**, namely the adequacy of the support, care and management of Clinton’s borderline intellectual functioning and acquired brain injury while in custody;
 - d) The management of Clinton’s **application for parole**;
 - e) The **movement of Clinton across and within different Victorian prisons** during his most recent period of custody;

- f) The extent to which current **policies and procedures** in relation to the abovementioned were adhered to in relation to Clinton’s most recent period in custody; and
- g) Identification of any further **prevention opportunities or recommendations**.

PROPOSED FINAL SCOPE OF INQUEST

- 12. On 23 December 2024, Interested Parties were provided with a proposed final scope of Inquest (**Proposed Final Scope of Inquest**), which is contained at **Appendix B**. The main amendment was removal of the item in relation to the management of Clinton’s application for parole.
- 13. Interested Parties were given until 10 February 2025 to provide any submissions on the Proposed Final Scope of Inquest, ahead of the inquest scheduled to commence on 24 March 2025.

SUBMISSIONS ON SCOPE

Clinton’s Family

- 14. Mr Shaun Austin (Clinton’s twin brother and appointed Family representative) submits that the focus of the draft scope is consistent with the Court’s commitment to implementing the recommendations of the Royal Commission into Aboriginal Deaths in Custody (**RCIADIC**), noting in particular Recommendation 12 of RCIADIC, referenced in PD 6 of 2020, that a coroner ‘*inquiring into a death in custody be required by law to investigate not only the cause and circumstances of the death but also the quality of the care, treatment and supervision of the deceased prior to death.*’⁴
- 15. Clinton’s Family also submits that the draft scope is properly aligned with the Court’s preventative functions under the Act, and allows for the coroner to be well-positioned to make recommendations to prevent further passings.
- 16. The Family also submits that the draft scope does not fall foul of the principles in *Harmsworth v State Coroner* [1989] VR 989 (**Harmsworth**) as, rather than leading the Court to an inquiry which is overly discursive or disconnected from the requirements of the Act, it allows for a ‘*complete examination of issues that have clear connections to Clinton’s passing, and which can form the basis for appropriate preventative recommendations*’.⁵
- 17. The Family emphasises that the powers and role of the coroner, as set out in the Act, should be interpreted in accordance with section 32 of the *Charter of Human Rights and Responsibilities Act 2006* (hereinafter ‘**the Charter**’), including the right to life (s 9), the right to be treated with

⁴ Submissions of Family, 8 December 2023, paras 9-10, referring to PD 6 of 2020, para 6.3.

⁵ Submissions of Family, 8 December 2023, paras 26-28.

human dignity when detained (s 22), and the right to enjoy rights without discrimination (s 8(2)). The Family submits that for the Court to uphold its duties under s 67 of the Act consistently with the Charter, the scope of the inquest ought to encompass consideration of both the immediate cause of Clinton's passing, as well as the potential systemic causes.⁶

18. To this end, the Family submits that, while arguably covered by the existing draft scope, certain additional matters ought to be included in the final scope.⁷
19. In relation to the Proposed Final Scope of Inquest, the Family opposes the removal of the scope item that relates to the management of Clinton's application for parole. It is argued on behalf of the Family, that, amongst other things, the management of Clinton's parole application by Community Correctional Services was subject to a series of delays and errors that prevented his application from being considered by the Adult Parole Board in a timely manner, that Clinton was not adequately supported to pursue parole, and that the circumstances of the management of Clinton's parole are sufficiently proximate and causally related to Clinton's passing in custody so as to warrant examination at inquest.⁸

Secretary to the Department of Justice and Community Safety

20. Referring, *inter alia*, to *Harmsworth*, the Secretary to the Department of Justice and Community Safety (**Secretary**) submits that the statutory functions and powers of a coroner stem from the particular death being investigated, and that the circumstances that are contemplated by s 67(1)(c) of the Act are those that are sufficiently proximate and causally relevant to that death. The Secretary also emphasises that comments and recommendations must be in respect of matters connected with the death being investigated. Referring to particular topics within the draft scope, the Secretary submits that certain aspects stray beyond the coroner's jurisdiction because they are not sufficiently connected to Clinton's passing.⁹
21. The Secretary submits that crafting a scope that spans Clinton's most recent period in custody, which is a period of approximately two years and eight months, will risk traversing aspects of healthcare that bear no material connection to Clinton's passing, and that '*the more distant in*

⁶ Submissions of Family, 8 December 2023, para 32; Supplementary Submissions of Family, 5 April 2024, para 35.

⁷ Namely, '(a) the continuity of health care received by Clinton between the community and the custodial setting during his most recent period of incarceration; (b) assessment of the suitability of the physical conditions (including placement in separation) at the various prisons given his Aboriginality, health issues and disability; (c) assessment of Clinton's medication regime; (d) the adequacy of health providers' response to Clinton's reporting of symptoms on the day of his passing; and (e) the adequacy of healthcare provided to Clinton in the specific context of his multiple co-morbidities and disabilities' – *see* Submissions of Family, 8 December 2023, para 4.

⁸ Submissions of Family, 10 February 2025, paras 2-3.

⁹ Submissions of the Secretary, 12 December 2023, paras 7-9, 20-22, 24-33.

*time treatment is from his passing, the less likely it is to be sufficiently connected to it, as the effect of that health care would likely diminish over time or be superseded by later treatment’.*¹⁰

22. The Secretary submits that, in circumstances in which the cause of Clinton’s passing is currently unascertained, and in forecasting the possibilities in relation to the cause of passing, there needs to be a distinction made between the matters that might have a possible causal link to the passing and those matters that cannot rationally be said to have a causal link with the passing.¹¹

Correct Care Australasia

23. Correct Care Australasia submits that the scope of the coronial investigation into the cause of Clinton’s passing must be confined to matters which have a sufficient connection with the death. Specifically, the pathological findings as to the cause of Clinton’s passing should inform the scope of the investigation and inquest, being Dr Beer’s conclusion that the cause of passing is ‘*unascertained*’. It is submitted that ‘*absent knowing the cause of [Clinton’s] passing, it will not be possible to determine what might have prevented it*’,¹² and that this should circumscribe the proceedings accordingly.
24. Correct Care Australasia submits that aspects of the draft scope are too broad and lack the required connection to Clinton’s passing. It is submitted that other inquiries and inquests have traversed certain of the issues in the draft scope and that these issues ought not to be further ventilated in the present proceedings.
25. Finally, in order to ensure that the topics traversed at inquest have a sufficient connection with the passing, Correct Care Australasia submits that the appropriate period of time for investigation of healthcare prior to the passing is 22 August 2022, being the date of Mr Austin’s transfer to Loddon Prison, to 11 September 2022, the date of his passing.¹³

Counsel Assisting the Coroner

26. At the Directions Hearing on 22 December 2023, Counsel Assisting the Coroner, Mr Tim Farhall (**Mr Farhall**), addressed the Court on the draft scope, relevant caselaw and the initial submissions of Interested Parties. Mr Farhall noted that, under s 67 of the Act, the coroner is required to make findings, if possible, as to the identity, cause, and circumstances of a death they are investigating. He noted that in the case of *Priest v West & Anor* [2012] VSCA 327 (*Priest v*

¹⁰ Submissions of the Secretary, 12 December 2023, para 25.

¹¹ Transcript of Directions Hearing, 22 December 2023, p 22 lines 7-14.

¹² Correct Care Australasia Submissions, 12 December 2023, paras 3-4.

¹³ Supplementary Submissions of Correct Care Australasia, 4 April 2024, paras 2 and 4.

West), the Court of Appeal relevantly held that ‘the words “if possible” in s 67 make it obligatory, in our view, for the Coroner investigating a death to pursue all reasonable lines of inquiry’.¹⁴

27. Mr Farhall submitted that, while the coroner is not entitled to engage in a free-ranging enquiry that is untethered from the cause and the circumstances of Clinton’s passing, the coroner is required to fulfil the statutory functions laid down in the Act in accordance with the guidance given by the Court of Appeal in *Priest v West*.
28. Mr Farhall noted in relation to the cause of Clinton’s passing being currently unascertained that, rather than reducing the permissible scope of my enquiry, ‘if anything [it] expands the scope of matters that Your Honour’s required to investigate rather than narrows it’. Mr Farhall argued that to do otherwise would be inconsistent with the tasks mandated by section 67(1) of the Act.¹⁵
29. Further, referring to the case of *Thales Australia Limited v The Coroners Court of Victoria & Anor* [2011] VSC 133 (*Thales*), Mr Farhall further submitted that Justice Beach emphatically rejected a submission in that case that if a coroner could not find a cause of death, the coroner had no power to comment or make recommendations, holding:

*‘There may be many cases where the cause of death is uncertain, but that the circumstances in which the death occurred give rise to significant and substantial matters relating to public health and safety or the administration of justice. Neither the text of s 67 of the Coroners Act, nor the Act when read as a whole, limit the power of the Coroner to comment on such matters provided they are “connected with the death” which is being investigated’.*¹⁶

30. Mr Farhall submitted that the appropriate temporal scope of the Court’s inquiry is the period of time Clinton was most recently in custody, as identified in the draft scope, being 31 January 2020 until his passing on 11 September 2022. He submitted that there was ‘a real risk that cutting off the investigation at some arbitrary time closer to Clinton’s passing will inhibit or limit Your Honour’s ability to fulfill your statutory function[s]’.¹⁷
31. Mr Farhall concluded that, despite the fact that there are other relevant inquiries and inquests that have touched upon the issues captured in the draft scope, and while the Court ought properly to take care to avoid duplication of investigations, there is still a requirement to make findings

¹⁴ Transcript of Directions Hearing 22 December 2023, p 25, line 24 to p 26 line 4, referring to *Priest v West* at para 4.

¹⁵ Transcript of Directions Hearing 22 December 2023, p 28 lines 1-21.

¹⁶ Transcript of Directions Hearing 22 December 2023, p 29 lines 4-19, referring to *Thales* at para 71.

¹⁷ Transcript of Directions Hearing 22 December 2023, p 30 lines 6-9 and 16-26.

as to the cause and circumstances of Clinton’s passing. To exclude matters from the scope, as advocated by the Secretary and Correct Care Australasia, prior to receipt of further evidence, would be premature.¹⁸

FACTORS RELEVANT TO SCOPE

32. As noted by then-Deputy State Coroner Caitlin English in the ‘*Ruling on application regarding the scope of the Inquest*’ in the Inquest into the passing of Aunty Tanya Day (**Ruling on Scope in Aunty Tanya Day Inquest**), the purpose of defining a scope to the inquiry of the Inquest is to focus the court proceeding on the relevant issues in dispute and to provide a logical structure to evidence elicited at the Inquest.¹⁹
33. Her Honour noted that the scope of an Inquest is determined by three main issues: (i) the coroner’s statutory findings, namely findings as to identity, cause of death and circumstances; (ii) the outer bounds of causation, beyond which any matter will be too remote to be investigated; and (iii) where there are matters of public health and safety, or the administration of justice, that the coroner should investigate.²⁰
34. The two main issues in dispute in relation to draft scope of Inquest in relation to Clinton’s passing are: (i) the appropriate timeframe in relation to which evidence can be heard at inquest and findings made, whether constituting the most recent period Clinton was in custody (31 January 2020 until 11 September 2022) or some narrower timeframe; and (ii) whether topics included in the scope, and their specified sub-strands, invite the consideration of matters beyond what is sufficiently proximate and causally relevant to Clinton’s passing. These issues are amplified, to some extent, by the fact that the cause of Clinton’s passing is currently unascertained.
35. It is well-established that there must be a causal link between the passing and the matter under investigation to bring the matter within the scope of the inquest. While coroners previously used a ‘common sense’ test of causation, limited by the principles of remoteness, the Act contains several provisions that indicate coroners may now make broader inquiries than those permitted under the previous legislation.
36. In this connection, in her Ruling on Scope in the Aunty Tanya Day Inquest, then-Deputy State Coroner English referred to the Preamble, sections 1(c), [8](f) as well as Parliamentary debates

¹⁸ Transcript of Directions Hearing 22 December 2023, p. 31 lines 5-16 and p. 32, lines 29-31.

¹⁹ Then-Deputy State Coroner Caitlin English, ‘*Ruling on Application Regarding the Scope of the Inquest*’ COR 2017 6424, dated 25 June 2010 para 50, available [here](#).

²⁰ *Ibid* para 61.

on the present Act, which her Honour noted to arguably expand the permissible scope of inquests by making comments and recommendations an integral part of the investigation or Inquest.²¹

37. Further, as noted by Coroner Jamieson in the Finding into Passing of Matthew Luttrell,²² the Act has significantly changed since the 1989 case of *Harmsworth* was decided, and which related to review of a decision on scope of an Inquest being conducted under the *Coroners Act 1985*. There was no explicit requirement under the 1985 Act to make a finding, where possible, as to circumstances in which a death occurred, as there is under the present Act, a point touched upon by Counsel Assisting at the Directions Hearing in relation to Clinton's passing on 22 December 2023.²³
38. Then-State Coroner Jennifer Coate in the Inquest into the death of Tyler Cassidy, referring to *Thales*, noted that the '*circumstances*' in which the death occurred is for the coroner to interpret in each case, guided by the scheme of the Act, with assistance from the Preamble and purpose provisions. Her Honour noted that the '*circumstances in which the death occurred*' is a '*moveable concept*', dependant on the nature of the apparent facts and the issues which arise from those facts.²⁴
39. Without moving into the impermissible territory of the roving Royal Commissioner,²⁵ a coroner may also have regard to the examination of systemic issues and problems that are identified in the course of an investigation as having contributed to a death or passing (such as within the prison system), particularly as they relate to the exercise of the powers of the State in relation to a death in custody or care.
40. Previously, the RCIADIC criticised coronial inquests into Aboriginal passings in custody as being too narrow, stating '*the examination of wider issues was rarely seen as relevant. The lack of inquiry into systems issues such as custodial practices and procedures, resulted in a lack of findings or recommendations designed to rectify failures in these systems*'.²⁶
41. Indeed, as a direct result of RCIADIC recommendations, in September 2020, State Coroner Judge Cain issued PD 6 of 2020 requiring that, when investigating the circumstances of the passing of an Aboriginal person in custody, the coroner should consider '*the quality of care,*

²¹ Ruling on Scope in Aunty Tanya Day Inquest, above n 19 at para 55.

²² Inquest into the passing of Matthew James Luttrell, COR 2018 005721, 16 May 2023 at para 243, available [here](#).

²³ Transcript of Directions Hearing 22 December 2023, p 26 lines 21-27.

²⁴ Inquest into the death of Tyler Cassidy, COR 2008 5542, 23 November 2011, at paras 31-32, available [here](#).

²⁵ See in this regard *R v Doogan; Ex Parte Lucas-Smith* [2005] ACTSC 74 at para 29.

²⁶ Recommendation 4.5.8, referred to in Ruling on Scope in Aunty Tanya Day Inquest, above n 19, at para 60.

treatment and supervision of the deceased’ prior to passing,²⁷ as a means by which to ensure, *inter alia*, that ongoing systems issues are identified by way of appropriate findings, comments and recommendations.

42. Notably, the criticism of an overly narrow approach to coronial inquests into Aboriginal passings has found its way into more recent commentary, over thirty years after RCIADIC, in the context of passings in custody that are due to natural causes. The report of the Victorian Ombudsman, *‘Investigation into healthcare provision for Aboriginal people in Victorian prisons’*, dated March 2024, includes the concern of the Aboriginal Justice Caucus (AJC) regarding a narrow approach to investigations into Aboriginal passings in custody that are due to ‘natural causes’ and which fail to capture relevant systems issues that may have led to a decline in the deceased’s health:

‘It is clearly unnatural for young Aboriginal men and women in their 20s, 30s and 40s to die in custody from medical conditions that are preventable, and ... which ... could have been managed and addressed during their time in custody’. AJC stated that referring purely to clinical causes prevents us understanding what other health factors may have been present and contributing to the death of an Aboriginal person in custody.²⁸

43. I consider that this has some resonance in the context of the coronial investigation into Clinton’s passing, given he was an Aboriginal man of just 38 years of age when he passed. The fact that his passing appears to be due to ‘natural causes’ ought not, in my view, to reduce the possibility of investigating any systems issues that may be causally connected with his passing.

RULING

44. Over a year has elapsed since the Directions Hearing was convened to hear submissions on the draft scope. Since that time, a number of additional statements, expert reports and evidentiary materials have been received by the Court and have been included within the coronial brief. Further material will yet be received prior to the start of inquest.
45. In particular, I have received an expert report from Dr Katherine Moss, Forensic Psychiatrist, dated 30 November 2024, providing an opinion in relation to the adequacy of Clinton’s mental health treatment while in custody from 31 January 2020 until 11 September 2022. I have also received an expert report from General Practitioner Dr Kirsty Jennings, a proud Biripi woman

²⁷ See above n 3.

²⁸ Victorian Ombudsman, *‘Investigation into healthcare provision for Aboriginal people in Victorian prisons’*, March 2024 p 138, available [here](#).

from the Mid North Coast of NSW, dated 21 December 2024, providing an opinion on the adequacy of the clinical and cultural care provided to Clinton during the same period in custody (together, ‘**Expert Reports**’).²⁹

46. The Court has also received, *inter alia*, further statements from witnesses from Corrections Victoria, including in relation to Clinton’s parole application and cultural programs in prisons, as well as a witness from the National Disability Support Agency, and a witness from Gallawah Aged Care and Disability Services.

Management of Clinton’s parole application

47. Having provided Interested Parties with a further limited period during which to be heard on the issue of scope, as had been requested at the Directions Hearing on 22 December 2023, I consider that the issue of Clinton’s parole application (referable to draft scope item iv) has been comprehensively addressed through documentary evidence, including the statements of Jenny Roberts, Executive Director, Community Operations and Parole, Justice Services Division, Corrections and Justice Services, dated 18 July 2023 and 16 February 2024, as well as the ‘Review into the passing of Mr Clinton Austin at Loddon Prison on 11 September 2022’ (**JARO Report**) dated 15 April 2024, and concomitant update on implementation of JARO recommendations provided on 3 February 2025.
48. Examining the adequacy of the management of Clinton’s parole application in these proceedings was and is a matter of great importance to Clinton’s family; this much is evident from the submissions filed on behalf of the Family on this topic. However, in circumstances in which Corrections Victoria has conceded certain failures relating to management of Clinton’s parole application, and where relevant systems improvements have been identified, I do not consider there is a need to call *viva voce* evidence on this topic and I have determined that this topic will not form part of the final scope of inquest.
49. Having so ruled, I note that I have drawn a distinction between the scope of inquest (governing the topics upon which *viva voce* evidence will be called during these in-court proceedings), and the scope of my investigation more broadly. While I do not intend to call witnesses to give *viva voce* evidence on the issue of Clinton’s parole, I consider that it remains an appropriate topic for me to make findings in relation to, pursuant to section 67(1)(c) of the Act, and upon which submissions can be made by Interested Parties following inquest. This of course includes

²⁹ I am also exploring the need for any further expert evidence to assist my task of making findings under section 67(1) of the Act.

Clinton's Family, who will be afforded an opportunity to be heard on an issue they have identified as important, even where it is not part of the scope of *viva voce* evidence.

50. For clarity, to the extent that the issue of parole intersects with another topic that remains within scope (such as provision of disability supports), it will still properly be within the scope of inquest.

Timeframe applicable to scope

51. Having considered the submissions made by Interested Parties, I determine that the timeframe applicable to the scope remains to be the full period of time Clinton was most recently in custody, being 31 January 2020 until 11 September 2022. I concur with Counsel Assisting that, if narrowed to any other period, there is '*a real risk that cutting off the investigation at some arbitrary time closer to Clinton's passing will inhibit or limit [my] ability to fulfill [my] statutory function[s]*'.³⁰
52. Specifically, I am not persuaded by the submissions urging me to narrow the time period applicable to the scope, because: (i) the evidence received in the Expert Reports, JARO Report and other coronial materials indicates that Clinton faced health issues that evolved slowly over time and that his transition between prisons potentially impacted the continuity of healthcare and supports he received, which militates towards an investigation of the full period he spent in custody; (ii) the submission that I confine the investigation to a shorter period of time in custody on the basis that '*the more distant in time treatment is from his passing, the less likely it is to be sufficiently connected to it, as the effect of that health care would likely diminish over time or be superseded by later treatment*' lacks evidential basis;³¹ and (iii) of the requirement of PD 6 of 2020 to investigate '*the quality of care, treatment and supervision of the deceased*' prior to passing,³² which, in the context of evidence that Clinton faced slowly-evolving health issues, militates towards the scope encapsulating Clinton's entire most recent period in custody.
53. That does not mean that evidence will be permitted at Inquest on issues that, while within the temporal scope, are clearly irrelevant to Clinton's passing (for example, the management by healthcare providers of any skin conditions faced by Clinton, to take an example proffered on behalf of the Secretary, to the extent that these would not have any material connection to Clinton's passing). It simply means that relevant matters arising during the full final period in

³⁰ Transcript of Directions Hearing 22 December 2023, p 30 lines 6-9 and 16-26.

³¹ See in this regard Submissions of the Secretary, 12 December 2023 at [26].

³² See above n 3.

custody (for example, relating to healthcare or disability supports) may be the subject of evidence at Inquest. The evidence will ultimately be assessed in light of the coronial standard of proof, the balance of probabilities, in the usual manner.

54. In relation to topics in the scope, I consider that the investigation of the issues identified in the scope at Appendix B (which include topics on cause of passing, access to healthcare (inclusive of the cultural dimensions of this for Clinton as an Aboriginal man), access to disability supports, prison transfers, relevant policies, procedures and any prevention opportunities) sit comfortably within the limits of my powers of investigation under the Act. Such issues have potential *prima facie* relevance to the statutory findings I am required to make as to the cause and circumstances of Clinton's passing, particularly where I am required by PD 6 of 2020 to consider '*the quality of care, treatment and supervision of the deceased*' prior to passing.³³
55. I am also cognisant of the concern raised by Counsel Assisting that I should refrain from prematurely delimiting the scope of my inquiry prior to the Inquest being convened in circumstances in which Clinton's cause of passing is yet unascertained. To this end, I am persuaded that an unascertained cause of passing, rather than narrowing the permissible scope of my enquiry, '*if anything expands the scope of matters that [I am] required to investigate*'.³⁴ Mr Farhall argued, and I agree, that to do otherwise would be inconsistent with the tasks mandated by section 67(1) of the Act, given the very clear guidance of the Court of Appeal in *Priest v West*.

Application of Charter and examination of systemic issues

56. Finally, I have considered further the extensive and useful submissions put forward on behalf of Clinton's Family and on behalf of the Secretary as to the application of the Charter. The Family has submitted that, for the Court to uphold its duties under s 67 of the Act consistently with the Charter, the scope of the inquest ought to encompass consideration of both the immediate cause of Clinton's death, as well as the potential systemic causes.³⁵
57. I have determined that framing the scope to allow consideration of whether there were any systemic issues in prison that may have played a causal role in Clinton's passing, through the inclusion of the topics at Appendix B, is compatible with the requirement in section 32 of the Charter that section 67 of the Act be interpreted in a manner consistent with human rights.

³³ See above n 3.

³⁴ Transcript of Directions Hearing 22 December 2023, p 28 lines 7-10.

³⁵ Submissions of Family, 8 December 2023, para 32; Supplementary Submissions of Family, 5 April 2024, para 35.

58. This approach is further consistent with the RCIADIC itself, the Court’s recognition of RCIADIC recommendations through PD 6 of 2020, and more recent enquiries that have followed (including those of the Victorian Ombudsman referred to above) that support the investigation of systemic issues in coronial inquests into Aboriginal passings in custody, even where those passing appear to have been due to natural causes.
59. Finally, I consider this approach to be central to the Court’s prevention functions which are enshrined in the Act itself.

Additions to the scope

60. I have carefully considered the Family’s request for additional scope items to be included, and have determined that, as foreshadowed in the Family’s own submissions, the existing scope already adequately captures the issues identified. However, for completeness, the words ‘*as an Aboriginal man*’ have been added to scope item number 2 to ensure that references to culturally appropriate care and treatment are clearly referable to the fact that Clinton was a proud Aboriginal man.³⁶

DETERMINATION

61. I determine to set the final scope of the Inquest into the passing of Clinton Austin as contained at **Appendix B**.
62. I direct that a copy of this ruling be distributed to Interested Parties and published on the Coroners Court website in accordance with the *Coroners Court Rules 2019*.

Signature:



Ingrid Giles

Coroner

Date: 17 February 2025



³⁶ For completeness, I note that the word ‘*implemented*’ under ‘Policies and Procedures’ has been amended to ‘*adhered to*’, and the words ‘*(and any other)*’ have been added at the end of sub-paragraph b) of ‘Disability Supports’.

APPENDIX A

DRAFT WORKING SCOPE OF INVESTIGATION

i. Cause of passing

1. The cause of Mr Austin's passing, including identification of contributory factors;

ii. Health care provision

2. The adequacy of assessment, treatment, care, and management of Mr Austin's health from a clinical and cultural perspective from his admission on 31 January 2020 until 11 September 2022 (his most recent period of custody), encompassing any COVID-19 impacts, including:

- a) Mr Austin's access to culturally appropriate care and treatment;
- b) The management, provision, accessibility, and adequacy of health care by primary, secondary, and tertiary health care providers, prison operators and Corrections Victoria in relation to Mr Austin's:
 - i. Mental health;*
 - ii. Physical health;*
 - iii. Weight management, exercise, and nutrition;*
 - iv. History of illicit drug use; and*
 - v. Ability to access appointments.*
- c) Mr Austin's access to health care immediately prior to his passing on 11 September 2022.

iii. Disability supports

3. The adequacy of the support, care and management of Mr Austin's borderline intellectual functioning and acquired brain injury during his most recent period of custody, including:
 - a) Whether Mr Austin's support needs were appropriately addressed; and
 - b) Mr Austin's access to services and supports under his NDIS plan.

iv. Parole application

4. The management of Mr Austin's application for parole in January 2021, including;
 - a) Supports provided to assist Mr Austin to pursue parole;
 - b) The progression and management of Mr Austin's application for parole; and
 - c) The adequacy of Corrections Victoria and internal prison systems and processes to support the timely processing of Mr Austin's parole application.

v. Prison movements

5. The movement of Mr Austin across and within different Victorian prisons during his most recent period of custody, including:
 - a) Continuity of health and disability service provision;
 - b) Assessment of the suitability of the physical conditions at the various prisons given his Aboriginality, health issues and disability; and
 - c) Access to family and friends including physical visits and telephone access.

vi. Policies and procedures

6. The extent to which current policies and procedures in relation to items 1 to 5 above were implemented in relation to Mr Austin's most recent period in custody; and

vii. Prevention opportunities

7. Identification of any further prevention opportunities or recommendations.

December 2023

APPENDIX B

FINAL SCOPE OF INQUEST

i. Cause of passing

1. The cause of Mr Austin's passing, including identification of contributory factors;

ii. Health care provision

2. The adequacy of assessment, treatment, care, and management of Mr Austin's health from a clinical and cultural perspective from his admission on 31 January 2020 until 11 September 2022 (his most recent period of custody), encompassing any COVID-19 impacts, including:

- a) Mr Austin's access to culturally appropriate care and treatment as an Aboriginal man;

- b) The management, provision, accessibility, and adequacy of health care by primary, secondary, and tertiary health care providers, prison operators and Corrections Victoria in relation to Mr Austin's:

- i. Mental health;*
- ii. Physical health;*
- iii. Weight management, exercise, and nutrition;*
- iv. History of illicit drug use; and*
- v. Ability to access appointments.*

- c) Mr Austin's access to health care immediately prior to his passing on 11 September 2022.

iii. Disability supports

3. The adequacy of the support, care and management of Mr Austin's borderline intellectual functioning and acquired brain injury during his most recent period of custody, including:
 - a) Whether Mr Austin's support needs were appropriately addressed; and
 - b) Mr Austin's access to services and supports under his NDIS (and any other) plan.

iv. Prison movements

4. The movement of Mr Austin across and within different Victorian prisons during his most recent period of custody, including:
 - a) Continuity of health and disability service provision;
 - b) Assessment of the suitability of the physical conditions at the various prisons given his Aboriginality, health issues and disability; and
 - c) Access to family and friends including physical visits and telephone access.

v. Policies and procedures

5. The extent to which current policies and procedures in relation to items 1 to 5 above were adhered to in relation to Mr Austin's most recent period in custody; and

vi. Prevention opportunities

6. Identification of any further prevention opportunities or recommendations.