



## CORONERS COURT OF NEW SOUTH WALES

<b>Inquest:</b>	Inquest into the death of Muhammad Hafizuddin Bin Zaini
<b>Hearing date:</b>	20 November 2023, 27 November 2023 to 29 November 2023, 11 December 2023 to 14 December 2023
<b>Date of findings:</b>	6 March 2025
<b>Place of findings:</b>	NSW Coroners Court - Lidcombe
<b>Findings of:</b>	Magistrate Elizabeth Ryan, Deputy State Coroner
<b>Catchwords:</b>	CORONIAL LAW – death of person in immigration detention – self-inflicted intentional death – was mental health care adequate – were there adequate communications regarding repatriation to home country – were there adequate measures to reduce risk of hanging.
<b>File number:</b>	2020/352738
<b>Representation:</b>	<p>Counsel Assisting the inquest: A Casselden SC with M Dalla-Pozza and S Danne of Counsel, i/b NSW Crown Solicitor</p> <p>The Department of Home Affairs; Australian Border Force: C Magee of Counsel with L Hutchinson of Counsel, i/b Australian Government Solicitors</p> <p>Serco Australia Pty Ltd: J Fernon SC with P Barry of Counsel, i/b K&amp;L Gates</p> <p>International Health and Medical Services: K Nomchong SC with M Shume of Counsel and K Holcombe of Counsel, i/b Moray &amp; Agnew</p> <p>Dr Lienert: S Barnes of Counsel i/b Avant Law</p>

<p><b>Findings:</b></p>	<p><b>Identity</b> The person who died is Muhammad Hafizuddin Bin Zaini</p> <p><b>Date of death:</b> Muhammad Hafizuddin Bin Zaini died on 12 December 2020</p> <p><b>Place of death:</b> Muhammad Hafizuddin Bin Zaini died at Villawood Immigration Detention Centre,</p> <p><b>Cause of death:</b> The cause of Muhammad Hafizuddin Bin Zaini's death is hanging.</p> <p><b>Manner of death:</b> Muhammad Hafizuddin Bin Zaini died as a result of an intentional self-inflicted act, performed with the intention of taking his own life, while he was in immigration detention.</p>
<p><b>Recommendations:</b></p>	<ol style="list-style-type: none"> <li>1. That the Commonwealth review the role of a detainee's Status Resolution Officer under the 2023 Procedural Instruction with a view to considering whether there is an opportunity to improve the process concerning: <ol style="list-style-type: none"> <li>(a) the manner in which news or messages which, it might reasonably be expected, will be distressing to a detainee are communicated to that detainee; and</li> <li>(b) the support provided to a detainee at a time when that detainee is delivered news or messages referred to in paragraph (a) above.</li> </ol> </li> <li>2. That as a matter of priority, the Commonwealth: <ol style="list-style-type: none"> <li>(a) extend its 'ligature review' to all accommodation and bathroom areas within the VIDC as part of an Administrative Capital Works project; and</li> <li>(b) commit to taking reasonable steps to remove ligature points identified in the ligature review.</li> </ol> </li> </ol>

**Non publication orders** prohibiting publication of certain evidence pursuant to section 74(1)(b) of the *Coroners Act 2009* [the Act] have been made in this inquest. A copy of these orders, and corresponding ones pursuant to section 65(4) of the Act, can be found on the Registry file.

Section 81(1) of the Coroners Act 2009 (NSW) [the Act] requires that when an inquest is held, the Coroner must record in writing his or her findings as to various aspects of the death. These are the findings of an inquest into the death of Muhammad Hafizuddin Bin Zaini.

## **Introduction**

1. On 12 December 2020, Muhammad Hafizuddin Bin Zaini, aged 29 years, was found deceased in his room at Villawood Immigration Detention Centre.
2. At the time of his death he was in lawful detention and his health care was therefore in the hands of the State. An inquest into the circumstances of his death is mandatory pursuant to sections 23 and 27 of the Act.

## **The role of the Coroner**

3. The Coroner must make findings as to the date and place of a person's death, and the cause and manner of death.
4. In addition, pursuant to section 82 of the Act the Coroner may make recommendations in relation to matters which have the capacity to improve public health and safety in the future, arising out of the death in question.

## **Mr Bin Zaini's life**

5. Muhammad Hafizuddin Bin Zaini was born in Malaysia on 18 August 1991. He arrived in Australia on 29 January 2016 as the holder of a tourist visa, and he lived in Victoria for most of the time. One of his four siblings, a brother, was already living in South Australia.
6. On 29 April 2016, Mr Bin Zaini's tourist visa expired and he became an unlawful non-citizen. On 30 August 2016, he lodged an application for a protection visa. He was in the meantime granted a bridging visa. Mr Bin Zaini's application for a protection visa was refused on 24 January 2017, and his bridging visa expired four weeks later. From that time, he was an unlawful non-citizen under section 189(1) of the *Migration Act 1958 (Cth)*.
7. In April and June 2020, Mr Bin Zaini was convicted of drug and theft offences in Victoria. He received non-custodial sentences for these offences.
8. During the COVID-19 pandemic, border restrictions were placed on travel into South Australia from Victoria. In July 2020, Mr Bin Zaini crossed this border on foot. On 16 July 2020, Mr Bin Zaini was detained by officers of the South Australia Police Force. He was then transferred into the custody of the Australian Border

Force and moved to an alternative place of detention in Adelaide, where he completed 14 days of hotel quarantine. Between 31 July and 7 September 2020, Mr Bin Zaini was detained in Adelaide Immigration Transit Accommodation.

9. While Mr Bin Zaini was in this accommodation, he was agitated and irritable and was referred for a consultation with psychiatrist Dr Roman Onilov to review his mental health. Although Mr Bin Zaini denied command hallucinations, suicidal ideation or mood problems, he described to Dr Onilov a history of substance use. In addition, in response to specific questions he admitted auditory hallucinations including hearing voices which caused him to believe that he was chosen by God. Dr Onilov opined that Mr Bin Zaini had vague paranoid ideation and auditory hallucinations. His impression was recorded as “[*l*]ively schizophrenia on background of amphetamine, THC, heroin abuse”.
10. Dr Onilov recommended that Mr Bin Zaini continue on the medication Olanzapine, that the dose could be increased to 7.5-10mg at night, and that Mr Bin Zaini’s mental state should be monitored. Dr Onilov also recorded that Mr Bin Zaini “*wants to return to Malaysia*”.
11. Mr Bin Zaini had been expressing the desire to return to Malaysia since he first entered police custody on 16 July 2020. He repeated this desire upon his transfer into Australian Border Force detention on 17 July 2020, and thereafter throughout the period of his detention. Adding to his distress and agitation was the news that his mother in Malaysia was unwell. But as will be seen, Mr Bin Zaini was not able to return to Malaysia, and he remained in immigration detention until his death on 12 December 2020.
12. On 7 September 2020 Mr Bin Zaini was transferred to Villawood Immigration Detention Centre [VIDC] in Sydney.
13. While he was detained in VIDC Mr Bin Zaini received treatment from mental health staff. Tragically, on 12 December 2020 he died as a result of hanging.
14. Mr Bin Zaini’s family did not participate in this inquest.

### **The issues examined in the inquest**

15. Because of the evidence that Mr Bin Zaini experienced mental illness, and due to the manner of his death by suicide, the primary issues at the inquest concerned the mental health care which he received while he was in immigration detention.
16. The issues examined were:

1. Was the mental health care which Mr Bin Zaini received at VIDC of an adequate standard?
2. Did VIDC have in place adequate measures for ensuring that detainees complied with medication and attended scheduled clinical appointments?
3. Were adequate steps taken to communicate with Mr Bin Zaini in connection with his repatriation to Malaysia?
4. What steps have been taken within VIDC to remove or reduce the risk of detainees hanging themselves?

### **Overview of VIDC's administrative arrangements**

17. Because of the nature of the issues examined at the inquest, the court heard a large amount of evidence about the arrangements in place at VIDC for the management and care of its detainees, and the mental health services that were available to them.
18. The general administrative arrangements which underpin the operation of VIDC were described in paragraphs 12 to 22 of Counsel Assisting's closing submissions. The interested parties did not dispute the content of these passages. I have therefore borrowed liberally from them in giving the following outline.
19. The Commonwealth of Australia has overall responsibility for managing Australia's Immigration Detention Network. The Commonwealth discharges this responsibility through the Australian Border Force, which operates independently within the Department of Home Affairs [the Department].
20. The nature of immigration detention is administrative and not punitive. Because of this, detainees have a higher degree of autonomy than persons who are in corrective detention. Nevertheless, a detainee is not free to leave detention and must comply with directions given by detention officers.
21. Pursuant to a contract with the Department, Serco Australia Pty Ltd [Serco] as the Facilities and Detainee Service Provider is responsible for managing and operating Australia's detention facilities, including VIDC. Serco commenced providing these services in 2009.
22. Under its contract with the Department, Serco is responsible for providing garrison, facilities management, security, and transport services. Serco is also obliged to provide a range of welfare services to VIDC detainees which address their individual needs, and to develop and provide services and activities which

contribute to their welfare. The contract requires that Serco staff take an approach which emphasises communication and interaction with detainees.

23. Serco employs detention officers to perform many of these services. Detention officers at VIDC are responsible for maintaining security and stability and, although they are not medical officers, to attend to the welfare of detainees.

24. Serco also employs Welfare Officers to provide detainees with services and activities designed to promote their welfare. Like detention officers, they are not medically trained.

25. At the time of Mr Bin Zaini's death, International Health and Medical Services Pty Ltd [IHMS] as the Detainee Health Service Provider was responsible under contract for providing medical services to immigration detainees. At the time of the inquest, IHMS had not sought a renewal of its contract to provide health services to VIDC. IHMS is no longer providing services within Australia's onshore immigration detention network.

26. At the time of the inquest, IHMS's contract with the Department required it to provide detainees with quality health care in a cost effective manner, and in accordance with the Department's policies and procedures. IHMS's primary and mental health services were to include education and prevention programs, as well as giving medication to detainees and referring them to specialists as needed. Periodic mental health screening, assessment and treatment are required.

27. The closing submissions on behalf of IHMS rightly emphasised the legal framework within which clinicians provided detainees with health care. IHMS noted that in common with clinicians who care for patients in the community, VIDC health staff were legally required to respect the autonomy of their patients. Because of this, in general IHMS staff could not compel detainees to attend medical appointments or to comply with their medication regimes.

28. I accept IHMS's submissions that:

*'... the question of the adequacy of measures that are in place at VIDC for encouraging compliance (which is all IHMS can legally do unless a patient is under the Mental Health Act) must be viewed in that framework.'*

### **The VIDC as at 2020**

29. At the inquest, DT, Serco employee and former general manager of VIDC, told the court that between 2019 and 2022 there were on average between 470 and 500 detainees at VIDC. They were accommodated in nine compounds. Each compound had its own kitchenette, common area, access to computers, and

recreational space for activities. Some areas also had soccer fields and volleyball courts.

30. Detainees had access to a community centre which had a shop, café, hairdresser, basketball court, library, gym, computer room, music room, dining hall and sitting areas.
31. There was a medical clinic on the VIDC site operated by IHMS. It provided healthcare services in relation to primary healthcare, drug and alcohol and mental health. Services included administering regular medications to detainees and providing psychological support through the Psychological Support Program [PSP]. The clinic was staffed from 7:30am to 8:30pm daily.
32. DT also gave the following evidence about the changing demographic profile of VIDC detainees. In my view this evidence has very important implications for the future delivery of health and welfare services to VIDC detainees.
33. In 2019, 5% of VIDC's detainee population had been sent there from a corrective services facility. They had been convicted of offences and had served a term of imprisonment of twelve months or more in correctional centres. Because of this, they had had their visas cancelled under the *Migration Act 1958*.
34. But at the inquest, DT advised that this cohort now comprised approximately 75% to 80% of the VIDC population. It was beyond dispute that there is now widespread illicit drug use within the VIDC, as well as a significant level of mental illness. DT told the court that this has made for a more vulnerable cohort, with a greatly increased need for health and welfare services.
35. Notably, funding for any increased health services at VIDC must be approved by the Department of Home Affairs. This is achieved either through contractual variation or the making of an application for additional funding, known as an Additional Services Request.

### **Mr Bin Zaini's request for removal from Australia**

36. In this account, and the response which Mr Bin Zaini received from immigration authorities, I have drawn largely from the Opening Submissions of Counsel Assisting. I do not understand there to be any dispute about the facts which I set out below.
37. Mr Bin Zaini completed a Request for Removal from Australia form on 22 July 2020. As a result, he was required to be removed from Australia 'as soon as reasonably practicable' by virtue of s 198(1) of the *Migration Act 1958 (Cth)*.

38. As highlighted in the opening submissions of Counsel Assisting, it must be remembered that at the time these events were occurring, Australia had closed its international borders because of the global COVID pandemic. On 15 March 2020, the Australian Border Force announced that all escorted removals from Australia would be cancelled until further notice.
39. The court heard evidence that for detainees in Mr Bin Zaini's situation, the Australian Border Force allocates a Status Resolution Officer, who is responsible for assisting the detainees with any immigration matters. Status Resolution Officers are required to make contact with a detainee at least once every three months, and/or when an immigration milestone is reached.
40. Detainees are also allocated a Removal Officer, who is expected to communicate with the detainee as to how their removal arrangements are progressing, and to provide the detainee with an opportunity to contribute to the planning for their removal. The Court heard that there is an expectation that the Removal Officer will engage with a detainee on a monthly basis, but may do so more frequently where circumstances require.
41. In early August 2020, Mr Bin Zaini's case was allocated to a Removal Officer within the Australian Border Force. On 4 August, the Removal Officer received an email from a colleague advising that Mr Bin Zaini had '*asked how soon he can go home as he is really keen to see his mum*'. The colleague said further that she had told Mr Bin Zaini that his Removal Officer was "*working on it*" and that she would "*let him know if/when*".
42. On 13 August 2020, the Removal Officer recorded the possibility that Mr Bin Zaini would be able to depart Australia on 5 September 2020 on a Malaysian Airlines flight. It appears however that this was not a definite date and was entered because the Australian Border Force information platforms required a departure date to be entered.
43. Unfortunately, however it appears that Mr Bin Zaini had at least some awareness that 5 September was being canvassed as a potential date for his removal to Malaysia.
44. On 16 August 2020, an IHMS officer documented that Mr Bin Zaini was fit to fly but would need to be escorted by a mental health nurse on any flight. This was largely due to the possibility that he would require medication while on the flight.
45. Three days later Mr Bin Zaini received a psychiatric assessment via AVL, performed by Dr Jillian Spencer, Psychiatrist and Mental Health Medical Director of IHMS. Dr Spencer did not find that Mr Bin Zaini was suffering any formal thought disorder except when he was discussing religious ideas. She formed the



impression that he had a resolving substance-induced psychotic disorder, and she recorded that drug abstinence on an ongoing basis would assist his mental state.

46. Dr Spencer determined that Mr Bin Zaini was fit to travel without a medical escort, because in her opinion his mental health symptoms were unlikely to adversely affect his behaviour while on the flight. Dr Spencer also noted that Mr Bin Zaini was frustrated by the delays in being returning to Malaysia and felt that people had lied to him.

47. By 20 August 2020, Mr Bin Zaini's Removal Officer had obtained an itinerary for his return to Malaysia. The following day she completed an Aviation Assessment for Mr Bin Zaini. This assessment considered whether Mr Bin Zaini was suitable to fly and whether he required an escort to do so. Amongst other things, this involved assessing whether he was a '*dangerous person*' within the meaning of the *Aviation Transport Security Regulations 2005 (Cth)*. If Mr Bin Zaini was assessed to be a dangerous person, he would be required to be escorted by at least two persons. If he was not, the Regulations allowed for the possibility, if the Immigration Department and the Operator of the prescribed air service agreed, of him travelling unescorted.

48. The Aviation Assessment concluded that Mr Bin Zaini was a '*dangerous person*' on the grounds that he had been:

*' .. charged with several incidents surrounding minor assault, aggressive and abusive behaviour and property damage ... Prior to being detained Mr [Bin]Zaini was charged on 9/06/2020 by VICPOL [Victorian Police] with various offences which included criminal charge (intent damage/destroy) possess cannabis att[empted] theft of a motor vehicle, dishone[est]/u[nlawful?] take in relation [to] stolen goods, theft of a motor vehicle commit indictable offence whilst on bail, possess controlled weapon without excuse, go equipped to steal/cheat, theft from a shop (shop steal) and possess stolen weapon without excuse'.*

49. On 24-25 August 2020, the Removal Officer reconsidered whether Mr Bin Zaini met the definition of a '*dangerous person*' for the purposes of the Regulations. She maintained the view that he required escorted travel, because of evidence that his mental health was at times unstable in ways which posed a risk of disruption to the flight. In her opinion, Mr Bin Zaini's risk on a flight could not be adequately mitigated without the use of security escorts.

50. Prior to completing both the 21 and 26 August Aviation Assessments for Mr Bin Zaini, the Removal Officer did not speak with Mr Bin Zaini.

51. On 27 August 2020 the Removal Officer sent the following email to Australian Border Force Removals on 27 August 2020:

*'...After completing aviation assessments I have considered that it is appropriate for Mr ZAINI to be escorted, and therefore due to COVID will not be progressing Mr ZAINI's removal at this stage.'*

52. The reason why Mr Bin Zaini's removal would not be progressed was that, as mentioned, on 15 March 2020 the Australian Border Force had directed that there would be no escorted removals from Australia until further notice.

53. According to Serco records, on 30 August 2020 Mr Bin Zaini asked a detention officer when he would be able to return to Malaysia. The detention officer told him they did not have that information. Mr Bin Zaini replied:

*'... roughly 20 days ago, I had a video call appointment with a psychologist and she advised me that I will be deported back to my country on September 5 2020, and now no one gives me an answer when I have informed my unwell mother about my departure date. If they do not deport me sometimes soon, I will run away from this place and I will then go back to my family.'*

54. The detention officer suggested to Mr Bin Zaini that he make a written request for answers, which advice Mr Bin Zaini '*happily accepted*'. Mr Bin Zaini apologised for what he had said about breaking out of the detention centre.

55. Mr Bin Zaini then submitted the following detainee request form:

*'I would like to know when I'm going back to my country because my mother is not well and healthy, And that [is] why I have to go back as soon as possible please. Thank you very much.  
I would like to talk to my case manager about it please.  
Thank you'.*

56. On 31 August 2020, Mr Bin Zaini expressed frustration to detention officers, threatening to destroy the centre and be violent if he was not removed. Mr Bin Zaini spoke of advice he had received from his psychologist that he would be removed on 5 September 2020. He added that '*everyone is bullshitting me*' and repeated that he just wanted to go home to see his family.

57. Also that day, Mr Bin Zaini rang his Status Resolution Officer. He told her his mother was sick, he needed to go home, and that he had been told that he was leaving on 5 September. The Status Removal Officer told Mr Bin Zaini that his Removal Officer would be in touch by the end of the week. Mr Bin Zaini is reported

to have become abusive and said that if he was not leaving, he would ‘*destroy the place*’.

58. On 3 September 2020, Mr Bin Zaini submitted a detainee request form asking to speak to his Status Resolution Officer. It was decided that Mr Bin Zaini had to be advised that his removal was not imminent and be told the reasons why.

59. Mr Bin Zaini’s Status Resolution Officer rang him on 4 September 2020. She told him that it was considered that he required an escort for his removal from Australia and that, due to Covid-19, escorted removals were not occurring, which meant that his removal could not go ahead at present. The Officer’s notes of the conversation record the following:

*‘...I reiterated that we will still continue to manage and progress his removal as we do not want him to remain in detention longer than he needs to. Mr Zaini kept saying that it should be easy to get escorts and I am not doing my job properly and that he would cause problems for everyone here and burn the place down. Mr Zaini kept asking for a date in which I was unable to give him. Throughout the conversation Mr Zaini was talking over me and was using profane language. I advised Mr Zaini I had no more information and he hung up with [on] me’.*

60. Mr Bin Zaini submitted request forms over the next days requesting to speak to his Status Resolution Officer and be given more information about his removal.

61. On 7 September 2020, Mr Bin Zaini was transferred to VIDC. He received a replacement Removal Officer, who carried out an interview with him. The new Removal Officer recorded telling Mr Bin Zaini that it was not known when flights would be available due to the Covid situation, but that Mr Bin Zaini could call her at any time for updates.

62. On 10 September 2020, Mr Bin Zaini’s case was allocated to a new Status Resolution Officer. She too interviewed him, recording that Mr Bin Zaini told her ‘*I want to go [back to Malaysia] ASAP my mother is not well*’.

63. From around 19 September to 10 November 2020, the new Status Resolution Officer was required to be away, and Mr Bin Zaini’s matter was allocated to another Status Resolution Officer. This Officer did not have any interaction with Mr Bin Zaini.

## **The events of 12 December 2020**

64. At VIDC Mr Bin Zaini was accommodated in a room which he shared with another detainee, Mr Nathan Papuni.
65. At 6.25am on 12 December 2020, a detention officer made a check on Mr Bin Zaini, and found him to be asleep in his bed. This was also the case at 1.45pm, when a second detention officer carried out another check on him.
66. At around 3.24pm Mr Papuni tried to enter the room which he shared with Mr Bin Zaini, but he found that the door had been locked from the inside. He sought the help of the second detention officer, who went with Mr Papuni to the room and unlocked the door.
67. Inside the room, Mr Papuni and the detention officer found Mr Bin Zaini hanging from the bathroom door. He had used a pair of jeans as a ligature.
68. The detention officer cut Mr Bin Zaini down and, together with another detention officer, began CPR. They were joined by a member of the Serco Emergency Response Team. IHMS staff arrived and took over the resuscitation efforts.
69. An ambulance was called at 3.31pm and a paramedic crew quickly arrived. The paramedics noted that Mr Bin Zaini was in asystolic rhythm, meaning that he was in cardiac arrest. When intensive care paramedics arrived shortly afterwards they continued the resuscitation efforts, then transported him to Liverpool Hospital.
70. Mr Bin Zaini was pronounced deceased at 4.43pm.

## **The cause of Mr Bin Zaini's death**

71. An autopsy was performed by forensic pathologist Dr Rianie Janse Van Vuuren. She found the cause of Mr Bin Zaini's death to be hanging. Toxicological analysis revealed methylamphetamine and cannabinoids, which in her opinion had not contributed to his death.
72. I now turn to the issues which were examined at the inquest.

## **Issue 1: Was Mr Bin Zaini's mental health care at VIDC of an appropriate standard?**

73. Mr Bin Zaini lived at VIDC for the relatively short period of three months. Between the period 7 September 2020 and 30 October 2020 he had the following clinical appointments:

- an initial screening appointment with mental health nurse RN Mururi on 11 September 2020. RN Mururi noted that Mr Bin Zaini was not complying with his anti psychotic medication. Mr Bin Zaini explained to RN Mururi that he did not know the times of the medication rounds and *'had been sleeping a lot'*. He also told RN Mururi that he was bored and was *'waiting to be repatriated'*. RN Mururi encouraged Mr Bin Zaini to take his medication, and informed him of the medication times;
- a scheduled mental health assessment on 14 September 2020, which Mr Bin Zaini did not attend;
- a rescheduled mental health assessment on 16 September 2020. Mental health nurse RN Fang noted Mr Bin Zaini's mood to be *'fine'* and that he had said he would comply with his medication;
- an appointment with GP Dr Xiaoxian Pan on 24 September 2020. Mr Bin Zaini told Dr Pan that he had not been taking his medication for the past five days and that he felt better without them. Dr Pan advised Mr Bin Zaini of the risks of this behaviour, including that his psychotic symptoms could return;
- an appointment with a GP on 26 October 2020, which Mr Bin Zaini did not attend; and
- a rebooked GP appointment with Dr Poonam Sharma on 30 October 2020. Dr Sharma recorded that Mr Bin Zaini had *'good rapport and reactive affect'*. He arranged for him to have an appointment with the Mental Health Team.

#### Appointments with Dr Lienert:

74. An appointment was booked for 11 November 2020 with IHMS psychiatrist Dr David Lienert. Mr Bin Zaini did not attend, so Dr Lienert contacted detention officers and asked them to escort him to the IHMS clinic.

75. Dr Lienert performed a psychiatric assessment of Mr Bin Zaini. Dr Lienert noted that Mr Bin Zaini reported feeling *'sad'* and *'scared'*, and that he lacked energy and motivation and was sleeping during the day. He assessed Mr Bin Zaini's risk of suicide to be low. Although Mr Bin Zaini had said he had thoughts of killing himself, *'he tells himself 'no'*. Moreover, he was not expressing any current intent, and he had said he intended to stop using illicit drugs and to get better sleep.

76. Mr Bin Zaini also told Dr Lienert that he had not always been taking his prescribed medication of olanzapine. Dr Lienert decided to replace Mr Bin Zaini's olanzapine with the medication mirtazapine.

77. At this appointment Dr Lienert formed the impression that Mr Bin Zaini:

- had previous drug induced psychosis, but had no current psychotic symptoms;
- was using illicit drugs but wanted to cease using them; and

- appeared to be suffering a mixture of depressive and anxiety symptoms.

78. Dr Lienert turned his mind to whether he ought to place Mr Bin Zaini on a monitoring program, but decided against this as he considered his risk of suicide was low at this time. He booked Mr Bin Zaini for a further psychiatrist appointment on 2 December 2020, one of the purposes of which was to review his response to the changed medication.

79. That appointment had to be rescheduled to 9 December 2020. Mr Bin Zaini did not attend the 9 December appointment. Dr Lienert could not recall if he had responded by asking Serco staff to remind Mr Bin Zaini of the appointment, but thought that he probably had done so, as this was his usual practice.

80. When Mr Bin Zaini did not attend the 9 December appointment Dr Lienert did not book a replacement appointment for him, noting only *'further psychiatrist review as required'*. Dr Lienert explained that he had not considered Mr Bin Zaini to be at acute risk, and that if there had been any concerns about his mental health, these could be reported to him by Serco staff and IHMS nursing staff. Dr Lienert was also aware that Mr Bin Zaini was scheduled to have a mental health clinical review on 16 December 2020.

81. Mr Bin Zaini also had welfare-related interviews with detention officers each fortnight over the period 27 September 2020 to 6 December 2020. According to the notes of these interviews, Mr Bin Zaini advised that he felt generally well, and knew how to arrange a medical appointment if he felt that he needed one.

82. IHMS submitted that the court would find that Mr Bin Zaini received adequate clinical care for his mental health during his time at VIDC. Their submissions noted that:

- in all but the last of his clinical appointments, Mr Bin Zaini reported feeling generally well and did not report any thoughts of suicide or self harm;
- although for some periods he was not compliant with his medication, there was no evidence that he had relapsed into psychosis as a result; and
- on 11 November 2020 Dr Lienert performed a thorough mental health assessment, and on reasonable grounds, assessed his risk for suicide as low.

#### The expert psychiatrist evidence

83. The assisting team requested an expert opinion on the adequacy of Mr Bin Zaini's mental health care, from consultant forensic psychiatrist Dr Danny Sullivan. Dr Sullivan provided an expert report and gave oral evidence at the inquest.

84. In Dr Sullivan's opinion, the mental health care and treatment which Mr Bin Zaini received in VIDC was adequate and appropriate. In his view, Mr Bin Zaini's medical consultations were of a reasonable timeliness and frequency.

85. As regards the question of what follow up was required for Mr Bin Zaini after he did not attend his psychiatrist appointment on 9 December 2020, Dr Sullivan considered that follow up was required, given his non compliance with medication and his evident deterioration in mood.

86. However in Dr Sullivan's view, a follow up within one to two weeks was reasonable. He considered that the scheduled mental health assessment on 16 December 2020 represented a sufficient response.

### **Conclusion regarding adequacy of monitoring and treatment**

87. I am satisfied that the monitoring and treatment which Mr Bin Zaini received for his mental health while in immigration detention was adequate. Dr Danny Sullivan is a very experienced psychiatrist, with extensive experience providing mental health care and treatment to persons who are in custody. His opinion on this issue carries significant weight.

### **Issue 2: Adequacy of measures to ensure compliance with medications and appointments**

88. It is clear that Mr Bin Zaini often did not attend his clinical appointments and was only compliant with his medication on an intermittent basis.

89. IHMS noted, and I accept, that their staff have no power to compel a detainee to attend an appointment or to take prescribed medication. IHMS staff apply the foundational principle of patient autonomy, whereby a patient must in general consent to take medication and engage in health services.

90. IHMS submitted that Mr Bin Zaini's compliance with scheduled appointments was '*moderate*', and that IHMS's existing procedures for missed medical appointments were followed. In brief, if a detainee did not attend a scheduled appointment these procedures were:

- for clinical staff to ring Serco staff on the compound to ask them to encourage the detainee to attend;
- if the detainee did not attend, to reschedule the appointment and ask Serco staff to provide the detainee with a note of the new date; and
- in appropriate cases, for IHMS clinicians to attend the compound to see the detainee.

91. IHMS submitted that on the basis of the evidence, the court would find that its staff took all reasonable steps to encourage Mr Bin Zaini to attend his clinical appointments.

92. The IHMS submissions also outlined IHMS's procedures where a detainee did not comply with prescribed medication. These were:

- to encourage the detainee by means of psychoeducation to take their medication; and
- the preparation of a daily spreadsheet listing all detainees who had a medication prescription, and whether that medication had been administered to the detainees on the sheet.

### **Conclusion regarding adequacy of procedures for missed medication and appointments**

93. The evidence supports the conclusion that generally, the response which IHMS staff made to Mr Bin Zaini's missed appointments and his medication non compliance was adequate, and was in accordance with IHMS policy and procedure.

94. In concluding this I place weight on the opinion of forensic psychiatrist Dr Sullivan, who has extensive experience in the provision of health care to persons in detention and in custody.

### Changes within IHMS regarding missed medication

95. This is not to say however that there is not room for improvement. This appears to be accepted by IHMS. At the inquest Dr Heather Miller (Medical Director, Government Services, IHMS) advised of changes which had been made to strengthen IHMS's follow up of detainees who were missing their medication. In brief, the revised procedures are as follows:

- IHMS's electronic medical record system generates a daily report of missed medications;
- In cases where a detainee has missed medication for four days, a report is generated which is reviewed by senior members of IHMS;
- A primary health review is scheduled for that detainee;



- If the detainee does not attend the primary health review, a GP appointment is booked, then re-booked if that appointment is missed;
- If the further GP appointment is missed, and the medication is classed as ‘critical’, Serco staff are asked to bring the detainee to the clinic. If the detainee refuses to attend, an IHMS clinician will attend the detainee’s room to discuss the reasons for the non compliance, and reinforce the importance of the medication; and
- If the detainee continues to refuse ‘critical’ medication, there is to be GP review to assess the detainee’s capacity to make that decision. This may result in a decision to transfer to detainee to hospital for assessment.

96. These changes are positive and I commend them.

**Issue 3: Were adequate steps taken to communicate with Mr Bin Zaini in connection with his repatriation to Malaysia?**

97. As has been seen, Mr Bin Zaini wished to return to Malaysia but found himself unable to do so. He could not be repatriated due to the decision in his Aviation Assessment that a security escort would be required to accompany him on any flight returning him to Malaysia. Instead, he was required to remain in immigration detention. The fact that his detention would be for an indeterminate period must have added greatly to his frustration and distress.

98. Counsel Assisting offered no criticism of the Aviation Assessment decision. It was acknowledged that Mr Bin Zaini had made threats of violence in the recent past and had a history of unstable mental health. Given the potential risk presented by such behaviour on an airflight, this decision was a reasonable one. I accept this is the case.

99. Nor do I make any criticism that escort staff could not be procured during these early days of the COVID-19 pandemic. The suspension of escorts during this period was unavoidable, and a circumstance outside the control of any decision-maker in Mr Bin Zaini’s case.

100. However, Counsel Assisting has submitted that there were deficiencies in the communications which Mr Bin Zaini received from Australian Border Force staff regarding the progress of his removal. The communications were described as ‘*inadequate or harmful*’, in circumstances where Mr Bin Zaini faced:

*‘ ... the considerable stressors of an indeterminate period of detention with the additional stress of his mother unwell in Malaysia’.*

101. I have outlined above at paragraphs 37 to 63 the communications which Mr Bin Zaini had with his allocated Status Resolution Officers and Removal Officers.

102. In the submission of Counsel Assisting, these communications were inadequate. Among other things, Counsel Assisting adverted to the evidence that Mr Bin Zaini evidently (and mistakenly) believed that he had been scheduled to leave Australia for Malaysia on 5 September 2020. It appears that he received this impression in a conversation with an IHMS psychologist.

103. If so, this is unfortunate, as it can only have added to Mr Bin Zaini's sense of frustration and distress when he learnt that this information was incorrect.

104. This aside, it does not appear that the communications which took place between Mr Bin Zaini and his Status Resolution Officer or his Removal Officer fall outside the Australian Border Force requirements referred to at paragraph 39.

105. Nevertheless, the submissions on behalf of the Commonwealth did not oppose a proposed Recommendation which was designed to improve the quality of such communications. In reply submissions, Counsel Assisting proposed the following:

*That the Commonwealth review the role of a detainee's Status Resolution Officer under the 2023 Procedural Instruction with a view to considering whether there is an opportunity to improve the process concerning:*

- a) *the manner in which news or messages which, it might reasonably be expected, will be distressing to a detainee are communicated to that detainee: and*
- b) *the support provided to a detainee at a time when that detainee is delivered news or messages referred to in paragraph (a) above.*

106. I accept this proposed Recommendation. The evidence establishes that Mr Bin Zaini's frustration and distress regarding the processes for his voluntary removal request were very significant. It is appropriate for the Commonwealth to review its processes with a view to identifying if improvements can be made to them.

#### **Issue 4: Steps taken to reduce the risk of detainees hanging themselves**

107. The death of a detainee by hanging is a tragedy for the families whom they leave behind. Naturally, it also brings distress to staff members who have been involved with the detainee during the time of their detention.

108. It must be accepted (as submitted by Counsel Assisting) that it is not possible to remove all things which may be used as a ligature point. This is particularly the

case with immigration detention centres, which appropriately provide a less restrictive environment than do most correctional centres.

109. Aside from the inherent practical challenges, regard must also be had to the right of detainees to live in a residential environment which replicates, as far as security considerations allow, a life in the community. This inevitably impacts the ability of authorities to modify the design of accommodation areas and their furnishings, to reduce the risk that they may offer opportunities for serious self harm.
110. In addition, I note that in order to hang himself Mr Bin Zaini made use of items to which all detainees require access: namely a door within his compound and his own clothing. This underlines the tragic reality that for a person who is intent on taking their own life, it is not possible to remove all means that might be used.
111. I accept that in Mr Bin Zaini's case, the risk that he would take his life by these means could not have reasonably been foreseen.
112. Nevertheless, the issue of suicide by persons in detention is a very important one.
113. The Commonwealth would not deny owing a duty of care to those in detention, to minimise so far as is reasonably possible the risks for serious self harm that are presented in the design and furnishings of detainees' accommodation areas.
114. In closing submissions, Counsel Assisting proposed a Recommendation to the Commonwealth that it conduct an audit of VIDC to ascertain the existence of hanging points or features in the physical design of the premises which could be used by detainees to self harm. Counsel Assisting further proposed that the Commonwealth consider the ensuing audit report and take reasonable steps to remove the above features.
115. The Commonwealth did not support either Recommendation. However, its submissions made reference to the DHA having conducted a '*ligature review*' of all high care accommodation rooms as part of an Administered Capital Works project. The Commonwealth's submission stated that it is committed to extending this review to '*all mainland IDC detainee accommodation rooms and bathrooms*'. No details were provided as to the scope or the outcomes of the ligature review.
116. I have noted with interest the Commonwealth's reference to a '*ligature review*', and the Commonwealth's stated intention to extend this review to the accommodation areas of all mainland detention centres.

117. The court did not have the benefit of examining the ‘ligature review’ and has no details of it (this is not a criticism of the Commonwealth). Nevertheless, this review may provide the basis for an outcome similar to that sought to be achieved by Recommendations 25 and 26.

118. For this reason, I make the following Recommendation:

*That as a matter of priority, the Commonwealth:*

- (a) extend its ‘ligature review’ to all accommodation and bathroom areas within the VIDC as part of an Administrative Capital Works project; and*
- (b) commit to taking reasonable steps to remove ligature points identified in the ligature review.*

## **Conclusion**

119. In closing, I convey to Mr Bin Zaini’s family my sincere sympathy for their loss.

120. I acknowledge the excellent assistance given by Counsel Assisting Mr Casselden SC, Mr Dalla-Pozza and Ms Danne, and the lawyers of the NSW Crown Solicitor.

## **Findings required by s81(1) of the Act**

121. As a result of considering all of the documentary evidence and the oral evidence heard at the inquest, I am able to confirm that the death occurred and make the following findings in relation to it.

### **Identity**

The person who died is Muhammad Hafizuddin Bin Zaini

### **Date of death:**

Muhammad Hafizuddin Bin Zaini died on 12 December 2020

### **Place of death:**

Muhammad Hafizuddin Bin Zaini died at Villawood Immigration Detention Centre,

### **Cause of death:**

The cause of Muhammad Hafizuddin Bin Zaini’s death is hanging.

**Manner of death:**

Muhammad Hafizuddin Bin Zaini died as a result of an intentional self-inflicted act performed with the intention of taking his own life, while he was in immigration detention.

**Recommendations pursuant to s82 of the Act**

To the Commonwealth:

1. That the Commonwealth review the role of a detainee's Status Resolution Officer under the 2023 Procedural Instruction with a view to considering whether there is an opportunity to improve the process concerning:
  - (a) the manner in which news or messages which, it might reasonably be expected, will be distressing to a detainee are communicated to that detainee; and
  - (b) the support provided to a detainee at a time when that detainee is delivered news or messages referred to in paragraph (a) above.
2. That as a matter of priority, the Commonwealth:
  - (a) extend its 'ligature review' to all accommodation and bathroom areas within the VIDC as part of an Administrative Capital Works project; and
  - (b) commit to taking reasonable steps to remove ligature points identified in the ligature review.

I close this inquest.



**Magistrate E Ryan**  
Deputy State Coroner, Lidcombe

6 March 2025