

IMPACT OF HIGH COURT CASE ON PEOPLE IN DETENTION

WHAT DID THE HIGH COURT SAY?

On 8 November 2023, the High Court of Australia held that indefinite immigration detention (i.e. where there is no end point in a person's detention) is unlawful, and that the Australian Government cannot detain a person if they cannot be removed from Australia in certain circumstances.

The Court case was about a person in detention, known by the pseudonym *NZYQ*, who is a stateless Rohingya refugee from Myanmar. The Department of Home Affairs (Department) agreed that *NZYQ* was owed protection from Myanmar and could not return him there. The Department also had not found another country to remove *NZYQ* to, which meant he could not be removed from Australia.

The Court ordered that *NZYQ* be released and that his detention had been unlawful since 30 May 2023.

WHAT DOES THIS MEAN FOR ME?

As the High Court has not yet published its written reasons, it is unclear how many people in detention are impacted by the decision and must be released. We do not know when the High Court will publish its reasons, however it is unlikely to be this year.

During the High Court hearing, lawyers for the Minister indicated that 92 people in detention would likely be impacted by the decision, and possibly 340 other people may be affected. Actual numbers cannot be confirmed without further information. As of 18 November 2023, at least 93 people have been released from detention. We are urgently seeking clarity on whether more people will be released from detention.

You are *unlikely* to be impacted by the High Court decision if you have applied for a visa (e.g. Protection visa) and are waiting for a decision from the Department, the Administrative Appeals Tribunal or the Immigration Assessment Authority.

WHAT DOES THE NEW LAW PASSED BY THE GOVERNMENT MEAN?

On 16 November 2023, the government passed a new law that applies to people released from detention because of the High Court decision. The law says that people released will be granted bridging R visas with additional conditions, including strict reporting requirements.

People will also be subjected to curfew requirements and electronic monitoring devices. There is a process for people to request the Minister to remove these conditions on their bridging R visa if the Minister is satisfied that the person is not a risk to the community. Also, if people have been convicted of certain offences, their bridging visas will have conditions that prevent them being in contact with certain people in the community.

If a person breaches these new bridging R visa conditions, it is a criminal offence, unless the person has a reasonable excuse. If a person breaches a visa condition over more than 1 day, each day that the person is in breach of the condition will be considered as a separate offence.

The punishment for each offence is a minimum sentence of 1 year of imprisonment, and the maximum penalty is up to 5 years' imprisonment.

IF YOU ARE IN DETENTION (INCLUDING COMMUNITY DETENTION)

It is important that you speak to a lawyer to find out if you are impacted by the High Court decision. For many people it will be necessary to wait for the High Court's reasons to obtain specific advice.

To prepare, you can lodge [an FOI request](#). If you feel able to lodge an FOI request yourself, then you should request the following documents (using these exact words): 'Documents (paper or electronic) including file notes relating to attempts to remove me from Australia under s 198 of the Migration Act 1958 (Cth)'. If you do not feel able to submit an FOI request yourself, please don't be concerned - this is something that a lawyer can assist you with.

IF YOU HAVE BEEN RELEASED FROM DETENTION DUE TO THE HIGH COURT CASE

Please speak to a lawyer to get legal advice about your situation, including your bridging R visa conditions and the consequences of breaching these conditions, which could include mandatory imprisonment. We will continue to share information about other supports that may be available.

We also recommend getting legal advice before you speak to the media/journalists about your situation.

WHERE CAN I GET LEGAL HELP?

It is important that you get advice from ethical and reputable sources. You may contact the organisations below for free legal assistance, noting that you may need to wait until the High Court publishes its reasons for specific advice.

Organisation	Who can they assist?	Contact details
Asylum Seeker Resource Centre	If you: <ul style="list-style-type: none">are in immigration detention in Australia; ORlive in the community in Victoria; ORwere recently released from detention into the community in Queensland or Western Australia; ANDfear harm on return to your country of birth.	Email: legal@asrc.org.au . Please note we will only respond to email requests from people who are in detention. Phone or drop-in: <ul style="list-style-type: none">Hours: Monday, Tuesday, Thursday and Friday from 10am – 12.30pm (closed on Wednesdays)Phone: (03) 9274 9889Address: 214-218 Nicholson Street, Footscray VIC 3011
Refugee Advice Casework Service (RACS)	If you: <ul style="list-style-type: none">live in the community in New South Wales or the Northern Territory; ORare detained at Yongah Hill Immigration Detention Centre.	Email: admin@racs.org.au
Refugee Legal	If you: <ul style="list-style-type: none">are in immigration detention; ORlive in the community in Victoria, South Australia and the Northern Territory.	Email: admin@refugeelegal.org.au

Legal Aid NSW	If you: <ul style="list-style-type: none">• are in New South Wales (detention or in the community); OR• are in detention and were living in New South Wales before being detained.	Phone: (02) 9219 5790
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