

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.

On 28 November 2023, the High Court published the reasons for its decision.

WHAT DOES THIS MEAN FOR ME?

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. As of 15 December 2023, at least 149 people have been released from detention. We are urgently seeking clarity on whether more people will be released from detention.

You are *likely* to be impacted by the High Court decision if:

- You have been found to be owed protection by the Department, Administrative Appeals Tribunal (AAT) or the Immigration Assessment Authority (IAA); OR
- You are stateless; AND
- the Australian Government cannot remove you from Australia in the reasonably foreseeable future.

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, AAT or the IAA, and you do not have any previous Department/AAT/IAA finding that you are owed protection.

WHAT DO THE NEW LAWS PASSED BY THE GOVERNMENT MEAN?

On 16 November and 6 December 2023, the government passed new laws that apply to people released from detention because of the High Court decision.

People released will be granted bridging R visas (BVR) with additional conditions, including strict reporting requirements.

Monitoring device & curfew requirements

Generally people will be subjected to a curfew and must wear an electronic monitoring device. There is a process for people to request the Minister to remove these conditions on their BVR. The Department is currently providing people with **28 days** from the date their BVR was granted to make this request.

The test for whether the curfew and monitoring device conditions will be removed depends on when the BVR was granted:

- If the BVR was granted before 7 December 2023, the Minister must be satisfied that the person is not a risk to the community;
- If the BVR was granted on or after 7 December 2023, the Minister must be satisfied that those conditions are not reasonably necessary for the protection of any part of the Australian community.

The curfew and monitoring device conditions apply for **12 months** from the date the BVR was granted. However, the Minister can grant another BVR with these conditions so they will be in force for more than 12 months.

Other BVR conditions

If people have been convicted of certain offences including conduct involving children and/or sexual assault, their BVRs will have conditions that prevent them being in contact with certain people in the community.

Penalties for breach of certain BVR conditions

If a person breaches certain BVR conditions about monitoring devices, curfews and reporting:

- It is a criminal offence, unless the person has a reasonable excuse; and
- If the breach happens over more than 1 day, each day that the person is in breach of the condition will be considered as a separate offence.

Unless there is a reasonable excuse, the punishment for each offence is a **minimum sentence of 1 year of imprisonment**, and the maximum penalty is up to 5 years' imprisonment.

Community Safety Orders

The Minister can apply to a court for a Community Safety Order (CSO) for a person released from detention who:

- Has been convicted of a serious violent or sexual offence in Australia or overseas; and
- Poses an unacceptable risk of seriously harming the community.

There are two types of CSOs:

- Community safety detention order - this order requires a person to be held in prison; and
- Community safety supervision order - this order has strict reporting conditions which can include wearing a monitoring device, being subjected to personal and property searches and curfews.

A CSO can apply for up to 3 years. After this time, the Minister can apply for a new CSO.

A person can only be subject to one CSO at any given time.

As these laws are new, it is unclear how the CSOs will impact on a person's BVR conditions.

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.

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 new year to speak with a lawyer as organisations will have limited capacity at the end of December and start of January.

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; OR live in the community in Victoria; OR were recently released from detention into the community in Queensland or Western Australia; AND fear 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 9889 Address: 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; OR are 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; OR live in the community in Victoria, South Australia and the Northern Territory. 	Email: admin@refugeelgal.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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WHERE CAN I GET OTHER SUPPORT?

Government-funded service providers are providing limited support to people who have been recently released, including organising temporary housing and assisting them to apply for Medicare (to access healthcare) and Centrelink. You will also be eligible for short-term SRSS (Status Resolution Support Services).

You can contact the service providers below to find out what assistance they can provide.

If you already have a caseworker, it is recommended that you contact them directly on the contact details they have provided.

Organisation	Contact details
Life Without Barriers	Email: info@lwb.org.au Phone: <ul style="list-style-type: none"> • Sunshine (VIC) office: (03) 9245 2701 • Dandenong (VIC) office: (03) 8752 8500 • After hours for emergencies (5pm to 9am): 1800 861 862
Settlement Services International (SSI)	Email: srss.intake@ssi.org.au Phone: <ul style="list-style-type: none"> • Monday to Friday: (02) 9685 0100 • After hours for emergencies (weekdays 5pm to 9am & weekends): (02) 1800 774 142