

OFFICIAL

A timeline of key dates, including dates of ministerial decisions and briefings, concerning the conduct of the High Court litigation, including the decision to agree in the special case that there was no real prospect of the plaintiff being removed from Australia in the reasonably foreseeable future;

| Date | Event |
|-------------|--|
| 5 April 23 | NZYQ filed an Application in the High Court's original jurisdiction |
| 11 April 23 | Attorney-General's Office first informed by AGS of the application |
| 12 April 23 | Section 78B notice issued to the Attorneys-General |
| 2 May 23 | Email from Office of Constitutional Law to Attorney-General's Office indicating existence of new constitutional proceeding |
| 3 May 23 | Commonwealth's Response filed in Court The response argued NZYQ was not entitled to any of the final relief sought but accepted the matter should be referred to the Full Court if a special case could be agreed by the parties. |
| 8 May 23 | Emails between Office of Constitutional Law and Attorney-General's Office regarding draft special case |
| 26 May 23 | Email from Assistant Secretary Migration and Citizenship Litigation to Minister Giles office (cc'ing Minister O'Neil office) Provided a litigation update. |
| 30 May 23 | Emails between Office of Constitutional Law and Attorney-General's Office regarding revised draft special case |
| 31 May 23 | Special Case filed in High Court by parties The Special Case sets out agreed facts and questions of law for the opinion of the High Court. One of the agreed facts is that as at 31 May 2023, NZYQ could not be removed from Australia, nor was there a likelihood of it occurring in the reasonably foreseeable future. Consistent with usual litigation management practice in the Department, the Minister was not asked to sign off on the statement of agreed facts. |
| 1 June 23 | Email from Office of Constitutional Law to Attorney-General's Office providing litigation update and attaching filed special case |
| 2 June 23 | Directions hearing before Gleeson J Timetabling orders were made. |
| 5 June 23 | Email from Office of Constitutional Law to Attorney-General's Office including hearing report of the directions hearing on 2 June 23 |
| 8 Aug 23 | Meeting with General Counsel and Minister Giles' Office Discussed AGS prospects advice and upcoming ministerial submission. |
| 22 Aug 23 | Email from acting Assistant Secretary Migration & Citizenship Litigation to Minister O'Neil and Minister Giles offices Provided a litigation update and attached prospects advice from Australian Government Solicitor (AGS). |
| 28 Aug 23 | Ministerial submission sent to Minister Giles The submission was signed by Minister Giles on 18 September 2023. |
| 29 Aug 23 | Meeting between Minister O'Neil, a/g Secretary and General Counsel Included discussion about prospects advice, operational implications and removal efforts. |
| 1 Sept 23 | Plaintiff's submissions filed |
| 5 Sept 23 | Email from General Counsel to Minister O'Neil and Minister Giles offices Litigation update, also providing NZYQ's legal submissions. |

OFFICIAL

OFFICIAL

| | |
|------------|---|
| 13 Sept 23 | Email from acting First Assistant Secretary Immigration Policy, Integrity and Assurance to Minister O’Neil and Minister Giles’ offices Update on litigation and resettlement efforts, attaches Counsel legal advice dated 6 September on resettlement. |
| 14 Sept 23 | Meeting with Minister Giles’ Office and General Counsel Discussion on forthcoming AGS advice on options to mitigate implications of a loss. |
| 15 Sept 23 | Amicus curiae submissions filed (AHRC, Human Rights Law Centre and Kaldor Centre for International Refugee Law) |
| 16 Sept 23 | Minister Giles approves approaching 5 Eyes countries for resettlement negotiations |
| 19 Sept 23 | Email from Assistant Secretary Migration & Citizenship Litigation to Minister O’Neil and Minister Giles offices Provided litigation update, noting affidavits filed by Australian Human Rights Commission (AHRC), the Human Rights Law Centre (HRLC) and the Kaldor Law Centre; resettlement efforts. |
| 3 Oct 23 | Emails between Office of Constitutional Law and Attorney-General’s Office regarding final Commonwealth submissions |
| 3 Oct 23 | Commonwealth submissions filed |
| 3 Oct 23 | Email from acting First Assistant Secretary Immigration Policy, Integrity and Assurance to Minister O’Neil and Minister Giles’ offices Update on lines of effort in relation to NZYQ, attaches AGS advice on options to mitigate implications of a loss. |
| 12 Oct 23 | Meeting with Minister Giles’ Office, General Counsel and Assistant Secretary, Compliance and Community Protection Policy Branch Discussion included a litigation update and policy options. |
| 18 Oct 23 | Email from Assistant Secretary Migration & Citizenship Litigation to Minister O’Neil and Minister Giles’ offices Provided litigation update on the listing of an urgent directions hearing. |
| 18 Oct 23 | Email from Office of Constitutional Law to Attorney-General’s Office providing litigation update |
| 19 Oct 23 | Meeting between Minister O’Neil, General Counsel and Assistant Secretary Compliance and Community Protection Policy to discuss litigation |
| 20 Oct 23 | Directions hearing before Gageler J |
| 20 Oct 23 | Email from Assistant Secretary Migration & Citizenship Litigation to Minister O’Neil and Minister Giles’ offices Provided litigation update following the directions hearing. |
| 23 Oct 23 | Email from Office of Constitutional Law to Attorney-General’s Office providing litigation update after directions hearing |
| 25 Oct 23 | Emails between Office of Constitutional Law and Attorney-General’s Office regarding revised special case |
| 26 Oct 23 | Email from Office of Constitutional Law to Attorney-General’s Office regarding filing of revised special case |
| 26 Oct 23 | Revised special case filed |
| 27 Oct 23 | Emails between Office of Constitutional Law and Attorney-General’s Office regarding Commonwealth submissions for directions hearing |
| 27 Oct 23 | Commonwealth and Plaintiff’s submissions for directions hearing filed |
| 30 Oct 23 | Directions hearing before Gageler J |

OFFICIAL

| | |
|------------------|---|
| 30 Oct 23 | Email from Assistant Secretary Migration & Citizenship Litigation to Minister O'Neil and Minister Giles' offices Provided litigation update following the directions hearing on that day. |
| 30 Oct 23 | Meeting between Minister O'Neil and A/g Secretary Meeting included update on the matter. |
| 31 Oct 23 | Amended application and further amended special case filed |
| 31 Oct 23 | Meeting between Minister Giles' Office, Minister O'Neil's Office and Departmental officials including General Counsel and Group Manager Immigration Policy and Assistant Secretary Compliance and Community Protection Policy Agenda items included litigation update, caseload snapshot, policy discussion and portfolio implications. |
| 3 Nov 23 | Email from acting First Assistant Secretary Immigration Policy, Integrity and Assurance to Minister O'Neil and Minister Giles' offices Attaching operational plan in the event of a loss. |

Approaches made to other countries concerning the plaintiff's removal from Australia?

The Department approached six countries bilaterally regarding the removal of NZYQ, prior to the High Court decision. Five countries could not assist, and discussions remain ongoing with one of these countries.

- On 28 August and 26 September 2023, departmental officers met with officials from the Bangladesh High Commission. On both occasions, Bangladesh officials indicated they could not assist with this case.
- On 4 September 2023, departmental officers spoke with officials from the Royal Embassy of Saudi Arabia, who advised they could not assist with this case. On 28 September 2023, the department engaged again with officials from the Royal Embassy of Saudi Arabia who, on 6 November 2023, confirmed they could not assist.
- On 27 September 2023, departmental officers engaged with officials from the United Kingdom, who advised on that day they could not assist.
- On 28 September 2023, departmental officers engaged with officials from New Zealand, who advised on that day they could not assist.
- On 28 September 2023, departmental officers engaged with officials from Canada. On 30 September 2023, Canadian officials advised they could not assist.
- On 30 September 2023, departmental officers engaged with officials from the United States of America. Engagement with the United States of America on this case is ongoing.

Home Affairs is unable to provide further information about ongoing discussions. It is not appropriate to disclose information that could cause damage to Australia's international relations by revealing private discussions with foreign states.

OFFICIAL

A timeline for the hearing and orders made on 8 November;

| Date | Event |
|-------------------|--|
| 7-8 Nov 23 | High Court hearing and orders On 8 November, the Court delivered ex tempore orders requiring NZYQ's release from detention. |
| 7 Nov 23 | Meeting between Minister O'Neil's and Minister Giles' Office and General Counsel Provided briefing on the hearing that day. |
| 8 Nov 23 | Emails between Office of Constitutional Law and Attorney-General's Office regarding hearing report and orders made by the Court |
| 8 Nov 23 18:00 | Meeting between Minister O'Neil, Minister Giles, A/g Secretary and General Counsel. AGS and others Discussion about High Court's decision. |
| 9 Nov 23 11:30 | Meeting between Ministerial O'Neil, Minister Giles, A/g Secretary and General Counsel (and others) Discussion about the operational response required to comply with the High Court's order. |
| 10 Nov 23 | Operation Aegis established The purpose of the joint ABF-AFP Operation is to manage the overall response of federal agencies and state and territory police. |
| 28 Nov 23 | High Court publishes its reasons |
| 28 Nov 23 | Email from Office of Constitutional Law to Attorney-General's Office regarding Court's reasons |

The release of individuals in detention;

NZYQ BVR cohort by release date

| | |
|------------------|-----------------|
| 8 November 2023 | <5 ¹ |
| 10 November 2023 | 17 |
| 11 November 2023 | 38 |
| 12 November 2023 | 24 |
| 13 November 2023 | <5 |
| 14 November 2023 | <5 |
| 15 November 2023 | <5 |
| 16 November 2023 | <5 |
| 17 November 2023 | 6 |
| 20 November 2023 | 8 |
| 21 November 2023 | 10 |
| 22 November 2023 | <5 |
| 23 November 2023 | 12 |
| 24 November 2023 | 11 |
| 25 November 2023 | <5 |
| 30 November 2023 | <5 |
| 1 December 2023 | <5 |
| 5 December 2023 | <5 |
| Total | 149 |

¹In line with Departmental policy, numbers less than five are masked as <5.

OFFICIAL

The development of legislation considered by the Parliament;

| Date | Event |
|-----------------|--|
| 9-15 Nov 23 | Development and drafting of Migration Amendment (Bridging Visa Conditions) Bill. AGS advice received throughout the course of drafting the Bill. Initial drafting instructions provided to OPC on 10 Nov 23. |
| 15 Nov 23 | Government approves the Migration Amendment (Bridging Visa Conditions) Bill for introduction |
| 16 Nov 23 | Migration Amendment (Bridging Visa Conditions) Bill is introduced and passed by House of Representatives |
| 16 Nov 23 | Migration Amendment (Bridging Visa Conditions) Bill is introduced in the Senate |
| 16 Nov 23 | The Department of Home Affairs instructs OPC to prepare proposed Government amendments of the Bill AGS advice received in the course of drafting the Government amendments. |
| 16 Nov 23 | Government approves the text of proposed Government amendments |
| 16 Nov 23 | Government and Opposition amendments are moved and passed in the Senate; Bill passed by the Senate as amended |
| 16 Nov 23 | Migration Amendment (Bridging Visa Conditions) Bill passes both Houses |
| 18 Nov 23 | Commencement of <i>Migration Amendment (Bridging Visa Conditions) Act 2023</i> |
| 21-26 Nov 23 | Development and drafting of Migration Amendment (Bridging Visa Conditions and Other Measures) Bill 2023 Initial drafting instructions provided to OPC on 21 Nov 23. AGS advice provided throughout the drafting process. |
| 26 Nov 23 | The Department received the Solicitor-General's advice on the draft Migration Amendment (Bridging Visa Conditions and Other Measures) Bill 2023 |
| 26 Nov 23 | Government approves the Migration Amendment (Bridging Visa Conditions and Other Measures) Bill 2023 for introduction |
| 27 Nov 23 | Migration Amendment (Bridging Visa Conditions and Other Measures) Bill 2023 is introduced in and is passed by the House of Representatives |
| 29 Nov-3 Dec 23 | Development and drafting of the Government's amendments to Migration Amendment (Bridging Visa Conditions and Other Measures) Bill 2023 (comprising the measures on the Community Safety Order Scheme, including amendments of the Criminal Code and Migration Act, and consequential amendments of other Acts). Initial instructions provided to OPC on 29 Nov 23. AGS advice provided throughout the drafting process. |
| 2 Dec 23 | The Department received the Solicitor-General's advice on the Government's proposed amendments to the Migration Amendment (Bridging Visa Conditions and Other Measures) Bill 2023 |
| 3 Dec 23 | Government approves text of the Government amendments to the Migration Amendment (Bridging Visa Conditions and Other Measures) Bill 2023 for introduction in the Senate |
| 5 Dec 23 | Government amendments moved in the Senate (sheet SY101). The Senate agreed to the amendments and passed the Migration Amendment (Bridging Visa Conditions and Other Measures) Bill 2023, as amended. |
| 6 Dec 23 | Migration and Other Legislation Amendment (Bridging Visas, Serious Offenders and Other Measures) Bill 2023 is returned to the House and is passed by Parliament. |

OFFICIAL

The granting of visas to the affected cohort;

As a result of the High Court's orders of 8 November 2023, 149 non-citizens were released from immigration detention.

There are 26 mandatory conditions attached to the BVR and four [4] prescribed conditions that may be applied.

Since the passage of amended regulations, the Community Protection Board has reviewed the conditions attached to each BVR to provide advice on which conditions are reasonably necessary for the purpose of community protection.

As at 1 February 2024, there are:

- 103 BVR holders with all four prescribed conditions applied (being 8621, 8617, 8618 and 8620.
- 30 BVR holders had none of the prescribed conditions imposed.
- 15 BVR holders have a mix (1, 2, or 3) of the prescribed conditions.
- 1 individual had his substantive visa reinstated following a review process.

NZYQ BVR cohort by date of grant

| | |
|--|------------|
| BVRs granted prior to 8 December 2023 (date second amending legislation came into effect) | 102 |
| BVRs granted after 8 December 2023 | 47 |
| Total | 149 |

OFFICIAL

The arrest or re-detention of any members of the affected cohort;

As of 1 February 2024 six individuals have been arrested and charged for offences against the *Migration Act 1958* for breach of visa conditions. Additionally, the ABF is aware that 18 individuals have been charged by State and Territory police for State and Territory offences.

As of 31 January 2024, nil individuals have been re-detained in an immigration detention facility on the basis that there is a real prospect of their removal from Australia being practicable in the reasonably foreseeable future.

OFFICIAL

OFFICIAL

A breakdown of the number of individuals who were released from immigration detention because of the High Court decision, including information on the offences these individuals have been convicted of and the conviction date;

NZYQ BVR cohort by most serious offence category

| | |
|---|------------|
| Murder and attempted murder | 7 |
| Sexually based offending, including child sex offending | 37 |
| Assault and violent offending, kidnapping, armed robbery | 72 |
| Domestic violence and stalking | 16 |
| Serious drug offending | 13 |
| People smuggling, crimes of serious international concern | <5 |
| Low level or no criminality | <5 |
| TOTAL: | 149 |

Note – includes overseas offending in some cases.

Where released individuals are currently residing by state/territory and local government area?

Due to potential breach of privacy of individuals, the Department has provided State or Territory location only. Table shows the States and Territories the individuals resided in as of 31 January 2024.

NZYQ BVR cohort by current State / Territory

| | |
|--------------|------------|
| ACT | <5 |
| NSW | 60 |
| TAS | - |
| QLD | 20 |
| VIC | 40 |
| SA | <10 |
| WA | 20 |
| Total | 149 |

OFFICIAL

How many released individuals are required to wear ankle bracelets?

As at 31 January 2024 there were 113 individuals who had condition 8621 imposed on their BVR.

OFFICIAL

OFFICIAL

How many individuals have been re-detained since their initial release, and the reason for their re-detention?

As of 31 January 2024, nil individuals have been re-detained into an immigration detention facility.

OFFICIAL

OFFICIAL

How many times the Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs has applied to a Supreme Court of a State or Territory for a community safety detention order (CSDO) or community safety supervision order (CSSO)?;

As of 31 January 2024, nil applications have been made.

OFFICIAL

How many times a CSDO or CSSO has been granted?

As of 31 January 2024, nil CSDOs or CSSOs have been granted.

OFFICIAL

A breakdown of all costs to date incurred by the Commonwealth Government in managing this caseload, including law enforcement costs and Government assistance provided to the released cohort.

- A breakdown of all known costs incurred by Commonwealth Government as at 31 December 2023 is outlined in Table 1 below:

| Table 1: Breakdown of Costs | Employee Costs (as at 31 Dec 2023) (\$'000) | Supplier Costs (as at 31 Dec 2023) (\$'000) | Total Costs (as at 31 Dec 2023) (\$'000) |
|--|--|--|---|
| Department of Home Affairs | | | |
| <i>i) Australian Border Force costs including monitoring of released detainees, removal and surveillance, and support for national coordination function</i> | 1,097 | 5 | 1,101 |
| <i>ii) Status Resolution and Visa Cancellation</i> | 2,416 | 15 | 2,432 |
| <i>iii) Legal</i> | 325 | 281 | 606 |
| <i>iv) Immigration Policy</i> | 218 | - | 218 |
| <i>v) Detainee guarding, security personnel and Parole Board scoping</i> | 36 | 4 | 40 |
| <i>vi) Other (intelligence, executive, enabling, support activities)</i> | 600 | 43 | 643 |
| Departmental | 4,692 | 348 | 5,040 |
| <i>i) External settlement service provider fees for status resolution and settlement services (incl. Corporate Overheads).</i> | | 1,292 | 1,292 |
| <i>ii) Pass through accommodation costs for motels/hotels that can be monitored.</i> | | 1,175 | 1,175 |
| <i>iii) Fee for Service with NSW Corrections - related to monitoring devices.</i> | | 644 | 644 |
| <i>iv) SRSS Income Support</i> | | 417 | 417 |
| Administered Expenses | | 3,528 | 3,528 |
| Total Department of Home Affairs | 4,692 | 3,876 | 8,568 |
| Australian Federal Police | | | 3,900 |
| Services Australia | | | 460 |
| Attorney General's Department | | | 75 |
| Commonwealth Director of Public Prosecutions ¹ | | | - |
| Department of Health and Aged Care ² | | | - |
| Total all agencies | | | 13,003 |

Note:

- CDPP: In respect of the CDPP prosecution of NZYQ matters, CDPP has not incurred any external expenses to 31 December 2023. "External expenses" includes counsel fees and other legal expenses including relevant staff travel, process serving expenses and transcript costs, invoiced (and processed) as at 31 December 2023. Counsel fees yet to be invoiced/not submitted for processing are not captured in the amount reported. That said, several NZYQ matters have been referred and CDPP staff have begun working on them. These internal costs have not been estimated.
- Health: Department of Health and Aged Care cannot identify actual costs for such measures as there is no unique identifier within Health programs for tracking those that access our programs under the NZYQ cohort.

OFFICIAL

A breakdown of law enforcement costs and Government assistance provided to the released cohort as at 31 December 2023 (already incorporated in Table 1 above) is outlined in Table 2 below:

| Table 2: Breakdown of Law enforcement costs and Government assistance | | Costs (as at 31 Dec 2023) (\$'000) |
|--|--|---|
| <u>Law Enforcement Costs</u> | | 3,900 |
| Australian Federal Police | | 3,900 |
| <u>Government assistance</u> | | 417 |
| Department of Home Affairs - <i>SRSS Income Support</i> | | 417 |