

Shifting legal paradigms: Landmark decision in *NZYQ v Minister for Immigration*



By [Jason Donnelly](#) - Dec 08, 2023 9:00 am AEDT

Snapshot

- A recent High Court decision found that indefinite detention is unlawful and overturned the *Al-Kateb v Godwin* precedent.
- The decision highlights the importance of aligning Australian immigration laws with human rights and constitutional principles, especially for non-citizens and stateless individuals.
- It also sets an important legal precedent that will impact judicial review and the exercise of Executive power. The decision may also influence international immigration policies and practices.

The recent decision in *NZYQ v Minister for Immigration Citizenship and Multicultural Affairs & Anor* (*'NZYQ'*) marks a pivotal moment in Australian jurisprudence. This landmark case, heard by the High Court of Australia in 2023, has profound implications for immigration law, human rights and the application of judicial power under the Australian *Constitution*.

The facts

The plaintiff, NZYQ, is a stateless Rohingya Muslim who arrived in Australia by boat in 2012. After a criminal conviction, his visa was cancelled and he was detained under the *Migration Act 1958* (Cth) (the *'Migration Act'*). Despite being recognised as a refugee with a well-founded fear of persecution in Myanmar, his application for a protection visa was refused due to his criminal conviction, rendering him unable to be removed from Australia.

The High Court faced several critical questions regarding the interpretation of the *Migration Act* and its alignment with constitutional principles. The Court was tasked with deciding whether the indefinite detention of NZYQ, without a real prospect of removal, was lawful.

The High Court's findings

The Court found the indefinite detention of NZYQ, in circumstances where his removal from Australia was not practicable, unlawful.

The Court revisited the constitutional holding in *Al-Kateb v Godwin* (2004) 219 CLR 562 ('*Al-Kateb*'), ultimately overruling it. This decision marked a significant shift, indicating that indefinite detention under the *Migration Act*, especially for individuals who cannot be removed from Australia, is unconstitutional.

The Court scrutinised the relationship between Executive detention powers and the judicial powers of the Commonwealth, emphasising the need for detention to be reasonably necessary for a legitimate, non-punitive purpose.

The Court ordered the release of NZYQ and declared his detention since 30 May 2023 as unlawful. This was a significant outcome, highlighting the Court's stance against indefinite detention without prospects of removal.

Broader significance of the case

Human rights and immigration Law

The High Court's decision in *NZYQ* is monumental in terms of human rights, especially for those who often exist in the margins of society such as non-citizens and stateless individuals. This ruling brings to the forefront the critical need to harmonise immigration laws with the principles of human rights and constitutional mandates.

The plight of NZYQ, a stateless Rohingya Muslim, highlights the vulnerabilities faced by individuals who, without a country to call home, often find themselves subject to legal and humanitarian dilemmas. The High Court's judgment underlines a vital legal and moral principle: immigration practices must not only adhere to the rule of law but must also respect the inherent dignity and rights of every individual, regardless of their citizenship status. This decision stands as a beacon, guiding Australia to a path where legal frameworks are aligned with international human rights standards, ensuring protection and fair treatment of all within its jurisdiction.

Impact on Australian immigration policy

The implications of this ruling on Australian immigration policy are potentially far-reaching. It signals a need for a paradigm shift in how Australia deals with the detention of non-citizens, particularly in scenarios where deportation is not immediately possible or practical.

The case directly challenges policies that have allowed the indefinite detention of individuals like NZYQ, who cannot be removed from Australia due to various constraints. This decision may prompt legislative and policy reforms aimed at ensuring that detention is used sparingly and only when

justified by clear, achievable objectives. It could lead to the development of more humane alternatives to detention, especially in cases where deportation is not an option.

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This change is not merely a legal requirement but also a moral imperative, reflecting a commitment to uphold the principles of justice and human rights in the realm of immigration policy.

Legal precedent and judicial review

The decision in *NZYQ* sets a significant legal precedent, offering essential guidance on the lawfulness of detention under the *Migration Act*. It underscores the role of the Judiciary as a critical check on the powers of the Executive. By declaring the indefinite detention of *NZYQ* as unlawful, the High Court has reaffirmed the principle that Executive actions must align with the rule of law and constitutional provisions.

This ruling provides a clear judicial framework for future cases, ensuring that the detention of non-citizens is conducted within the bounds of legality and fairness. It also serves as a reminder of the judiciary's responsibility to review and, if necessary, constrain Executive powers, particularly when they impinge on individual freedoms and rights. This decision, therefore, not only resolves a singular case but also fortifies the role of judicial oversight in upholding the rule of law and protecting individual liberties.

Revisiting past precedents

By overruling its previous decision in *Al-Kateb*, the High Court has shown a remarkable capacity for self-reflection and evolution. This willingness to overturn past rulings, particularly when they conflict with contemporary legal principles and societal values, is a testament to the dynamic nature of law and its ability to adapt to changing circumstances.

The overturning of *Al-Kateb* reflects a judicial recognition that legal doctrines are not set in stone but must evolve in response to new challenges and understandings. This aspect of the decision is significant as it demonstrates the Court's commitment to ensuring that legal precedents remain relevant and just in a changing social and legal landscape. It also signifies a readiness to re-evaluate and update legal principles to better reflect current values and norms, ensuring that the law remains a living instrument that serves the needs and rights of contemporary society.

International implications

The decision's impact transcends Australian borders, potentially influencing international legal frameworks and practices regarding the detention of non-citizens. By setting a precedent that challenges indefinite detention, especially in cases where deportation is not feasible, the decision has the potential to contribute to a global discourse on immigration and human rights, promoting legal and policy reforms that prioritise the dignity and rights of individuals over strict immigration controls. It serves as a compelling example of how courts can uphold human rights and constitutional principles in the face of complex immigration issues.

Conclusion

The *NZYQ* case stands as a watershed moment in Australian legal history, especially in the realms of immigration law and human rights. This landmark decision by the High Court of Australia marks a significant turning point, showcasing the Court's commitment to upholding the rights of the most vulnerable individuals in society.

At the core of this ruling is the reaffirmation of a fundamental legal principle: the State's power to detain individuals must be exercised within the confines of the law, with a deep respect for human rights and adherence to constitutional mandates. This balance is crucial in maintaining the integrity of the legal system and ensuring that it serves the cause of justice, not just the enforcement of laws.

This decision transcends the individual case of a stateless Rohingya Muslim and becomes a powerful testament to the broader principles of justice and fairness. It challenges policymakers, legal practitioners, and society at large to reflect on how our legal and immigration systems treat those who are most in need of protection.

By firmly placing human rights at the heart of its decision, the High Court has set a precedent that could inspire positive change not only in Australia but also in other jurisdictions around the world. This case represents a significant step towards a more compassionate and just approach to immigration law and the treatment of non-citizens and stateless individuals.



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