



## HIGH COURT OF AUSTRALIA

18 March 2026

### EGH19 v COMMONWEALTH OF AUSTRALIA [2026] HCA 7

Today, the High Court answered questions of law to the effect that cl 070.612A(1) of Sch 2 to the *Migration Regulations 1994* (Cth) was invalid on the basis that it was inconsistent with Ch III of the *Constitution*.

Following *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* (2023) 280 CLR 137, the Commonwealth Parliament established a statutory regime in Subdiv AF of Div 3 of Pt 2 of the *Migration Act 1958* (Cth) in relation to unlawful non-citizens whose removal from Australia under s 198 of the *Migration Act* had no real prospect of becoming practicable in the reasonably foreseeable future. That regime provided for the Minister administering the *Migration Act* to grant a non-citizen of that class a Bridging R (Class WR) Subclass 070 (Bridging (Removal Pending)) visa ("BVR") in accordance with criteria and on conditions prescribed in Pt 070 of Sch 2 to the *Migration Regulations*. Clause 070.612A(1) of Sch 2 to the *Migration Regulations* authorised and required the Minister to impose a condition requiring the holder of a BVR to wear a monitoring device at all times ("the monitoring condition") and a condition requiring the holder of a BVR to remain at a notified address between the hours of 10.00pm and 6.00am each day ("the curfew condition"), unless the Minister was "satisfied that it [was] not reasonably necessary to impose that condition for the protection of any part of the Australian community". In *YBFZ v Minister for Immigration, Citizenship and Multicultural Affairs* (2024) 99 ALJR 1; 419 ALR 457, a majority of the High Court held that cl 070.612A(1), in that form, was inconsistent with Ch III of the *Constitution* to the extent it then purported to authorise and require the Minister to impose each of the monitoring condition and the curfew condition.

In response to *YBFZ*, the *Migration Regulations* were amended to repeal and substitute a new cl 070.612A(1) of Sch 2, which authorises and requires the Minister to impose each of the monitoring condition and the curfew condition if the Minister is both "satisfied on the balance of probabilities that the holder poses a substantial risk of seriously harming any part of the Australian community by committing a serious offence" and "satisfied on the balance of probabilities that the imposition of the condition ... is ... reasonably necessary ... and ... reasonably appropriate and adapted ... for the purpose of protecting any part of the Australian community from serious harm by addressing that substantial risk". The context of cl 070.612A(1) was otherwise unchanged, including two relevant features. First, the rules of natural justice do not apply to the decision of the Minister to grant the BVR subject to the monitoring condition or the curfew condition. Secondly, if imposed on the grant of a BVR, the monitoring condition and the curfew condition remain in force for a fixed period of 12 months from the date of the grant. Non-compliance with either condition is an offence punishable by a term of imprisonment of between one and five years.

The plaintiff is a citizen of Papua New Guinea, whose protection visa was cancelled in 2024. In April 2025, a delegate of the Minister granted the plaintiff a BVR on conditions that included the monitoring condition and curfew condition.

The High Court held, by majority, that cl 070.612A(1) of Sch 2 to the *Migration Regulations*, to the extent it purported to authorise and require the Minister to impose each of the monitoring condition and the curfew condition, was invalid for exceeding the regulation-making power conferred by s 504 of the *Migration Act* when that power was construed as subject to Ch III of the *Constitution*.

*This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*