

## New Zealand Detention Profile

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Due to its remote geographic location, New Zealand has not faced the same migration pressures as that of its larger neighbour [Australia](#). The smaller inflows of irregular migrants and asylum seekers are reflected in the country's detention infrastructure and policies. New Zealand has no dedicated immigration detention facilities, instead using its prison system for long-term detention, a practice that has been criticised by rights observers (HRF 2009). Although a new Immigration Act emphasises alternatives to detention, it also raises the possibility of prolonged and arbitrary detention (Ngatai 2010; AI 2009). There also seems to be a growing focus on border security in political discourse. In October 2010, for example, New Zealand Prime Minister John Key emphatically rejected that New Zealand would pay for and run a "regional processing centre" for arriving boat people, although he said that having such a facility somewhere in the region "could fit" with the country's policies. Referring to a then-recent arrival of a boat of asylum seekers in Canada, Key said, "If they can get to Canada they can get to New Zealand so we are looking at our own legislation and our response to this issue" (Vance 2010).

### Detention Policy

**Key norms.** As of November 2010, *Immigration Act 2009* became New Zealand's principle piece of legislation guiding its immigration and detention policies, replacing the previous *Immigration Act 1987*. The new law carries with it several significant changes, including increased powers for immigration officers to arrest and detain migrants, as well as extending detention without judicial review. The New Zealand government, meanwhile, has emphasised that the new Act "will provide for a tiered detention and monitoring system that includes a greater ability to use reporting and residence requirements instead of secure detention" (DoL website).

A second relevant piece of legislation is the *Corrections Act 2004*, which covers irregular migrants and asylum seekers who are detained in one of New Zealand's prisons. Section 181 of the Act allows the Department of Corrections, which is part of the Ministry of Justice, to share information about specific offenders with the Department of Labour when it is for immigration purposes. Cooperation between the two departments is also outlined in Section 302 of the 2009 *Immigration Act*. The Immigration Service (Immigration New Zealand) falls under the Department of Labour.

**Grounds for detention.** The 2009 *Immigration Act* introduces no real changes to the grounds for detention in New Zealand. Under Section 310 police can detain a foreign national if he/she is: a) denied entry into the country at an airport and awaiting deportation; b) not carrying proper identification documents; c) suspected of constituting a threat or risk to security; or d) has breached residence and reporting requirements. Further, if a foreign national has a false, fraudulent, or expired visa, has had their refugee status cancelled, or is deemed a threat to security, they are liable for deportation and can also be detained (s. 154-163, IA 2009).

**Detaining authorities and length of detention.** The 2009 *Immigration Act* provides changes in who can detain people and the amount of time a foreign national can remain in administrative detention.

Designated immigration officers are provided the authority to arrest and detain foreign nationals suspected of being unlawfully in New Zealand for a maximum of four hours. Under the old *Immigration Act*, the authority to arrest and detain lay solely with members of the police. (s. 312, IA 2009; INZ website).

The new law also extends the amount of time foreign nationals can be detained without judicial review from 72 to 96 hours (s. 316, IA 2009), a move that has been criticised by human rights groups (Ngatai 2010). Foreign nationals are detained at a police station during this period until a decision is made on their cases. If their identity has not been established, or they cannot be deported within 96 hours, an immigration officer can apply to a District Court Judge for a warrant of

commitment, which extends detention up to 28 days (s. 316, IA 2009). In these cases the individual is transferred from a police station to one of New Zealand's prisons. The Court has the discretion to further extend detention every seven days, although this has been criticised as being often a mere formality. One attorney told the Human Rights Foundation of New Zealand that "there is a weekly charade of 'review' at the Manukau District Court on a Friday whereby the detention of asylum seekers is extended for seven days" (HRF 2007).

While there is no firm limit on detention outlined in the *Immigration Act*, according to the Department of Labour, "There is a general six-month limit on immigration detention except where a foreign national hinders their own departure" (DoL website). Immigration authorities have the discretion to extend the length of detention if they feel a detainee is hindering the deportation process while waiting for the six-month period to pass in order to be released (DoL website).

**Asylum seekers.** Detention of asylum seekers in New Zealand can occur under two circumstances. Those arriving at the border are initially held in police custody pending a risk assessment and court hearing. After the hearing, claimants are either detained at a prison if identity or security concerns are raised, conditionally released to an approved address in their community, or held at the Mangere Accommodation Centre. Asylum seekers are rarely detained in prisons; according to the Department of Corrections, between July 2004 and April 2010 only 14.1 percent of asylum seekers continued to be detained after their initial court hearing (Reeve 2010; Poole 2010a). It generally takes between 3 and 5 months for a decision to be made by a refugee and protection officer on an asylum claim (INZ 2010a).

Foreign nationals already detained in a prison under section 310 of the new 2009 *Immigration Act* (s. 128 of the 1987 Act) can claim asylum, but should do so within two days of being taken into custody (INZ 2009). In these cases, refugee and protection officers have access to the prison to interview asylum seekers (s. 149(3), IA 2009) and are encouraged to make a decision as quickly as possible, ideally within 20 weeks. Claimants, however, remain detained in prison until a decision is made, at which point they are released if granted refugee status (INZ 2009). Between July 2004 and April 2010, 4.4 percent of refugee claims were from those already detained (Reeve 2010).

Asylum seekers can appeal to the Refugee Status Appeals Authority if their claims are rejected. For those detained in a prison, the appeal must be made within five working days of the decision, while in all other instances the deadline is 10 working days (s. 194(2), IA 2009). Legal aid is also available to those wanting to challenge their detention, a significant change provided for under the new immigration act (RCNZ 2010).

**Alternatives to detention.** At the discretion of an immigration officer, foreign nationals liable for arrest can be offered an alternative to detention. Under s. 315 of the new act, alternatives include residing at a specified place, reporting to a specified place at certain times, and/or having a guarantor ensure compliance with residence and reporting requirements. Immigration officers, however, also have the discretion to end any agreement with respect to alternatives, while foreign nationals can be arrested and detained if they violate any of the residence and reporting requirements (s. 315, IA 2009).

For asylum seekers there is a sliding scale of options: detention in prison, detention at the Mangere Accommodation Centre, or conditional or unrestricted release. Conditional release is offered at the discretion of an immigration officer (Field 2006) and asylum seekers must attend any interviews with immigration authorities during the refugee determination process (s. 315(1), IA 2009).

Asylum seekers granted conditional release have the option of staying with members of their family or community, or at a hostel. Since 2006 the Auckland Refugee Council has run one such hostel, which hosts those awaiting a decision on their claims, as well as a small number whose claims have been denied but where the principle of non-refoulement applies. From July 2009 to June 2010, the majority of residents came from Iran, Lebanon, Pakistan and the Democratic Republic of Congo, with most staying between 2 and 12 months. In general there is a one-year limit at the hostel unless Immigration New Zealand (INZ) denies someone a work permit due to "identity issues." In June 2010 there were 13 residents at the hostel: 10 men, 2 women and 1 child. Five of these had been there for more than 2 years (ARCI 2010).

**Minors.** While the new *Immigration Act* does not explicitly discourage the detention of minors, in principle minors in New Zealand may be detained only in exceptional circumstances and as a last resort, according to the Immigration Department's operations manual on border entry (INZ 2010b). The new act does, however, provide certain protections. Minors must have a responsible adult to represent their interests (either a parent or a responsible adult nominated by immigration authorities) (s. 375, IA 2009), be able to express his/her views on detention, and have these views considered at any proceedings affecting him/her (s. 377, IA 2009; Ngatai 2010).

The new act's position toward minors has garnered mixed reactions from human rights groups. On the one hand, it will

change the definition of a child from a person under the age of 17 to one under 18, bringing New Zealand in line with the UN [Convention on the Rights of the Child](#) (UNCROC). On the other hand, as the New Zealand Human Rights Commission highlights, it does not include “an explicit presumption against detention of children, and reference to UNCROC obligations” (Ngatai 2010).

**Privatisation.** In 2009, the Parliament passed the *Corrections (Contract Management of Prisons) Amendment Act*, which allows private companies to manage prisons and detention centres in New Zealand. According to the Department of Corrections, “Contract management of prisons is where private sector organisations competitively tender for contracts to manage the operation of a prison. The prison is operated by an external party, under the terms of a contract with Government, where Corrections remains ultimately responsible to the public and Government. The Government’s objective is to use private sector innovation and international experience to improve quality, efficiency and cost-effectiveness across the corrections system” (DoC, “Contract Management of Prisons Project”).

In 2010, the private security firm Serco was awarded a contract to operate the Mt. Eden’s Prison and the Auckland Central Remand Prison, both of which have been used to hold non-citizens in administrative detention. Serco has been harshly criticized for its operations at prisons and detention centres in Australia and the United Kingdom (Vance 2010).

## Detention Infrastructure

New Zealand’s detention infrastructure reflects the relatively small number of irregular migrants and asylum seekers who reach its shores. In contrast to its neighbour Australia, which has nine detention sites, including an off-shore centre, New Zealand has no dedicated immigration detention facilities. Instead, it uses police stations and prisons to house detainees, as well as a semi-secure accommodation centre for asylum seekers.

Unfortunately, New Zealand does not keep detailed statistics about where immigration detainees are held. In response to an information request from the Global Detention Project, an official at the Department of Labour wrote, “The Department does not hold information regarding which prisons hold asylum seekers or which particular corrections facility irregular migrants or asylum seekers were held at. The Department of Corrections has also confirmed that they do not hold this data” (Robinson 2010).

The Global Detention Project has also received contradictory information regarding possible plans to build a new dedicated immigration detention center in order to limit the use of prisons for such purposes. According to a note from the Refugee Council of New Zealand (RCNZ), “The Government has plans, which RCNZ fully supports, to build a small secure facility at Mangere Centre and stop any and all detention in any correctional facility” (Poole 2010). However, when queried about this, an official at the Ministry of Labour claimed that there were “no plans at present to build” such a facility (Robinson 2010).

**Police stations.** Under the 2009 *Immigration Act*, any police station in New Zealand can be used to detain a person without a warrant of commitment for up to 96 hours (s. 331b, IA 2009; Blakemore 2010), including both undocumented migrants and asylum seekers whose identity is uncertain. Under the previous immigration act detention could only last up to 72 hours. Individuals reportedly are generally detained at police stations for no longer than 24-48 hours (HRF 2009).

The appropriateness of using these facilities for immigration purposes has been criticized by human rights groups. For instance, the Papanui police station in Auckland has been criticised for not providing separate facilities for migrants and asylum seekers, as well as overcrowding and poor hygiene. Detainees also claimed being denied access to their belongings and being forced to sleep in cells without a mattress. Additional concerns have been raised over the fact that police officers have not been trained in dealing with asylum seekers (HRF 2009). Moreover, in its May 2009 report, the UN [Committee Against Torture](#) criticised the insufficient training in human rights provided to immigration officials (CAT 2009).

**Prisons.** New Zealand currently has 20 prisons that can detain undocumented migrants issued warrants of commitment, each of which are managed by the Department of Corrections (DoC website; Reeve 2010). In rare cases asylum seekers are also detained in these facilities, when there is an identifiable risk of absconding, criminal activity, or threat to security or public safety (RCNZ 2009; HRF 2009). According to information gathered by the Global Detention Project, only a handful of prisons appear to have been used for the purposes of immigration-related detention in recent years. These are: the Auckland Central Remand Prison, Mt. Eden Prison, Waikeria Prison, and Arohata Prison for women (Blakemore 2010; Poole 2010a; HRF 2009). In response to an access to information request from the Global Detention Project, the Department of Labour and the Department of Corrections said they did not collect data on which prisons currently hold or

have held irregular migrants and asylum seekers (Robinson 2010).

According to statistics provided by the Department of Labour, the average length of detention for asylum seekers detained at the border in one unnamed prison has fluctuated over the past several years. Detention times jumped from 6.9 weeks in fiscal year (FY) 2007-08 to 11.8 weeks in FY 2008-09, only to drop back to 6.25 weeks in FY 2009-10 (Robinson 2010).

Generally, detainees are held in the remand sections of the prisons, although in most cases they appear not to be segregated from criminal detainees (Reeve 2010). The Auckland Central Remand Prison (ACRP), part of Mt. Eden Prison, is the only facility with a separate unit for individuals detained on immigration matters and who have submitted an asylum claim (Blakemore 2010). In a 2004 report, the Auckland Refugee Council (ARCI) highlighted that due to a lack of space at ACRP, detainees were moved to Mt. Eden where “bullying and intimidation from criminal inmates was not uncommon” (ARCI 2004).

While there is no separate protocol for women, those detained are held in one of New Zealand’s three women’s prisons, located in Auckland, Wellington, and Christchurch (Reeve 2010). Currently, young males under the age of 17, as well as 18 and 19 year olds deemed vulnerable, can be held at youth units maintained by the Department of Corrections. Those under 17 can also be held at a youth justice facility operated by Child, Youth and Family (Reeve 2010).

Similar to the criticism leveled at police stations, human rights groups have argued that prisons are inappropriate places of detention, especially for asylum seekers (CAT 2009; HRF 2009). There have been reports of assaults at ACRP and of inadequate interpreting services (HRF 2009), while cases of detained minors in prisons continues to draw heavy criticism (RCNZ 2009).

**Mangere Accommodation Centre.** Located in a former army barracks, the Mangere Accommodation Centre (MAC) (also known as the Mangere Refugee Resettlement Centre) is the sole facility in New Zealand dedicated entirely to housing refugees and asylum seekers. The centre’s population is predominantly made up of incoming UN Quota Refugees being resettled in the country (of which New Zealand accepts 750 annually), as well as asylum seekers whose identity is uncertain and who do not pose either a risk of absconding or to national security (Poole 2010b; INZ 2010c). Both are housed together, which has reportedly caused resentment and tension between the two groups, and has led to criticism of differences in treatment, including a lack of parity in accessing housing and employment support services (RCNZ 2009; Dunstan 2004). On average, asylum seekers spend six weeks at the centre, which can hold up to 28 at any given time. While at the MAC, the *Immigration Act* officially classifies them as ‘detainees’ (Field 2006).

The Global Detention Project codes the centre as being *semi-secure*, while New Zealand authorities characterize the facility as “open detention” (DoL website, “Regulatory impact statement—immigration act: monitoring and detention”). The structure itself reportedly resembles a hostel, as there are no security guards or walls (Poole 2010a), and while electronic gates are in place, in practice they are mainly used to keep non-residents out (for a detailed look at the centre’s infrastructure, see [Thammavongsa 2009](#)). There are, however, limitations on asylum seekers’ movements, and the centre’s management has the right to refuse permission to leave during the day (Field 2006). According to the Refugee Council of New Zealand, “some categories of asylum seekers have restricted access to leaving the premises and others must sign in and out with restricted hours of freedom of movement.” While it is effectively based on an honour system, if an asylum seeker violates these restrictions they can be detained at a prison (Poole 2010a). This is in contrast to Quota Refugees, who have no restrictions on leaving the centre during the day or staying away overnight (RCNZ 2009; Field 2006). It is very rare, however, that an asylum seeker is transferred from the MAC to a prison; there were only four such occurrences between July 2007 and June 2010 (Robinson 2010).

Immigration New Zealand (INZ) manages the centre, with the help of NGOs such as Refugee Services New Zealand and Refugees as Survivors (INZ 2010c; Thammavongsa 2009; Field 2006). It is designed to detain both adult and minor asylum seekers, and has a separate one-block section used specifically for women and children. Children are only detained with adults if they are with family members and it is in their best interests (Ngatai 2010). Generally speaking, the MAC is described as being in very good condition (Field 2006).

The number of asylum seekers at the MAC has declined significantly over the past five years. Only 15 were detained at the centre in FY 2009-10, compared to 34 in FY 2006-07 and 62 in FY 2004-05 (Reeve 2010). Both local NGOs and UNHCR have expressed concern that the declining numbers are due to the growing interdiction of asylum seekers at transit airports, preventing genuine refugees from reaching New Zealand and filing asylum claims (RCNZ 2010; AI 2009).

## Facts and Figures

New Zealand currently has no dedicated immigration detention sites, instead using its prison infrastructure of 20 facilities for long-term detention (Blakemore 2010), while the Mangere Accommodation Centre is able to house 28 asylum seekers at a time in a semi-secure environment (Poole 2010a; Field 2006). The total number of persons held in secure or semi-secure detention has steadily declined over the past six years, dropping from 76 in FY 2004-05 to 23 in FY 2009-10 (Reeve 2010).

The number of individuals detained in prisons is relatively small and has been declining over the past five years. There were only eight detainees in FY 2009-10, compared to 12 in FY 2005-06 and 14 in FY 2004-05 (Reeve 2010). As for asylum seekers, statistics showed that six were detained at ACRP in 2006, although NGOs have criticized the limited amount of more recent information on these numbers (RCNZ 2009). NGOs, in particular the ARCI, are able to visit asylum seekers at Mt. Eden and ACRP, and detained asylum seekers have full access to legal representation and other support (Poole 2010b). Concerns have also been raised, however, over access to detainees at ACRP to assist in their asylum applications (RCNZ 2009).

According to Department of Labour statistics, eight asylum seekers were detained at the border in FY 2009-10, originating from Nigeria, Sri Lanka, South Africa, Algeria, Iran, Pakistan and Iraq. While the GDP was unable to obtain figures for irregular migrants, according to the Department of Labour asylum seekers detained in prisons were held for an average of 6.25 weeks in FY 2009-10, compared to 11.8 weeks in FY 2008-09 and 6.9 weeks in FY 2007-08 (Robinson 2010).

Largely owing to its geographic location, asylum claims to New Zealand are significantly lower in comparison to Australia, which saw 6,170 claims in 2009 (UNHCR 2010). In FY 2009-10, New Zealand's Refugee Status Branch decided on 335 asylum applications, a slight increase over the previous three years (INZ 2010a; RefNZ website). Of these, 91 (27 percent) were approved, while 244 (73 percent) were declined. The top five countries of origin among asylum seekers in 2009 were Fiji, Sri Lanka, Iraq, Iran, and India (UNHCR 2010).

Since 2007, the approval rate for refugee claimants to New Zealand has remained between 25 and 30 percent. According to statistics from Immigration New Zealand, it generally takes 3-5 months for a refugee claim to be processed and for a decision to be made (INZ 2010a). In FY 2009-10, the Refugee Status Appeals Authority heard 186 cases from people whose refugee status claims were declined. Of these 52 were granted and 111 were dismissed (RSAA 2010).

In FY 2007-08, a total of 1,197 people were refused entry into New Zealand. This represented a slight decrease over both 2006-07 (1,328) and 2005-06 (1,455). During this three-year span, the top three countries of origin of those refused entry were Malaysia, Brazil, and South Africa. New Zealand has also seen a decline in the number of deportations over the past several years. In FY 2008-09, a total of 1,645 people were deported, including those whose refugee status claims were declined, down from a peak of 2,407 in 2003-04 and 1,912 in 2006-07 (RefNZ website).

There were an estimated 15,769 overstayers in New Zealand in April 2009. The majority of these came from Samoa (4,082), Tonga (2,457) and China (1,965) (RefNZ website).

## New Zealand Detention Profile

### List of Detention Sites

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Name	Status (Year)	Location	Facility Type	Security	Detention Timeframe	Authority	Management	Capacity	Reported Population	Demographics & Segregation
Arohata Prison	In use (2009)	Tawa, Wellington	Prison	Secure	Long-term	Ministry of Justice/ Department of Corrections (chief executive)	Department of Corrections	154 (total prison capacity) (2010)		Adult females. No segregation of criminal and administrative detainees (2010)
Auckland Central Remand Prison	In use (2010)	Mt Eden, Auckland	Prison	Secure	Long-term	Ministry of Justice/ Department of Corrections (chief executive)	Serco	432 (total prison capacity) (2010)		Adult males. Segregation of criminal and administrative detainees (2010)
Mangere Accommodation Centre	In use (2010)	Mangere, South Auckland	Reception Centre	Semi-secure	Long-term	Department of Labour/ Immigration New Zealand	Immigration New Zealand; Non-governmental organisations	28 (2006)	15 (FY 2009-2010)	Adult males & females, minors. Segregation of males and females (2010)
Mt Eden Prison	In use (2010)	Mt Eden, Auckland	Prison	Secure	Long-term	Ministry of Justice/ Department of Corrections (chief executive)	Serco	521 (total prison capacity) (2010)		Adult males. No segregation of criminal and administrative detainees (2010)
Waikeria Prison	In use (2009)	State Highway 3, 16 km south of Te Awamutu	Prison	Secure	Long-term	Ministry of Justice/ Department of Corrections (chief executive)	Department of Corrections	1031 (total prison capacity) (2010)		Adult males, adult females. No segregation of criminal and administrative detainees (2010)

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(This is only a partial list. More detailed information is available upon request.)

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## New Zealand Detention Profile

### Map of "In Use" Detention Sites

For more detailed information, see the complete [List of Detention Sites](#).

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#### Country View

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