



3 May 2022

## **INZ accepts review recommendations relating to the detention of asylum claimants**

Immigration New Zealand (INZ) welcomes the recommendations of the independent review of the processes and procedures relating to the detention of asylum seekers.

The review, which was commissioned by INZ and undertaken by Victoria Casey QC, looked at INZ's operational practices, the structure of the detention regime under the Immigration Act 2009, and the appropriateness of the use of Police and Corrections facilities to detain asylum seekers.

The closing of our borders due to COVID-19 provided INZ with an opportunity to look at areas of our operational guidance in relation to asylum seekers and we have already started updating our procedures to better align with UNHCR guidelines.

There are currently no asylum seekers in detention and there has not been for the past two years.

This review allows us to build on those changes, and we intend to act on the recommendations.

We will review and change our operational guidance and decision-making framework relating to restricting the movement of asylum seekers, to ensure it complies with our human rights obligations.

As part of the work, we have established a decision-making panel to consider any recommendations to detain asylum seekers or restrict their movement. In the limited cases where there is an identifiable risk that cannot be managed appropriately in another way, this may include applying for a warrant of commitment.

Decisions made by this panel will be consistent with the 2012 UNHCR Detention Guidelines.

INZ is also refreshing New Zealand's refugee resettlement strategies which enables refugees to achieve better outcomes quicker, and late last year we moved the delivery of our Navigator service, which helps assess refugees needs and links them to support, closer to the communities they support.

We will work with Police to explore the provision of key support and services to asylum seekers where it is necessary for them to be in short-term detention.

The Police are responsible for detaining an asylum seeker at the initial point of detention and the Department of Corrections is responsible for the ongoing welfare of individuals detained in its facilities for longer stays.

Currently only a small number of people are detained under the Immigration Act each year so INZ does not have an alternative facility for those who need to be detained if required. Police and Corrections custody has been the default.

From 2015 to 2020 there were 2,655 asylum seekers in New Zealand, of whom 86 were detained.

INZ has set up an implementation group to work through the recommendations, make decisions and implement changes.

We want to thank Ms Casey and everyone who contributed to her thorough review.

**Alison McDonald**

**Deputy Secretary – Immigration**

**Ministry of Business, Innovation and Employment**

Summary of the recommendations made in the review:

Amendment of Part 9 of the Immigration Act 2009 to:

- separate the detention regime and lower end restrictions on freedom of movement for asylum seekers from those in the process of being deported.
- allow electronic monitoring where the Court considers it necessary to address well-founded risks of absconding, or public safety or national security risks.
- ensure the decision to agree to a Residence and Reporting Requirements Agreement (RRRA) is not within the absolute discretion of an INZ officer.

The Report recommends, pending legislative reform to Part 9 of the Act, that INZ's operational process should be changed to:

- recognise that detention of an asylum seeker is only justified as an exceptional measure of last resort, to be determined on an assessment of the individual's circumstances.
- require any decision to seek a warrant to detain an asylum seeker to be reviewed and approved at a sufficiently high level and to meet the high threshold required
- ensure that when a decision is made not to issue a visa at the border that a separate decision is made at an appropriate level of seniority as to what happens to the claimant pending resolution of their claim.
- ensure all operational guidance clearly reflects the 2012 UNHCR Guidelines.
- work urgently to address identity concerns where these concerns lead to restrictions on a claimant and if the claimant is detained, they have access to the appropriate tools (phone, internet) to assist them in providing evidence of their identity.
- to regularly review the necessity of detention and other restrictions.
- to ensure that alternatives to detention are available in the community.

The Review also proposes that INZ:

- work with the Ministry of Justice to facilitate resolution of legal aid issues that affect the warrant of commitment hearing processes, and utilise a proposed roster of refugee lawyers for newly arrived seekers
- improve data collection, compilation and reporting concerning refugee seekers who have not been granted a visa
- ensure that appropriate information and support, and appropriately qualified legal assistance is available to newly arrived seekers at the border
- engage with Ara Poutama Aotearoa (Corrections) to determine whether civil detention arrangements could be used as a template for a one-off bespoke facility for refugee seekers who pose a serious threat to public safety or national security, with that facility being compliant with the 2012 UNHCR Guidelines.