



COVERSHEET

Minister	Hon Andrew Little	Portfolio	Immigration
Title of briefing	Government response to the Report of the Education and Workforce Committee on the petition of Juliana Carvalho: Let Ignacia stay in New Zealand	Date to be published	13 October 2023

List of documents that have been proactively released

Date	Title	Author
31 July 2023	Government response to the Report of the Education and Workforce Committee on the petition of Juliana Carvalho: Let Ignacia stay in New Zealand The Government Response (Appendix One of Cabinet paper) was published by the House and can be found here .	Office of the Minister of Immigration
03 August 2023	Government response to the Report of the Education and Workforce Committee on the petition of Juliana Carvalho - Let Ignacia stay in New Zealand: LEG-23-MIN-0132 Minute	Cabinet Office

Information redacted

YES / NO

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld for the reasons of privacy of natural persons and confidential advice to government.

In Confidence

Office of the Minister of Immigration
Chair, Cabinet Legislation Committee

Government response to the Report of the Education and Workforce Committee on the petition of Juliana Carvalho: Let Ignacia stay in New Zealand

Proposal

- 1 This paper seeks approval of the Government’s response to the Education and Workforce Committee’s report on the petition of Juliana Carvalho: *Let Ignacia stay in New Zealand*.

Background

- 2 The petition from Juliana Carvalho titled *Let Ignacia stay in New Zealand* was presented to the House on 09 May 2022. The petition requests:

That the House of Representatives urge the Associate Minister of Immigration to exempt Ignacia Vasquez from the Acceptable Standards of Health policy and grant Ignacia her visa so that she can live with her parents in New Zealand, and note that 3,413 people have signed an online petition to this effect.

- 3 This the third petition Juliana Carvalho has submitted regarding immigration health settings and disability since May 2021.
- 4 The petitioner urges the Associate Minister of Immigration to grant the subject of the petition, Privacy of natural persons [redacted], an exemption to the immigration health requirements. The petitioner further recommends that the Government carry out a full review of the Acceptable Standard of Health (ASH) requirements and the Immigration Act provisions enabling them, with a view to implementing a strengths-based approach to health and disability immigration settings.

- 5 Privacy of natural persons [redacted]

- 6 Privacy of natural persons [redacted]

- 7 Privacy of natural persons [redacted]

Privacy of natural persons
[Redacted]

8 Privacy of natural persons
[Redacted]

9 In July 2022, the Ministry of Business, Innovation, and Employment (MBIE) responded to a request from the Petitions Committee to provide a written submission in response to the matters raised in this petition. MBIE's response provided details of the immigration health settings and how they are applied, as well as the Immigration and Protection Tribunal process for unsuccessful residence applications. The response also noted the Government's obligations under articles 5 and 18 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and noted MBIE's stance that it considers the immigration health settings are appropriate, even in light of New Zealand's obligations under this convention.

10 The Petitions Committee subsequently transferred the petition to the Education and Workforce Committee (the Committee) to consider.

The Education and Workforce Committee's findings

- 11 The Committee's report on this petition recommends to the Government:
 - 11.1 by majority, that the review of immigration instructions relating to health requirements for residence should consider creating exemptions for dependent children, and
 - 11.2 that it take a strengths-based approach to disability with regards to immigration policy.
- 12 The Committee also commented that they would ask me to look at Ignacia's case and to take it into account when reviewing the immigration instructions relating to health requirements.

Comment on the Education and Workforce Committee's findings

- 13 I recommend continuing to maintain the position, as noted in previous responses to this petitioner, that the current immigration settings are appropriate because they:
 - 13.1 Focus on assessing the likely impact that person will have on our health and special education services.
 - 13.2 In most cases, allow INZ to take into account the applicant's personal circumstances, such as their likely settlement outcomes.

Privacy of natural persons
[Redacted]

- 14 I consider that it is necessary to retain these settings to ensure that New Zealanders' access to health and special education services are not negatively impacted in the long-term.
- 15 It is worth noting that New Zealand ratified the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in 2008. Ratifying states are required to ensure disabled people enjoy, on an equal basis with others, their human rights. It does not create new rights for disabled people per se, although it does build on conventional understandings of what is required to uphold existing human rights as they relate to disabled people.
- 16 The UNCRPD Committee periodically reviews ratifying states' adherence to the UNCRPD. In September 2022 the UNCRPD Committee issued a report on New Zealand's adherence that included 60 concluding observations, including three immigration-related observations in relation to New Zealand's realisation of the right to liberty of movement and nationality (Article 18 of the UNCRPD). The UNCRPD Committee recommended that New Zealand:
- 16.1 review and amend its immigration legislation and administrative rules to ensure persons with disabilities do not face discrimination in immigration procedures, in particular, as a result of the application of the acceptable standard of health requirements,
 - 16.2 reverse the current ineligibility of persons with disabilities whose impairment requires full-time care (under the acceptable standards of health policy) for consideration of a medical waiver, and
 - 16.3 repeal section 392, paragraphs (2) and (3), of the Immigration Act of 2009, which prohibits the lodging of immigration-related complaints to the Human Rights Commission.
- 17 The Government response to the report was considered by Cabinet Social Wellbeing Committee on 28 June [SWC-23-MIN-0083 refers] and advises that the Government does not intend to progress these recommendations and considers that the current approach to health screening for immigration purposes remains appropriate and proportionate to the objectives and risks being balanced in this space.
- 18 The Government response to the UNCRPD report will be published in due course.
- 19 I continue to recommend that a broad review of the health criteria is not required, but note that:
- 19.1 Aspects of immigration health screening, including the threshold in immigration instructions for health conditions deemed high cost have recently been reviewed. As a result, the threshold for health conditions was increased from \$41,000 to \$81,000 over five years.
 - 19.2 Confidential advice to Government

Confidential advice to Government

19.3 Whaikaha Ministry of Disabled People supports a shift to a more strengths-based approach to immigration health settings. MBIE remains open to a discussion with both Whaikaha and the Human Rights Commission on the practicalities of what a strengths-based approach could look like. However, a substantive review of the immigration health settings is not in the current policy work programme. I note that details on how to quantify contributions under a strengths-based approach have not yet been developed, and there would be significant operational hurdles in expecting a holistic assessment to be made by INZ in every presenting case.

20 The Associate Minister of Immigration has been delegated authority to respond to cases where ministerial intervention has been requested. The request for ministerial intervention was referred to the Associate Minister of Immigration for consideration and she has declined to intervene Privacy of natural persons

The Government response

21 The proposed response attached at Appendix One outlines that the Government considers that the current approach to health screening for immigration purposes remains appropriate and proportionate to the objectives and risks being balanced in this space and the Government does not intend to conduct a broad review of the health settings, including in relation to a strengths-based approach or to consider exempting dependent children from the ASH requirements.

22 The proposed response also notes that intervention in the particular case of Privacy of natural persons was declined by the Associate Minister of Immigration.

Timing of Government response

23 The Government response was due to be presented to the House by 18 January 2023 but has been delayed, so will be presented as soon as possible.

Consultation

24 This paper was prepared by the Ministry of Business, Innovation and Employment. Whaikaha were consulted on this paper and have commented that they would welcome a review of the current policy settings and progress towards a positive response to the UNCRPD recommendations. However, they note that the response reflects current policy settings and is consistent with the Government's response to the UNCRPD report from 2022, which details that MBIE does not intend to review the settings.

Financial Implications

25 There are no financial implications associated with this petition response.

Publicity

26 The Government response at Appendix One will be publicly released in line with petitions procedures.

Proactive Release

27 This paper will be proactively released in line with the Cabinet Office circular Proactive Release of Cabinet Material: Updated Requirements [CO (18) 4].

Recommendations

The Minister of Immigration recommends that the Cabinet Legislation Committee:

- 1 **note** that on 20 October 2022 the Education and Workforce Committee presented its report to the House entitled “Let Ignacia stay in New Zealand”;
- 2 **note** that the Education and Workforce Committee recommended to the Government:
 - 2.1 by majority, that the review of immigration instructions relating to health requirements for residence should consider creating exemptions for dependent children;
 - 2.2 that it take a strengths-based approach to disability with regards to immigration policy;
- 3 **note** that the Education and Workforce Committee also requested that the Minister of Immigration look into the case of the subject of the petition;
- 4 **note** that I consider that:
 - 4.1 the approach to health screening for immigration purposes remains appropriate and proportionate to the objectives and risks being balanced in this space to ensure that New Zealanders are not negatively impacted in the long-term;
 - 4.2 that a broad review of the health criteria is not required;
- 5 **note** that the Associate Minister of Immigration has chosen not to intervene in the case of **Privacy of natural persons** at this time;
- 6 **approve** the Government response, attached at Appendix One, to the Report of the Education and Workforce Committee entitled “Let Ignacia stay in New Zealand”;
- 7 **note** that once approved, the Government response can be presented in the House on the next available sitting day;

IN CONFIDENCE

- 8 **invite** the Minister of Immigration to present the Government response to the House in accordance with Standing Order 380;
- 9 **invite** the Minister of Immigration to write to the petitioner enclosing a copy of the government response to the report of the Education and Workforce Committee on the petition, after the response has been presented to the House.

Authorised for lodgement

Hon Andrew Little

Minister for Immigration

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Appendix One: Government Response to Referral of petition from Juliana Carvalho: “Let Ignacia stay in New Zealand”

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