SUBMISSION BY JOHN FREEMAN

My background and reason for submission

I am researching the life of a former resident of the building in which I live. He was threatened with deportation in the 1930s, and he was involved in the 1936 migration case of Mrs Freer. The current allegations of inappropriate use of Ministerial powers to admit a person to Australia are reminiscent of 1936 allegations relating to the admission of Mrs Freer, though the circumstances differ completely.

The Mrs Freer case

A paper in the *Macquarie Law Journal*[i] reviews the Mrs Freer case, and it is not necessary to give details of the case here. Among the paper's conclusions are the following:

> At the same time – and this is 'Doc' Evatt, one of Australia's greatest champions of human rights – in applying the law with care, he explored the role of judicial review of administrative action, at that time an area of the law in a state of retarded development. In holding that the decision was unreviewable because Parliament had not provided for review, he raised the issue of whether the courts might be more adventurous in the face of an 'abuse of the power'. In holding that the court could not interfere even though the decision might have been 'based upon inaccurate or misleading information', he raised the question of whether that was an appropriate state of the law.
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> …..the case does stand out as an illustration of the tendency of Australian governments of various political stripes to manipulate immigration laws for ends unrelated to their original aims.
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> [the Minister], having made the ill-advised decision to ban Mrs Freer on alleged moral or family-protective grounds, was unable to obtain timely and reliable advice as to her alleged immorality.
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> The lasting significance of the Freer Case is that it not only illustrates a past tendency but also serves as a point of access to discuss questions of belonging, exclusion and identity that remain relevant to the Australian community today.

Implications of the Mrs Freer case for the Senate enquiry

Ministerial decisions on whether to admit a person to Australia have long been controversial. Wide ministerial discretion is essential, but so is public confidence that the Minister is acting in a fair, humane and reasonable manner, and in the national interest rather than a private one. In the light of the Mrs Freer case:

- Has there been an abuse of the Minister's power in the sense canvassed by 'Doc' Evatt?
- The Minister's claim that his intervention was a "discretionary and humanitarian act" for someone with "ongoing needs" and that the decision was "common sense" or "in the "interests of Australia as a humane and generous society" sits at complete odds with the Minister's repeated claims that he takes a hard-line approach to illegal migration.
- The migrants in question were Caucasian, whereas our asylum seekers rarely are. This suggests "questions of belonging, exclusion and identity" may have influenced the Minister in his migration decisions, as in the Mrs Freer case. But all those who are not Australian citizens are aliens, irrespective of their origins.
- As in the Mrs Freer case, the Minister has not provided acceptable reasons for his decisions or of how they relate to the national interest.

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[i] Dictating to One of 'Us': the Migration of Mrs Freer, Kel Robertson with Jessie Hohmann and Iain Stewart, Macquarie Law Journal 2005, accessed at http://www5.austlii.edu.au/au/journals/MqLJ/2005/12.html. Digital copies of the government's records are available at https://recordsearch.naa.gov.au/SearchNRetrieve/Interface/ViewImage.aspx?B=257345