

Submission to the inquiry of the Legal and Constitutional Committee of the Senate into the Migration Amendment (Validation of Decisions) Bill 2017.

I am a retired philosopher, and have been active since 2004 in the NSW Council for Civil Liberties (CCL). This however is my personal submission—though I have discussed it with the CCL Committee.

If the High Court finds section 503A unconstitutional, as the Minister expects, it is nearly certain that they will also find this bill unconstitutional as well. But in any case, the Senate should not have any truck with trying to retrospectively validate processes that are contrary to the Constitution.

In my submission, it is morally objectionable for the Minister to be able to remove a person's visa on supposed grounds that the person is unable to properly counter in the courts, given the very serious consequences that may follow. In the hands of a future minister, this may well lead to mistaken or immoral decisions. It is worse that such decisions, whose validity is now under threat, should, as is now proposed, in effect be made by an act of Parliament, without the persons in question having any opportunity at all to challenge those decisions.

It is not only a possible future minister that we need to take not account. Let us remember also the poor decisions made about Mohamed Haneef. The CCL has long argued that section 501 of the Migration Act should be repealed. I endorse that view. It has also argued that there is no place for persons who have been convicted of crimes, even serious crimes, being sent overseas, as though other countries will be in a better position to deal with those criminals, or that they will be less able to do harm in the countries to which they are sent. At its best, this "protection of the Australian people" is an extreme form of NIMBYism. But I suspect there is something nastier going on—a desire to hurt the offenders after they have served the penalties handed down by the courts.

Rather than validating the decisions taken by the Minister relying on the constitutionally objectionable section 503A, the individuals concerned should be entitled to reconsideration of their cases, with the opportunity to respond, in the knowledge of what they are accused of.

I would welcome the opportunity to further assist the Legal and Constitutional Committee's deliberations on this bill.