

Faking reason: *Kartinyeri v. The Commonwealth of Australia*

ABSTRACT

Valerie Kerruish

Working as ever on my idea of the wrong of law I return to the case of *Kartinyeri v. The Commonwealth*. I read it as a legal expression of the racism in Australian society, since it decided (albeit on various grounds) that racially discriminatory legislation, the Hindmarsh Island Bridge Act 1997 (Commonwealth), was constitutionally valid. Various strategies of avoidance, denial, admission and justification appear from the reasoning and provide one level for analysis. The indeterminacy of law's formalism is manifested in the Court's inability to agree an issue and the consequent lack of a *ratio decidendi*. This is a second platform. It raises questions about law's formalism: what it works and what its character is. Differently again, but still with an anchor within the arguments and judgements, namely the effect of the 1967 Constitution Amendment Act, *Kartinyeri* marks the end of a period of liberal reform in Australia and a turn to policies which might (or might not) have reached their most spectacular moment in former Prime Minister John Howard's plans to combat child sexual abuse within Aboriginal communities using police-military intervention, compulsory medical examinations of children and compulsory acquisitions of Aboriginal land.

At this stage I'm pondering the relation between violence and wrong. Is 'violence' figured in legal thought as *prima facie* 'wrong' that is trumped by legality because law has, so to speak taken it together with the authority to determine what 'it' is into itself?