False Courts and Jurisdictional Abuse in Australian and International

A **"false court"** – one acting beyond or outside its lawful authority – undermines the judiciary's integrity and the rule of law. Introduction A "false court" can be understood as a court proceeding that lacks lawful authority or fundamental fairness – for example, a court in one Australian state purporting to apply another jurisdiction's statute to override due process, hold secret hearings, or enable arbitrary detention.

Such a scenario raises serious legal issues. Under Australian constitutional law, it **implicates the separation of powers and the integrity of courts** as recognized by the High Court. Under international law, it engages human rights norms like the right to a fair trial and freedom from arbitrary detention (as embodied in the International Covenant on Civil and Political Rights, ICCPR).

This report analyses the concept through five lenses**: (1) Australian constitutional principles and High Court precedent; (2) international human rights law (ICCPR and UN jurisprudence on fair trial and detention); (3) the Vienna Convention on the Law of Treaties regarding treaty obligations; (4) legal theory on judicial legitimacy, abuse of power and "state malice"; and (5) real-world cases or scholarship on misuse of jurisdiction, closed courts, or fabricated legal process.**

Relevant case law, commentary, and human rights reports are cited throughout to illustrate these points.

1. Australian Constitutional Principles and Separation of Powers

Australian courts derive their authority from law and must act within the scope of their jurisdiction. A state court cannot generally apply another state's statute unless authorized by a valid law (for instance, via a cross-vesting scheme or choice-of-law rules in appropriate matters). If a Victorian court purported to enforce an ACT statute without authority – especially to deprive someone of due process – this would be a jurisdictional error that could render its actions invalid.

In Australia's federal system, the Commonwealth Constitution establishes a separation of federal judicial power (Chapter III), but state courts are not strictly bound by a state-level separation of powers. Even so, the High Court's Kable principle imposes limits to protect the integrity of state courts. In Kable v DPP (NSW) (1996), the High Court struck down a NSW law that required the Supreme Court to order the preventive detention of a named individual (bypassing ordinary criminal process) BLOGS.UNIMELB.EDU.AU . The Court held that state legislation cannot confer upon state courts functions that are incompatible with "the maintenance of the integrity of State courts" as impartial tribunals BLOGS.UNIMELB.EDU.AU .

In other words, a state court cannot be turned into an instrument of executive will or used to administer justice in a manner repugnant to basic judicial process, because state courts are entrenched as part of the integrated Australian judicature. One fundamental attribute of a court in Australia is adherence to natural justice (procedural fairness) and open justice. As

the High Court has noted, “the rationale of the open court principle is that court proceedings should be subjected to public and professional scrutiny” and courts depart from this principle only in exceptional circumstances ALRC.GOV.AU ALRC.GOV.AU .

Chief Justice Gibbs in Russell v Russell (1976) observed that **public hearings are an “essential aspect” of a court’s character – “the fact that courts of law are held openly and not in secret is an authentic hallmark of judicial … procedure. To require a court invariably to sit in closed court is to alter the nature of the court.”** ALRC.GOV.AU . Likewise, procedural fairness is central to the judicial function. In **Assistant Commissioner Condon v Pompano Pty Ltd (2013),** a case concerning **a Queensland law that allowed secret “criminal intelligence” evidence in court**, **Justice Gageler stressed that procedural fairness is an “immutable characteristic” of any Australian court** BLOGS.UNIMELB.EDU.AU .

He noted it **is “always unfair for a court to make an order that finally determines a person’s rights or interests without giving that person a fair opportunity to respond to evidence on which that order might be made.”** BLOGS.UNIMELB.EDU.AU Even when national security or other concerns justify some departure from ordinary openness, courts must preserve the irreducible minimum of fairness (e.g. the ability of the accused to know and meet the case against them) BLOGS.UNIMELB.EDU.AU LR.LAW.QUT.EDU.AU . If a court were to conduct a closed hearing that denied a party knowledge of the evidence against them or applied an inapplicable law to shortcut legal process, it would likely violate these principles. **The High Court has indicated that legislation which forces a court to proceed with unjust secrecy or without giving a fair hearing could be invalid under the Kable doctrine, as it undermines the court’s institutional integrity** BLOGS.UNIMELB.EDU.AU BLOGS.UNIMELB.EDU.AU .

At the very least, the affected party would have grounds to seek appellate or High Court review to quash such a proceeding for jurisdictional error (as occurred in **Kirk v Industrial Court (NSW) (2010), where an inferior court’s legal error was beyond reach of a privative clause and was ultimately corrected by the High Court** EN.WIKIPEDIA.ORG EN.WIKIPEDIA.ORG).

In sum, Australian constitutional law demands that courts act according to law and basic fairness. **A “false” or pseudo-court that uses the wrong jurisdiction’s statute to override procedural fairness would run afoul of these requirements. It offends Chapter III values and the rule of law for any Australian court to be used as a mere tool of executive or “star chamber” style injustice. As one scholar put it, procedural fairness and an open hearing are defining characteristics of a court – without them, a tribunal cannot be recognized as exercising legitimate judicial power** BLOGS.UNIMELB.EDU.AU ALRC.GOV.AU

. Thus, any attempt to subvert these principles (for example, via an interstate legal gimmick) would be met with constitutional resistance in the Australian legal system.

2. International Human Rights Law:

Fair Trial and Freedom from Arbitrary Detention Under international law, notably the ICCPR (to which Australia is a party), individuals are guaranteed the right to a fair hearing and to liberty. Article 14 of the ICCPR provides that “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law” EOS.CARTERCENTER.ORG .

This encompasses rights such as equality before courts, the presumption of innocence, the right to counsel, and the principle that justice should generally be open and transparent. The UN Human Rights Committee, which oversees ICCPR compliance, has emphasized that trials should be public and open in normal circumstances: “All trials in criminal matters ... must in principle be conducted orally and publicly. The publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large.” EOS.CARTERCENTER.ORG Public exclusion is permissible only for legitimate reasons like national security or public order and must be strictly necessary and proportional. Even then, core fair trial rights – such as the defendant’s right to know the evidence against them and to have a reasonable opportunity to present a defense – cannot be abrogated without breaching Article 14. Secret or closed proceedings, if they prevent the accused from effectively participating or if they are not strictly justified, are viewed as anathema to fair trial rights under international standards EN.WIKIPEDIA.ORG LR.LAW.QUT.EDU.AU .

Indeed, **when Australia conducted an entirely secret criminal trial of an intelligence officer (“Witness J” in 2018), it was widely condemned as “unprecedented” and “anathema to the rule of law” by observers including a former Supreme Court Justice and the Independent National Security Legislation Monitor** EN.WIKIPEDIA.ORG EN.WIKIPEDIA.ORG . Such secrecy runs counter to the **ICCPR’s requirements of a competent tribunal and public judgment. Article 9 of the ICCPR guarantees the right to liberty and security of person, prohibiting “arbitrary arrest or detention**.” Importantly, the term “arbitrary” in international law means more than “unlawful according to domestic law.” Even a detention that has a veneer of legal authorization can be arbitrary if it is unjust, unreasonable, or disproportionate LR.LAW.QUT.EDU.AU .

Article 9(1) specifies that no one shall be deprived of liberty except on grounds “established by law” – which implies a requirement of legal basis – and pursuant to fair and due process. The UN Human Rights Committee has made it clear that “‘non-arbitrary’ detention is not synonymous simply with ‘lawful’ detention” under domestic law LR.LAW.QUT.EDU.AU .

Detention must also accord with fundamental principles of justice and necessity. If a person were detained by a court order that was obtained through a grossly unfair process (for example, via a hearing where the detainee was not allowed to be present or the evidence was hidden, or under a statute that had no legitimate application to that person), this detention would likely be deemed arbitrary under Article 9 LR.LAW.QUT.EDU.AU . The UN

Working Group on Arbitrary Detention considers a deprivation of liberty arbitrary if it results from a trial that failed to meet international fair trial standards or if it otherwise lacks a proper legal basis or observance of due process EN.WIKIPEDIA.ORG .

In short, **international human rights law would view a "false court" orchestrating a person's imprisonment without a genuinely fair hearing as a serious violation of the detainee's rights. Furthermore, ICCPR Article 14 enshrines the right to an independent and impartial tribunal established by law. A court that acts ultra vires (beyond its power) or applies the wrong jurisdiction's law might not qualify as a "tribunal established by law" in the sense of Article 14(1).** International jurisprudence (including decisions of the Human Rights Committee on individual complaints) has condemned situations where ostensibly legal processes mask injustices. For example, the Committee has found Australia in breach of the ICCPR in past cases of prolonged immigration detention without effective judicial review, deeming them arbitrary despite domestic legality LR.LAW.QUT.EDU.AU .

Likewise, **if a court proceeding is a sham – lacking impartiality or the basic elements of a defense – any resulting conviction or detention can be challenged internationally as a denial of fair trial rights. Under Article 14(5), a person convicted has the right to have the conviction and sentence reviewed by a higher tribunal according to law; circumventing normal jurisdiction could rob a person of this right as well.**

In summary, international human rights law robustly guards against the kind of abuses described. The ICCPR would be violated by a court that, to defeat a person's fair hearing rights, invokes a law from another jurisdiction to hold a closed hearing or to detain someone arbitrarily. Such tactics offend the right to a fair, public trial and the freedom from arbitrary detention, attracting the opprobrium of bodies like the UN Human Rights Committee and international watchdogs. Notably, Australia has incorporated some of these standards in local law (e.g. Victoria's Charter of Human Rights and Responsibilities and the ACT's Human Rights Act, which mirror ICCPR fair trial guarantees), giving additional avenues to challenge unfair proceedings. Internationally, an affected individual could file a complaint under the First Optional Protocol to the ICCPR, alleging that Australia (as a whole) breached Articles 9 and 14 by allowing such a "false" legal process. Australia would then need to answer for how this occurred, as international law does not excuse a state because the violation happened in a sub-national jurisdiction.

3. The Vienna Convention and Treaty Obligations in a Federal System

If a **scenario arose where an Australian court (or any state organ) attempted to circumvent international obligations – for example, using a legal technicality to avoid fair trial guarantees – the Vienna Convention on the Law of Treaties (VCLT) becomes relevant.** Australia, as a party to the ICCPR,

is bound by that treaty on the international plane. The **VCLT codifies the principle of pacta sunt servanda (Article 26), meaning treaties in force must be performed by the parties in good faith** TRANS-LEX.ORG .

Crucially, Article 27 of the VCLT provides: “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.” TRANS-LEX.ORG . In other words, Australia cannot defend an ICCPR violation by saying “a state court did it, and our federal system permitted it.” From the perspective of international responsibility, the State (Australia) is a single entity. If any Australian authority or law – be it Commonwealth, state, or territory – acts in a way that breaches ICCPR obligations, Australia as a nation is answerable for that breach. The ICCPR itself anticipates federal states and forbids internal divisions from causing non-compliance: Article 50 of the ICCPR stipulates that “the provisions of the ... Covenant shall extend to all parts of federal States without any limitations or exceptions.” HUMANRIGHTS.GOV.AU .

This means Australia must ensure that all its jurisdictions (Victoria, ACT, etc.) uphold the Covenant’s rights. It cannot use the excuse that, for example, Victoria’s courts are independent or that an ACT law was applied outside its proper domain. Therefore, **if a “false court” scenario led to a person being denied a fair trial or arbitrarily detained, Australia’s international obligations would be breached regardless of the domestic technicalities. The federal government has a duty to ensure international human rights are respected nationwide. Should a state court engage in such conduct, international bodies (like the UN Human Rights Committee or the Working Group on Arbitrary Detention) would expect Australia to provide a remedy, not an excuse.** Indeed, under the VCLT Article 27, Australia could not cite a local statute or a jurisdictional quirk to avoid responsibility TRANS-LEX.ORG .

This principle was famously illustrated by the Human Rights Committee in communications where individuals complained about state-level actions (for instance, prison conditions or state police misconduct) – the Committee held Australia responsible, pressing it to align its internal law with ICCPR standards. The Vienna Convention also implies that treaty obligations must be performed in good faith. Deliberately routing legal processes through an atypical jurisdiction or misusing laws to dodge treaty-based rights would likely be seen as bad faith. It could draw diplomatic criticism or adverse findings in international forums. While the VCLT deals with state responsibility more than individual redress, it bolsters the argument that any domestic maneuver (such as applying an ACT statute in Victoria to skirt fair trial rules) has no effect on Australia’s duty to comply with the ICCPR. In practice, if such a thing occurred and an individual petitioned the UN Human Rights Committee, Australia could not simply respond “the procedure was lawful under our system.” The Committee would assess whether the substance of ICCPR rights was upheld. If not, Australia would be found in violation, with Article 27 VCLT foreclosing any “federalism” defense TRANS-LEX.ORG .

In conclusion, the Vienna Convention on the Law of Treaties underscores that international obligations override conflicting internal practices. A state cannot escape its human rights

duties by citing internal law or court peculiarities. Thus, any attempt to create a de facto "false court" to circumvent fair process would not only violate domestic principles but also place Australia in breach of its international treaty obligations, with no legal justification acceptable on the world stage.

4. Judicial Legitimacy, Abuse of Power, and "State Malice"

The rule of law requires that courts are not only lawful in form but legitimate in the eyes of the public. Judicial legitimacy has been described by Justice Stephen Gageler as "that level of public confidence which needs to exist for a competent and impartial judiciary to do its job … without fear or favor." It depends on the public perceiving that disputes are decided according to law by independent judges HCOURT.GOV.AU .

A "false court" scenario – where legal forms are misused to achieve a predetermined or unjust outcome – would gravely undermine this legitimacy. It would suggest that the court is not impartial or is acting at the behest of some other authority (executive or otherwise), which erodes public confidence. In democratic societies, courts derive their authority from their integrity; if that integrity is compromised, the court risks being seen as a sham or "kangaroo court" (a pejorative term for a proceeding that lacks due process and delivers a foregone conclusion).

The notion of a kangaroo court or star chamber runs directly contrary to the expectations of an independent judiciary. Public confidence would plummet if people believed courts were engaging in jurisdictional sleight-of-hand to deny individuals a fair chance to be heard. Legal theory and jurisprudence have long condemned any abuse of power in the judicial process. Common law courts have inherent powers to prevent abuse of their own process.

For example, if proceedings are conducted oppressively or with "malice" (an improper purpose), courts can issue a stay or dismissal to protect the integrity of the justice system. In Williams v Spautz (1992), the High Court of Australia held that a court may stay a case that is an abuse of process – such as one brought for an ulterior motive unrelated to adjudicating the claims – because allowing it to proceed would tarnish the administration of justice.

State malice refers to the government or its agents using the law with ill-intent to harass or harm an individual beyond what the law permits. There is even a tort – misfeasance in public office – designed to hold officials accountable for deliberate, malicious abuse of their lawful powers. This tort requires proving that a public officer intentionally acted unlawfully or with knowing disregard for the law, causing harm. A coordinated attempt to convene a "false court" (e.g. having a judge act outside their jurisdiction to sabotage someone's rights) could potentially fall within such wrongdoing. It would represent a conscious flouting of legal limits (using the wrong statute, denying due process) with the intent to injure the affected person – classic targeted malice. In essence, the law labels such conduct as ultra vires (beyond power) and malicious.

No lawful authority is conferred on a court to act unjustly; judges themselves are bound to uphold the constitution and natural justice. From a constitutional and theoretical standpoint, legitimacy of judicial power is maintained by adherence to the rule of law, which includes principles like fairness, openness, rationality, and fidelity to valid laws. A tribunal that grossly deviates from these (for instance, by secretly applying an irrelevant law to someone's detriment) is sometimes called a "sham tribunal." The decisions of such a body lack moral

and legal authority. Philosophers of law like Lon Fuller have articulated an “inner morality of law” – general rules, public promulgation, consistency, etc. – which, if violated, result in not true law but mere force. A false court would similarly be exercising mere power without rightful authority.

Historically, the abhorrence of Star Chamber-style courts (closed proceedings without jury or accountability in 17th-century England) informed the development of open justice and due process rights. Modern Australian and international law is built on the rejection of those dark practices of secret or politically motivated tribunals. In practical terms, if a court were seen to act as an agent of state malice – for example, conniving with executive officials to detain a dissenter without due process – it would trigger alarms in the legal community and civil society. Judges swear oaths to do justice according to law; if a judge were found to be participating in a legally baseless or unfair process, it could lead to appeals, intervention by superior courts, and possibly removal or discipline for breach of judicial ethics. The integrity of the judiciary is a constitutional value: the High Court in Kable and later cases spoke of maintaining the “appearance of independence and impartiality” of courts BLOGS.UNIMELB.EDU.AU ALRC.GOV.AU .

Even the perception that a court is acting improperly can be constitutionally problematic. Thus, beyond concrete legal rules, there is a strong normative expectation that courts must not be misused or seen to be misused. If they are, their decisions lose legitimacy, and the rule of law is replaced by rule by executive or factional fiat – something fundamentally at odds with Australia’s constitutional framework and international commitments. In summary, legal theory and safeguards within the system strive to prevent and remedy any abuse of judicial process.

A “false court” scenario is essentially a case of extreme abuse of process and breach of the public trust in courts. Concepts like judicial legitimacy, independence, and the prohibition of state malice all reinforce that courts must operate within the bounds of law and justice. Should those bounds be consciously overstepped, the proceeding is not viewed as a valid exercise of judicial authority, but as a void act that the legal order can nullify or punish. As one commentator noted in context of secret trials, “Open justice is a critical democratic principle, protecting the human rights of all Australians” THEGUARDIAN.COM

 – any deviation from that principle risks the law’s legitimacy and is intrinsically suspect. 5. Case Studies and Scholarship on Misuse of Jurisdiction and Closed Courts There are sobering real-world examples and analyses that illustrate the dangers of courts being used in improper ways. The Kable case (1996) is a prime example of a legislature’s misuse of a court’s jurisdiction. The NSW Parliament had enacted a one-off law directed at a single individual, designed to keep him imprisoned via court order (without any new crime committed).

The High Court struck it down, with Justice McHugh famously warning that such a law was “repugnant to the judicial process” and incompatible with the Supreme Court’s role BLOGS.UNIMELB.EDU.AU . Kable’s legacy has been a line of High Court cases monitoring state laws that either mandate unfair processes or compromise court impartiality. For instance, in South Australia v Totani (2010) and Wainohu v NSW (2011), aspects of anti-bikie gang legislation were invalidated for forcing courts to issue control orders on government request or to act without giving reasons – again, because courts were being bent to

executive aims in a way that undermined their proper function BLOGS.UNIMELB.EDU.AU BLOGS.UNIMELB.EDU.AU .

Scholars have noted that this Kable doctrine essentially enforces a form of rule of law: courts cannot be platforms for arbitrary or oppressive schemes BLOGS.UNIMELB.EDU.AU . Another set of cases deals explicitly with closed courts and secret evidence. In Assistant Commissioner Condon v Pompano Pty Ltd (2013), the Queensland law allowing secret "criminal intelligence" was challenged. The High Court upheld it only after reading in safeguards – notably, the Supreme Court retained inherent power to stay the proceedings if the use of secret evidence caused practical unfairness BLOGS.UNIMELB.EDU.AU .

Justice Gageler's separate opinion stressed that if ever a person were truly left without a real opportunity to meet the case (due to concealed evidence), the proceeding would be fundamentally unfair and could not be allowed BLOGS.UNIMELB.EDU.AU BLOGS.UNIMELB.EDU.AU . This shows the judiciary's awareness of the thin line between national security measures and injustice, and their duty to ensure the line is not crossed. Legal commentators like Cheryl Saunders observed that Pompano underscored procedural fairness as "central to institutional integrity … underpinning correctness of decisions, litigants' acceptance, and confidence in the judiciary" BLOGS.UNIMELB.EDU.AU .

In recent years, Australia faced public outcry over extreme secrecy in court cases. The "Witness J" case (2018) involved a former intelligence officer who was secretly tried, convicted, and imprisoned in the ACT, under a veil so opaque that even the ACT Justice Minister was unaware of it until media reports EN.WIKIPEDIA.ORG . This was essentially a closed court with no public disclosure of the charges, evidence, or outcome until afterward. The Independent National Security Legislation Monitor described a "wholly closed criminal trial" as "unprecedented" in Australian history, likening it only to wartime aberrations EN.WIKIPEDIA.ORG . The ACT Chief Justice later said that such a secret trial "should not have happened" and is "anathema to the rule of law", notwithstanding arguments about national security EN.WIKIPEDIA.ORG .

The case prompted inquiries and a review of the National Security Information Act, which had facilitated the secrecy EN.WIKIPEDIA.ORG . Both the Human Rights Law Centre and the Law Council of Australia (a professional body) intervened in the debate, arguing that even in security cases, open justice and fairness must be preserved EN.WIKIPEDIA.ORG . Thanks to these pressures, the law is being re-examined to prevent repeat occurrences. The Witness J saga is a cautionary tale: it shows how easily a proceeding can slide into a realm of "false" justice when accountability and transparency are removed. It also shows the corrective forces at work – media, legal advocates, and oversight bodies quickly denounced the secret trial, vindicating the principle that justice must be seen to be done. Another high-profile matter was the prosecution of Bernard Collaery, an attorney charged under secrecy laws for allegedly revealing information about an Australian espionage operation.

The previous federal government had insisted on heavy secrecy in his trial, with many hearings closed to the public. Collaery fought for open justice, and in 2021 the ACT Court of Appeal ruled in his favor, finding that the orders shrouding the trial were excessive and unjustified. Justice Helen Murrell noted that the earlier court had given "too much weight" to speculative national security fears at the expense of the principle of open justice, which "trump[s] national security" in the circumstances THEGUARDIAN.COM THEGUARDIAN.COM .

The appellate judgment, released in 2023, said the government's arguments for secrecy were "replete with speculation and devoid of any specific basis" THEGUARDIAN.COM . This case underscores that Australian courts themselves can correct overreach: the judiciary affirmed that public confidence in the administration of justice was at risk due to the extreme secrecy, and that risk outweighed the unproven security concerns. As a result, much of the Collaery case became public, and ultimately the prosecution was dropped. A senior lawyer commenting on the outcome said, "Open justice is a critical democratic principle, protecting the human rights of all Australians." THEGUARDIAN.COM

The case highlights the judiciary's role in balancing state power and individual rights – effectively preventing a slide into a "star chamber" scenario by insisting on transparency and fairness. Academic scholarship and human rights organizations in Australia have been vigilant about these issues. Law reviews have criticized "arbitrary detention" schemes and secret evidence laws as threats to the rule of law.

For example, scholar Roxanne Emerton wrote in 2004 about a "disturbing trend" in counter-terrorism laws that "pav[e] the way for conviction without evidence." She analysed the National Security Information Act (then a Bill), warning that its provisions (allowing defendants and their lawyers to be excluded from parts of the trial while evidence is presented) created the real "possibility of a 'secret trial'" LR.LAW.QUT.EDU.AU and "undermine the independence and impartiality" of the judiciary by transferring too much control to the executive (the Attorney-General) LR.LAW.QUT.EDU.AU LR.LAW.QUT.EDU.AU . Emerton concluded that the scheme risked undermining the integrity of both prosecutorial and judicial offices LR.LAW.QUT.EDU.AU .

This academic critique proved prescient in light of Witness J and Collaery. It reflects a broader consensus in legal commentary: courts must not become rubber stamps, even in the face of terrorism or national security concerns, because doing so erodes the very foundation of justice. Likewise, the Australian Human Rights Commission, parliamentary committees, and civil society groups like the Human Rights Law Centre regularly review and report on such matters, often urging reforms to ensure fair trial rights are protected in all jurisdictions. In the international arena, comparisons can be drawn to highlight how a legitimate court differs from a "false" one.

For instance, Australian officials have themselves condemned other nations for conducting secret or show trials. When Australian citizens like Dr. Yang Hengjun and Cheng Lei were tried in closed courts in China on vague national security charges, Australia's government decried the lack of transparency and termed the detentions "arbitrary" ABC.NET.AU THESENIOR.COM.AU .

These statements reinforce the principle that closed, unfair proceedings are universally seen as hallmarks of injustice. Australia cannot hold the moral high ground in advocating for its citizens abroad unless its own domestic practices align with those fair trial principles. Fortunately, the overall trend in Australian jurisprudence is to affirm openness and fairness, even if occasionally legislation or overzealous officials push the boundaries.

The combined weight of High Court precedents, human rights scrutiny, and public expectation acts as a check against any sustained "false court" phenomenon. In summary, real-world cases in Australia have tested the limits of procedural fairness and jurisdictional propriety. Each time, whether through court decisions, public outcry, or international critique,

the fundamental norms reasserted themselves: courts must act within the law, and justice must remain fair and open.

When processes have strayed (as in the secret trial instance), they have been met with swift condemnation and calls for correction. Legal scholarship supports this vigilance, often shining a light on subtle abuses that might escape immediate notice. The concept of a “false court” ultimately serves as a stark warning – it represents a failure of legal safeguards that Australian law, informed by both domestic values and international standards, strives to prevent. As the cited cases and commentary show, any attempted misuse of jurisdiction or suppression of fair process is likely to be exposed and invalidated, because it clashes with deeply ingrained principles of judicial legitimacy and human rights LR.LAW.QUT.EDU.AU LR.LAW.QUT.EDU.AU .

Conclusion

The notion of a court in one Australian state misapplying another jurisdiction’s statute to override procedural fairness and facilitate arbitrary detention cuts to the core of what law and justice mean. Both Australian constitutional law and international law resoundingly reject such a perversion of justice. Domestically, the separation of judicial power and High Court doctrine (e.g. the Kable principle) ensure that courts cannot be enlisted in schemes that undermine their integrity or deliver unfair, predetermined outcomes. Every person is entitled to a fair and public hearing before an impartial court – a principle woven into the fabric of common law (open justice and natural justice) ALRC.GOV.AU ALRC.GOV.AU and implied by the Constitution’s structure. Internationally, Australia has binding obligations under treaties like the ICCPR to uphold fair trial rights and to prevent arbitrary detention LR.LAW.QUT.EDU.AU EOS.CARTERCENTER.ORG .

These obligations apply nationwide, and under the Vienna Convention no local law or practice can excuse a violation TRANS-LEX.ORG . A “false court” scenario would violate ICCPR Articles 9 and 14, attracting international condemnation and legal responsibility for Australia as a whole. The analysis also revealed that judicial legitimacy hinges on public confidence that courts operate within the rule of law and not as puppets of convenience HCOURT.GOV.AU . Any abuse of judicial process – especially one orchestrated with malice or political motive – is antithetical to the rule of law. The legal system contains mechanisms (appeals, judicial review, stays for abuse of process, etc.) to correct or nullify such abuses. Indeed, as seen in cases like Kable, Totani, Pompano, Witness J, and Collaery, when the pendulum has swung toward injustice or secrecy, it has provoked a strong corrective response from courts and the community EN.WIKIPEDIA.ORG THEGUARDIAN.COM .

Academic and watchdog commentary reinforce these principles, labeling misuses of jurisdiction and closed proceedings as serious threats to democratic freedoms LR.LAW.QUT.EDU.AU LR.LAW.QUT.EDU.AU . In conclusion, a “false court” has no lawful place in Australia’s constitutional order. Any court that departs so fundamentally from fair process would be acting beyond power and its decisions liable to be quashed. Engaging in such conduct would also breach Australia’s international human rights commitments, subjecting the state to legal and moral accountability beyond its borders.

The confluence of constitutional safeguards, judicial ethics, and international norms creates a powerful protective framework: courts must remain real courts – lawful, fair, open, and impartial – and not degenerate into tools of oppression. Should a situation arise resembling

the hypothetical (a court applying the wrong law to deny justice), one can expect the illegitimacy of that action to be swiftly recognized and remedied, as both a legal imperative and a vindication of the rule of law. The lesson from both law and history is clear: no one is above the law, not even those who wield it, and a court that ceases to dispense justice ceases to be a court in anything but name. The combined force of Australian constitutional jurisprudence and international human rights law stands as a bulwark against such false courts, guarding the rights and liberties of individuals from even the most insidious legal distortions LR.LAW.QUT.EDU.AU THEGUARDIAN.COM

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