

**COMMON LAW PROCEDURE AND SUPREME COURT  
AND CIRCUIT COURTS (AMENDMENT) ACT.**

**New South Wales**



ANNO SEXTO DECIMO

**ELIZABETHÆ II REGINÆ**

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**Act No. 11, 1967.**

An Act to regulate the procedure relating to writs of habeas corpus; for this purpose to amend the Common Law Procedure Act, 1899–1965, and the Supreme Court and Circuit Courts Act, 1900–1965; and for purposes connected therewith. [Assented to, 23rd March, 1967.]

**B**E it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

1. (1) This Act may be cited as the "Common Law Procedure and Supreme Court and Circuit Courts (Amendment) Act, 1967".

Short title  
and  
citation.

(2)

*Common Law Procedure and Supreme Court and Circuit Courts  
(Amendment).*

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**No. 11, 1967** (2) The Common Law Procedure Act, 1899, as amended by subsequent Acts and by this Act, may be cited as the Common Law Procedure Act, 1899–1967.

(3) The Supreme Court and Circuit Courts Act, 1900, as amended by subsequent Acts and by this Act, may be cited as the Supreme Court and Circuit Courts Act, 1900–1967.

Pending applications.

2. An application made but not finally dealt with before the commencement of this Act for an order nisi or an order absolute in the first instance for a writ of habeas corpus, and any proceedings under an application so made, may be continued and completed as if the amendments made by this Act had not been enacted.

Amendment of Act No. 21, 1899. Subst. Part XXII.

3. The Common Law Procedure Act, 1899–1965, is amended by omitting Part XXII and by inserting in lieu thereof the following Part :—

PART XXII.

HABEAS CORPUS.

Proceedings—how taken.

252. Proceedings for habeas corpus shall be taken in accordance with this Part and the Supreme Court and Circuit Courts Act, 1900, as amended by subsequent Acts, and not otherwise.

Application.

253. (1) Every application for an order nisi or an order absolute in the first instance for a writ of habeas corpus shall be made to a Judge or to the Court of Appeal.

(2) The application may, if made to a Judge, be made ex parte in the manner prescribed, and, if made to the Court of Appeal, may be made ex parte in the manner prescribed by rules made under section 21K of the Supreme Court and Circuit Courts Act, 1900, as amended by subsequent Acts.

254.

*Common Law Procedure and Supreme Court and Circuit Courts  
(Amendment).*

254. Notwithstanding anything in any enactment or rule of law, where an application for an order nisi or an order absolute in the first instance for a writ of habeas corpus has been made by or in respect of any person, no such application shall again be made by or in respect of that person on the same grounds, whether to the same Judge or to any other Judge or to the Court of Appeal, unless fresh evidence is adduced in support of the application.

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Further  
applica-  
tion.

cf. 8 & 9  
Eliz. 2 c. 65,  
s. 14 (2).

254A. (1) Every order nisi for a writ of habeas corpus made—

Return of  
order nisi.

- (a) by a Judge shall be made returnable before a Judge sitting in public chambers whether in term or not or, where the Judge considers that it should be returnable before the Court of Appeal, before that Court; or
- (b) by the Court of Appeal shall be returnable before the Court of Appeal.

(2) On the return of the order the Judge or the Court of Appeal may make such order disposing of the case as the circumstances appear to require and may make such order as to costs as the Judge or the Court of Appeal thinks fit.

(3) The provisions of subsections two and three of section twenty of the Supreme Court and Circuit Courts Act, 1900, as amended by subsequent Acts, apply mutatis mutandis to proceedings on the return of an order nisi for a writ of habeas corpus made returnable before the Court of Appeal.

254B. Any order made by a Judge under section two hundred and fifty-three or subsection two of section 254A of this Act shall be subject to appeal to the Court of Appeal within the same time and in the same manner as prescribed for motions for a new trial.

*Common Law Procedure and Supreme Court and Circuit Courts  
(Amendment).*

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**No. 11, 1967**      **4.** The Supreme Court and Circuit Courts Act, 1900–  
1965, is amended—

Amendment  
of Act No.  
35, 1900.

Sec. 20.  
(Exercise  
of powers  
by single  
Judge or  
Judge of  
Appeal in  
certain  
cases.)

- (a) (i) by omitting from subsection one of section twenty the words “or for an order for the issue of a writ of habeas corpus”;
- (ii) by omitting from subsection two of the same section the words “or to make absolute an order for the issue of a writ of habeas corpus”;

Sec. 21F.  
(Jurisdic-  
tion of  
Court of  
Appeal.)

- (b) (i) by omitting from paragraph (b) of subsection three of section 21F the words “to make absolute an order for the issue of” and by inserting in lieu thereof the words “made to the Court of Appeal for an order nisi or an order absolute in the first instance for”;
- (ii) by inserting next after the same paragraph the following new paragraph :—
  - (b1) proceedings on the return of an order nisi for a writ of habeas corpus made returnable before the Court of Appeal pursuant to subsection one of section 254A of the Common Law Procedure Act, 1899, as amended by subsequent Acts.