Version
as at 26 August 2020

Habeas Corpus Act 2001

Public Act	2001 No 31
Date of assent	25 May 2001
Commencement	see section 2

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Justice.

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Schedule 12
Writ of habeas corpus

1 Title

This Act is the Habeas Corpus Act 2001.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Interpretation

In this Act, unless the context otherwise requires,—

applicant means the plaintiff in an application

application means an application to the High Court for a writ of habeas corpus

detention includes every form of restraint of liberty of the person

habeas corpus means habeas corpus *ad subjiciendum*

Judge means a Judge of the High Court

Registrar includes a Deputy Registrar

working day has the same meaning as in the High Court Rules 2016.

Section 3 **High Court Rules**: repealed, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

Section 3 **working day**: amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

4 Application of Act to the Crown and Parliament

(1) This Act binds the Crown.

(2) Nothing in this Act limits or affects the power or authority of the House of Representatives to punish for contempt.

5 Purposes

The purposes of this Act are—

(a) to reaffirm the historic and constitutional purpose of the writ of habeas corpus as a vital means of safeguarding individual liberty:

(b) to make better provision for restoring the liberty of persons unlawfully detained by establishing an effective procedure for applications to the High Court for the issue of a writ of habeas corpus, and the expeditious determination of those applications:

(c) to provide certain unsuccessful parties in habeas corpus proceedings with a right of appeal to the Court of Appeal:

(d) to abolish writs of habeas corpus other than the writ of habeas corpus *ad subjiciendum*.

Application for writ of habeas corpus

6 Application for writ of habeas corpus to challenge legality of detention

An application to challenge the legality of a person's detention may be made by an application for a writ of habeas corpus.

7 Manner of application for writ

(1) An application for a writ of habeas corpus must be made to the High Court by originating application in the manner provided by the High Court Rules 2016.

(2) Despite subsection (1), nothing in that subsection excludes the inherent jurisdiction of the High Court to hear and to make an order on an oral application at any time in circumstances of unusual urgency.

(3) Despite subsection (1), the provisions of any High Court Rule providing for directions by the court before the hearing, or affecting the hearing, of an originating application or empowering the court to convene a conference of the parties to an originating application do not apply to an application.

(4) No applicant may be disqualified for lack of capacity or standing.

(5) In a proceeding for a writ of habeas corpus—

(a) no party to the proceeding is entitled to general or special discovery of the documents of any other party to the proceeding or to an order for security for costs; and

(b) the High Court Rules concerning discovery and inspection of documents and security for costs do not apply.

(6) No fee is payable to the High Court for filing any document in respect of an application.

(7) Section 153 of the Senior Courts Act 2016 does not apply in respect of the form and manner of any application made under this Act.

Section 7(1): amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

Section 7(7): amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

8 Description of defendant by reference only to office

A defendant may be described in an application by reference only to the defendant's office if the defendant is—

(a) the chief executive of the department for the time being responsible for the administration of the Corrections Act 2004, if the detained person is alleged to be illegally detained in a corrections prison; or

(b) the Commissioner of Police, if the detained person is alleged to be illegally detained in Police custody except following the exercise of powers under the Immigration Act 2009; or

(c) the chief executive of the department of State that is, with the authority of the Prime Minister, for the time being responsible for the administration of the Immigration Act 2009, if the detained person is alleged to be illegally detained in custody following the exercise of powers under that Act; or

(d) the chief executive of the New Zealand Customs Service, if the detained person is alleged to be illegally detained in the custody of the New Zealand Customs Service; or

(e) any other office holder prescribed by rules made in accordance with section 20, and in the circumstances prescribed in those rules.

Section 8(a): replaced, on 30 March 2013 (applying in respect of an application made under this Act whether before, on, or after this date), by section 4 of the Habeas Corpus Amendment Act 2013 (2013 No 9).

Section 8(b): amended, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 8(c): substituted, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Section 8(d): amended, on 26 May 2001, pursuant to section 294(3) of the Customs and Excise Act 1996 (1996 No 27).

9 Urgency

(1) An application for a writ of habeas corpus must be given precedence over all other matters before the High Court unless a Judge of that court considers that the circumstances require otherwise.

(2) Judges and employees of the Ministry of Justice must ensure that every application, including any interlocutory application, is disposed of as a matter of priority and urgency.

(3) The Registrar must allocate a date for the *inter partes* hearing of an application that is no later than 3 working days after the date on which the application is filed.

Section 9(1): amended, on 30 March 2013 (applying in respect of an application made under this Act whether before, on, or after this date), by section 5 of the Habeas Corpus Amendment Act 2013 (2013 No 9).

Section 9(1): amended, on 1 October 2003, pursuant to section 14(1) of the State Sector Amendment Act 2003 (2003 No 41).

10 Urgency where no resident Judge available

(1) If an application is filed at a Registry of the High Court in a place where no Judge is at that time available, the Registrar must ensure that the application is dealt with in some other place within the time limit referred to in section 9(3); and any other Registrar or employee of the Ministry of Justice whose assistance is sought by the Registrar in whose Registry the application is filed has a corresponding obligation.

(2) If subsection (1) applies, the Registrar must—

(a) make such urgent enquiries as are necessary to determine where and by whom the application can most conveniently and expeditiously be dealt with; and

(b) forward the application and any other relevant documents without delay to the Registrar at the place where the application is to be dealt with; and

(c) without delay, inform every party to the proceeding of the action taken under this section.

(3) This section applies in substitution for any provision of the High Court Rules 2016 relating to the transfer of notices of application filed at a time when a Judge is not present.

Section 10(1): amended, on 1 October 2003, pursuant to section 14(1) of the State Sector Amendment Act 2003 (2003 No 41).

Section 10(3): amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

Determination of applications

11 Interim orders for release from detention

(1) The High Court may make an interim order for the release from detention of the detained person pending final determination of the application, and may attach any conditions to the order that the court thinks appropriate to the circumstances.

(2) In the case of a detained person who is charged with an offence to which the Bail Act 2000 applies, the court must not make an order under this section if the court is of the opinion that bail would not be granted to that person under that Act.

(3) If a person has been released from detention under an interim order, the court may, on the application of the person released or any party to the proceeding or on the court's own initiative, make an order—

(a) revoking the interim order; or

(b) varying or revoking any condition of the interim order or substituting or imposing any other condition.

(4) If a detained person who is in custody under a conviction is released under an interim order, the time during which the person is released does not count as part of any term of detention under the person's sentence if on a final determination of the application the writ of habeas corpus is refused.

12 Power of arrest of absconder etc

(1) A constable may arrest without warrant a person who has been released from detention under an interim order made under section 11 if the constable believes on reasonable grounds that—

(a) the person released has absconded, or is about to abscond, for the purpose of evading any appearance or further appearance in court in connection with the application or the person's original detention; or

(b) the person has failed to comply with any condition attached to the interim order.

(2) A person who is arrested under this section must be brought before the High Court as soon as possible.

(3) The court may revoke the interim order if it is satisfied that the person had absconded or was about to abscond or had failed to comply with a condition attached to the interim order or an undertaking to the court in reliance on which the interim order was made.

(4) A constable may, for the purposes of this section, enter at any time onto any premises, by force if necessary, if the constable has reasonable cause to believe that the person released from detention is on those premises.

(5) If the constable is not in uniform and a person in actual occupation of the premises requires the constable to produce evidence of his or her authority, the constable must, before entering on the premises, produce his or her badge or other evidence of membership of the Police.

Section 12(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 12(4): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 12(5): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

13 Powers if person detained is young person

(1) In dealing with an application in relation to a detained person who is under the age of 18 years, the High Court may exercise the powers that are conferred on the Family Court by the Care of Children Act 2004.

(2) If the substantive issue in an application is the welfare of a person under the age of 16 years, the High Court may, on its own initiative or at the request of a party to the proceeding, transfer the application to the Family Court.

(3) An application referred under subsection (2) must be dealt with by the Family Court in all respects as if it were an application to that court under the Care of Children Act 2004.

Section 13(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 13(1): amended, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

Section 13(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 13(3): amended, on 1 July 2005, by section 151 of the Care of Children Act 2004 (2004 No 90).

14 Determination of applications

(1) If the defendant fails to establish that the detention of the detained person is lawful, the High Court must grant as a matter of right a writ of habeas corpus ordering the release of the detained person from detention.

(1A) Despite subsection (1), the High Court may refuse an application for the issue of the writ, without requiring the defendant to establish that the detention of the detained person is lawful, if the court is satisfied that—

(a) section 15(1) applies; or

(b) an application for the issue of a writ of habeas corpus is not the appropriate procedure for considering the allegations made by the applicant.

(2) A Judge dealing with an application must enquire into the matters of fact and law claimed to justify the detention and is not confined in that enquiry to the correction of jurisdictional errors; but this subsection does not entitle a Judge to call into question—

(a) a conviction of an offence by a court of competent jurisdiction, the Court Martial of New Zealand established under section 8 of the Court Martial Act 2007, or a disciplinary officer acting under Part 5 of the Armed Forces Discipline Act 1971; or

(b) a ruling as to bail by a court of competent jurisdiction.

(3) Subject to section 13(2), a Judge must determine an application by—

(a) refusing the application for the issue of the writ; or

(b) issuing the writ ordering the release from detention of the detained person.

(4) All matters relating to the costs of and incidental to an application are in the discretion of the court and the court may refuse costs to a successful party or order a successful party to pay costs to an unsuccessful party.

(5) A writ of habeas corpus may be in the form set out in the Schedule.

Section 14(1A): inserted, on 30 March 2013 (applying in respect of an application made under this Act whether before, on, or after this date), by section 6(1) of the Habeas Corpus Amendment Act 2013 (2013 No 9).

Section 14(2)(a): substituted, on 1 July 2009, by section 87 of the Court Martial Act 2007 (2007 No 101).

Section 14(3): amended, on 30 March 2013 (applying in respect of an application made under this Act whether before, on, or after this date), by section 6(2) of the Habeas Corpus Amendment Act 2013 (2013 No 9).

14A Application for writ is civil proceeding under Courts (Remote Participation) Act 2010

To avoid doubt, an application for a writ of habeas corpus is a civil proceeding for the purposes of the Courts (Remote Participation) Act 2010.

Section 14A: inserted, on 30 March 2013 (applying in respect of an application made under this Act whether before, on, or after this date), by section 7 of the Habeas Corpus Amendment Act 2013 (2013 No 9).

15 Finality of determinations

(1) Subject to the rights of appeal conferred by section 16 of this Act and to sections 68 to 71 of the Senior Courts Act 2016, the determination of an application is final and no further application can be made by any person either to the same or to a different Judge on grounds requiring a re-examination by the court of substantially the same questions as those considered by the court when the earlier application was refused.

(2) A person who has been released from detention in accordance with a writ of habeas corpus must not be re-arrested or detained again on substantially the same grounds as those considered by the court when the earlier release was ordered.

(3) Subsection (2) has no application if the ground on which the earlier release was ordered was a jurisdictional or procedural defect that has since been corrected or no longer applies.

Section 15(1): amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

Section 15(1): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Appeals by certain unsuccessful parties

16 Certain unsuccessful parties may appeal

(1) The provisions of the Senior Courts Act 2016 relating to appeals to the Court of Appeal against decisions of the High Court in civil cases—

(a) apply with respect to a determination refusing an application for the issue of a writ of habeas corpus; but

(b) do not apply to a final determination that orders the release from detention of a detained person unless the substantive issue is the welfare of a person under the age of 16 years.

(1A) With the leave of the Supreme Court, a party to the proceeding in which the determination was made may appeal to the Supreme Court—

(a) against a determination refusing an application for the issue of a writ of habeas corpus:

(b) if the substantive issue is the welfare of a person under the age of 16 years, against a final determination that orders the release from detention of a detained person.

(2) The court cannot order that security for costs be given by the appellant in an appeal against the refusal of an application where the respondent in the appeal is the Crown or a public officer or other person purporting to act on behalf of the Crown.

(3) No fee is payable to the Court of Appeal or the Supreme Court for filing any document in respect of an appeal against the refusal of an application.

Section 16(1): amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

Section 16(1A): inserted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 16(3): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

17 Urgency in hearing appeals

(1) An appeal under this Act must be given precedence over all other matters before the Court of Appeal unless that court or a Judge of that court considers that the circumstances require otherwise.

(1A) The following must be given precedence over all other matters before the Supreme Court unless that court or a Judge of that court considers that the circumstances require otherwise:

(a) an application for leave to appeal against a decision of the Court of Appeal on an appeal under this Act:

(b) an application for leave to appeal under paragraph (a) or paragraph (b) of section 16(1A):

(c) an appeal against a decision of the Court of Appeal on an appeal under this Act:

(d) an appeal under paragraph (a) or paragraph (b) of section 16(1A).

(2) Judges of the Court of Appeal or the Supreme Court, and employees of the Ministry of Justice, must use their best endeavours to ensure that every appeal

under this Act or paragraph (a) or paragraph (b) of section 16(1A) is disposed of as a matter of priority and urgency.

Section 17(1): amended, on 30 March 2013 (applying in respect of an application made under this Act whether before, on, or after this date), by section 8(1) of the Habeas Corpus Amendment Act 2013 (2013 No 9).

Section 17(1A): inserted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 17(1A): amended, on 30 March 2013 (applying in respect of an application made under this Act whether before, on, or after this date), by section 8(2) of the Habeas Corpus Amendment Act 2013 (2013 No 9).

Section 17(2): substituted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Miscellaneous provisions

18 Abolition of certain writs

It is declared for the avoidance of doubt that all writs of habeas corpus other than the writ of habeas corpus *ad subjiciendum* are abolished.

19 Application of Contempt of Court Act 2019

(1) Subpart 2 of Part 2 and sections 25 and 26(1) and (2) of the Contempt of Court Act 2019 apply with the necessary modifications to a person who wilfully hinders the prompt disposal of an application.

(2) Subpart 4 of Part 2 and sections 25 and 26(1) and (2) of the Contempt of Court Act 2019 apply with the necessary modifications to a person who,—

(a) having been released under an interim order made under section 11, fails to comply with a condition attached to the order; or

(b) wilfully fails to comply with a writ of habeas corpus ordering the release from detention of a person.

(3) Subpart 4 of Part 2 and sections 25 and 26(1) and (2) of the Contempt of Court Act 2019 apply, as if the application were a court order, to a person who is aware that an application has been made to the High Court seeking the release from detention of a person and removes or attempts to remove that person from the jurisdiction of the court.

Section 19: replaced, on 26 August 2020, by section 29 of the Contempt of Court Act 2019 (2019 No 44).

20 Rules

(1) Rules not inconsistent with this Act may be made under section 148 of the Senior Courts Act 2016 regulating the practice and procedure of the High Court and the Court of Appeal and the Supreme Court in relation to applications under this Act.

(2) Without limiting subsection (1), rules may be made under section 148 of the Senior Courts Act 2016 that amend the form in the Schedule or replace the form.

Section 20(1): amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

Section 20(1): amended, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 20(2): replaced, on 30 March 2013 (applying in respect of an application made under this Act whether before, on, or after this date), by section 9 of the Habeas Corpus Amendment Act 2013 (2013 No 9).

Section 20(2): amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

21 Supplementary procedure

If a matter arises in relation to an application for which this Act does not provide, the High Court must dispose of it as nearly as is practicable in a manner consistent with this Act, and to the extent that they are not inconsistent with this Act, in accordance with the High Court Rules 2016.

Section 21: amended, on 18 October 2016, by section 183(c) of the Senior Courts Act 2016 (2016 No 48).

22 Repeals and amendments

(1), (2) *Amendment(s) incorporated in the Act(s).*

(3) Sections 17 to 19, and 21 of the Interpretation Act 1999 apply to the enactments referred to in subsection (2) as if those enactments were Acts of the Parliament of New Zealand.

Schedule
Writ of habeas corpus

s 14(5)

(Intitulement)

Charles the Third, by the Grace of God King of New Zealand and His Other Realms and Territories, Head of the Commonwealth, Defender of the Faith:

To: [*name, place of residence, and occupation of the defendant, or other person in whose custody the detained person is alleged to be detained*]

We command you immediately to discharge and release from custody and detention [*full name*] (who may be called by another name).

Witness the Judge of the High Court of New Zealand this ..... day of ..... 20.....

By Order of Court

(Deputy) Registrar

Warning:

Take notice that if you wilfully fail to comply with this writ of habeas corpus the High Court will be moved as soon as counsel can be heard for an order committing you to prison for your contempt.

Schedule: editorial change made by the PCO, on 22 September 2025, under sections 86(1) and 87(d) of the Legislation Act 2019 (2019 No 58).

Schedule: amended, on 30 March 2013 (applying in respect of an application made under this Act whether before, on, or after this date), by section 10 of the Habeas Corpus Amendment Act 2013 (2013 No 9).

Reprints notes

1 General

This is a reprint of the Habeas Corpus Act 2001 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 Legal status

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 Editorial and format changes

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also http://www.pco.parliament.govt.nz/editorial-conventions/.

4 Amendments incorporated in this reprint

Contempt of Court Act 2019 (2019 No 44): section 29

Senior Courts Act 2016 (2016 No 48): section 183(b), (c)

District Court Act 2016 (2016 No 49): section 261

Habeas Corpus Amendment Act 2013 (2013 No 9)

Immigration Act 2009 (2009 No 51): section 406(1)

Policing Act 2008 (2008 No 72): section 116(a)(ii)

Court Martial Act 2007 (2007 No 101): section 87

Care of Children Act 2004 (2004 No 90): section 151

Corrections Act 2004 (2004 No 50): section 206

Supreme Court Act 2003 (2003 No 53): section 48(1)

State Sector Amendment Act 2003 (2003 No 41): section 14(1)

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