

Unfitness to be Tried:
**Chart Three – Special Hearing / Limiting
Term**

Mental Health (Forensic Provisions) Act 1990

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Tribunal must, as soon as practicable after Court refers person found unfit to be tried, determine on balance of probabilities whether person will become fit to be tried within 12 months: *s.16(1)*

If Tribunal finds the person will not become fit within the next 12 months:

- must inform the Court of the determination: *s.16(3)*
- must inform the DPP *s.16(4)*

Court must obtain advice from DPP as to whether DPP will continue with proceedings: *s.19(1)(a)*

Unless DPP advise no further proceedings Court must hold a special hearing as soon as practicable: *s.19(1)(b)*

Special hearing is for the purpose of ensuring person is acquitted unless it can be proved to the requisite criminal standard of proof that, on the limited evidence available, the person committed the offence charged or any other offence available as an alternative to the offence charged: *s.19(2)*

If DPP advise Court there will be no further proceedings the Court must release the person: *s.20*

DPP must also advise Minister for Police: *s.19(3)*

Person ceases to be forensic patient upon release: *s.52(4)(b)*

Special hearing to be held before judge alone unless election made for jury: *s.21A(1)*

Election can be made by:

- accused person after receiving and understanding advice from legal representative
- legal representative of accused
- prosecutor: *s.21A(1)*

Election must be made:

- One day before hearing if accused or legal representative
- Seven days before hearing if prosecutor: *s.21A(2)*

Accused or legal representative can change mind anytime before hearing: *s.21A(3)*



Nature and conduct of special hearing:

- As nearly as possible as if a criminal trial: *s.21(1)*
- Accused must be represented: *s.21(2)*
- Accused taken to have pleaded not guilty: *s.21(3)(a)*
- May raise any defence that could properly raised at criminal trial: *s.21(3)(c)*
- Accused entitled to give evidence: *s.21(3)(d)*

If there is a jury the following also applies:

- Legal representative has right to challenge jury: *s.21(3)(b)*
- Court must explain to jury person unfit to be tried, meaning of unfitness, purpose of special hearing; availability of verdicts and consequences of verdicts: *s.21(4)*

Verdicts at special hearing include:

- Not guilty: *s 22(1)(a)*



Where found not guilty on grounds of mental illness treated as if found not guilty on grounds of mental illness at normal trial under s 38: *s 22(2), 25*.
(See Chart for dealing with person found not guilty by reason of mental illness)

A finding that the accused committed the offence is subject to appeal in same way as any verdict in criminal trial: *s 22(3)(c)*

Where found not guilty same as acquittal at normal trial: *s 26*
Person ceases to be forensic patient: *s.52(1)(a)*



<p>If Court would not have imposed imprisonment may impose <u>any other penalty or order</u>: <i>s 23(2)</i></p> <p>Penalty or order subject to appeal in same manner as normal proceedings: <i>s.23(3)</i></p> <p>Must notify Tribunal no sentence of imprisonment: <i>s 23(7)</i></p> <p>Person <u>ceases to be forensic patient</u>: <i>s.52(1)(b)</i></p>	<p>If imprisonment would be imposed if so must nominate a period of that sentence: <i>s 23(4)</i></p> <p>Penalty or order subject to appeal in same manner as normal proceedings: <i>s.23(3)</i></p> <p>Must notify Tribunal no sentence of imprisonment: <i>s 23(7)</i></p> <p>Person <u>ceases to be forensic patient</u>: <i>s.52(1)(b)</i></p>
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Tribunal must determine whether or not:

- person suffering from mental illness
- person suffering from mental condition treatable in MHF, and if not in a MHF, whether person objects to being detained in MHF: *s.24(2)*

Must advise Court of determination: *s 24(3)*



Upon determination by Tribunal Court may make following orders:

- order person to be detained in MHF if suffering from mental illness or treatable mental condition, if not in a MHF, and does not object to being detained in MHF: *s 27(a)*
- order person to be detained in place other than MHF if not suffering from mental illness or treatable mental condition or objects to being detained in MHF: *s 27(b)*

Person becomes a FORENSIC PATIENT: *s 42(a)(i)*



As to review of forensic patients see Chart Five

A person ceases to be a forensic patient when limiting term expires: *s 52(2)(a)*