

**Unfitness to be  
Tried:  
Chart Four – The  
Special Hearing**  
*Mental Health (Forensic  
Provisions) Act 1990*

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Where the MHRT has advised the court that a person will not become fit within 12 months and the DPP has not advised the court that there will be no further proceedings, the court must hold a Special Hearing as soon as practicable *s.19(1)(b)*

A Special Hearing is for the purpose of ensuring person is acquitted unless it may 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)*



The court must hold a Special Hearing before a judge alone unless an election is made for jury

An election may be made by:

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

An election must be made:

- One day before the hearing if made by an accused or his or her legal representative;
- Seven days before the hearing if made by the prosecutor: *s.21A(2)*.

An accused or his or her legal representative may withdraw election anytime before hearing:  
*s.21A(2)*



Nature and conduct of special hearing:

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

If there is a jury, the following additionally applies:

- Legal representative has the right of challenge to jury-panel members: *s.21(3)(b)*

Verdict of Not Guilty: <i>s.22(1)(a)</i> Same as acquittal at normal trial: <i>s.26</i> ; Person no longer a forensic patient: <i>s.52(1)(a)</i>	Special Verdict of Not Guilty by reason of mental illness <i>s.22(1)(b)</i> ; As same verdict at normal trial: <i>s.26</i> . (See Mental Illness Flow Charts)	Finding that on the limited evidence available the accused committed the offence <i>s.22(1)(c)</i> ; Subject to appeal as after normal trial: <i>s.22(3)</i>	Finding that on the limited evidence available the accused committed an alternative offence <i>s.22(1)(d)</i> Subject to appeal as after normal trial: <i>s.22(3)</i>
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