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# Mental Health (Forensic Provisions) Act 1990 No 10

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[Part 3](#) [Section 32](#)

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## 32 Persons suffering from mental illness or condition

- (1) If, at the commencement or at any time during the course of the hearing of proceedings before a Magistrate, it appears to the Magistrate:
- (a) that the defendant is (or was at the time of the alleged commission of the offence to which the proceedings relate):
    - (i) developmentally disabled, or
    - (ii) suffering from mental illness, or
    - (iii) suffering from a mental condition for which treatment is available in a mental health facility, but is not a mentally ill person, and
  - (b) that, on an outline of the facts alleged in the proceedings or such other evidence as the Magistrate may consider relevant, it would be more appropriate to deal with the defendant in accordance with the provisions of this Part than otherwise in accordance with law,
- the Magistrate may take the action set out in subsection (2) or (3).
- (2) The Magistrate may do any one or more of the following:
- (a) adjourn the proceedings,
  - (b) grant the defendant bail in accordance with the *Bail Act 2013*,
  - (c) make any other order that the Magistrate considers appropriate.
- (3) The Magistrate may make an order dismissing the charge and discharge the defendant:
- (a) into the care of a responsible person, unconditionally or subject to conditions, or
  - (b) on the condition that the defendant attend on a person or at a place specified by the Magistrate for assessment of the defendant's mental condition or treatment or both, or
  - (c) unconditionally.
- (3A) If a Magistrate suspects that a defendant subject to an order under subsection (3) may have failed to comply with a condition under that subsection, the Magistrate may, within 6 months of the order being made, call on the defendant to appear before the Magistrate.
- (3B) If the defendant fails to appear, the Magistrate may:
- (a) issue a warrant for the defendant's arrest, or
  - (b) authorise an authorised officer within the meaning of the *Criminal Procedure Act 1986* to issue a warrant for the defendant's arrest.
- (3C) If, however, at the time the Magistrate proposes to call on a defendant referred to in subsection (3A) to appear before the Magistrate, the Magistrate is satisfied that the location of the defendant is unknown, the Magistrate may immediately:

- (a) issue a warrant for the defendant's arrest, or
  - (b) authorise an authorised officer within the meaning of the *Criminal Procedure Act 1986* to issue a warrant for the defendant's arrest.
- (3D) If a Magistrate discharges a defendant subject to a condition under subsection (3), and the defendant fails to comply with the condition within 6 months of the discharge, the Magistrate may deal with the charge as if the defendant had not been discharged.
- (4) A decision under this section to dismiss charges against a defendant does not constitute a finding that the charges against the defendant are proven or otherwise.
- (4A) A Magistrate is to state the reasons for making a decision as to whether or not a defendant should be dealt with under subsection (2) or (3).
- (4B) A failure to comply with subsection (4A) does not invalidate any decision of a Magistrate under this section.
- (5) The regulations may prescribe the form of an order under this section.