# Raising the Minimum Age of Criminal Responsibility in the ACT

The ACT Government is the first Australian jurisdiction to commit to raising the Minimum Age of Criminal Responsibility (MACR). This reform is based on research and human rights obligations:

* **Medical and social research on child development.** Research evidence on developmental psychology and brain development shows that children are not sufficiently able to reflect before acting or to comprehend the consequences of a criminal action.
* **Significantly improved life outcomes.** Neurobiological research on early childhood trauma shows that criminalising children under 14 years old leads to a lifetime of harmful consequences, including sustained contact with the justice system.
* **International human rights obligations.** Australia has human rights obligations under the United Nations Convention on the Rights of the Child. These obligations state that the MACR should be at least 14 years old.

FARE has a particular interest in MACR being raised due to the high prevalence of people detained in the criminal justice system, (including children), with Fetal Alcohol Spectrum Disorder (FASD). Recent research at the Banksia Hill Youth Detention Centre in Western Australia identified that more than a third of the young people screened in detention were diagnosed with FASD. Researchers suggested this may be an under-estimate due to, for example, the lack of confirmation of prenatal alcohol exposure, suspecting that almost half of these young people may have FASD.

## FARE recommended:

**Recommendation 1: Raise the MACR to at least 14.** All Australian State and Territory governments should raise the MACR in their jurisdictions to at least 14 years old.

**Recommendation 2: No exceptions.** The MACR must be raised to at least 14 years old. There should be no exceptions and no exemptions to this, regardless of the severity of behaviours.

**Recommendation 3: Implement alternative means to achieve community safety.** Protect community safety by referring children that would have come into contact with the justice system for clinical assessment to identify potential neurological disorders, and appropriate support.

**Recommendation 4: End Doli incapax for 10 to 14-year-olds.** Replace Doli incapax by raising the MACR to at least 14 years old.

**Recommendation 5: Ensure that evidence of behaviour from before children were 14 years old cannot be used in future prosecutions.** Ensure that police and courts are not able to use / rely on behaviour that occurred before a child was 14 years old in future prosecutions.

**Recommendation 6: Educate relevant professionals about children with disabilities and cognitive impairment.** This is essential for a better understanding by police, lawyers and the judiciary of how FASD and other impairments impacts on decision-making.

**Recommendation 7: Include FASD in alternate pathway model design.** Develop and fund appropriate alternative pathways for children suspected of having FASD or other neurological disorders that include adequate screening, diagnosis and ongoing support.

**Recommendation 8: Develop FASD professional capacity.** Invest in professional workforce development to establish capacity in the ACT for FASD screening, diagnosis and support. Allocate resources to educating professionals in recognising FASD.

**Recommendation 9: Avoid net-widening.** Ensure that any broader cohort accessing the new supports and services are not criminalised by any punitive compliance consequences.

**Recommendation 10: Consider voluntary restorative justice processes or elements in designing the new model.** Include appropriate voluntary restorative justice processes where appropriate in the new model.

**Recommendation 11: Use trauma-informed care.** Trauma-informed care should be used when engaging with children who are also victims of crime and survivors of trauma.

**Recommendation 12: Automatically extinguish convictions.** Automatically extinguish all previous convictions of children who were 10 to 14 years old at the time of the offence.

**Recommendation 13: Allow restricted information sharing.** Facilitate the sharing of information related to children 10 to 14 years old only for child protection, case management, and investigation of suspected adult exploitation of children.

**Recommendation 14: Publish accurate crime data regularly.** Collect, analyse and regularly publish accurate crime statistics, conviction, sentencing and recidivism data, and comprehensive costings for all aspects of the justice system.

[view the submission](https://fare.org.au/wp-content/uploads/FARE-submission-to-ACT-MACR-review.pdf)

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