# How Australia is criminalising people with FASD

Everyone with a disability should have access to the support they need.

This is especially true for a lifelong disability like Fetal Alcohol Spectrum Disorder (FASD). People with FASD experience neurodevelopmental challenges that can affect motor skills, language, executive functioning and social skills.

In Australia, many people with FASD often go undiagnosed, resulting in a lack of adequate support for them and their families. Early diagnosis and access to supports is critical to improving life outcomes.

So, what’s the relationship between FASD and criminalisation?

Without the right support, people with FASD have a higher risk of experiencing poor mental health, alcohol and drug problems, disruption at school, unemployment and homelessness. These challenges often mean people with FASD come into contact with the criminal justice system.

A landmark [Western Australia study](https://bmjopen.bmj.com/content/8/2/e019605) found that in 2018, more than a third of young people screened in the Banksia Hill Youth Detention Centre had FASD - an incredibly high rate of people with FASD in detention.

Once this early contact occurs, many people with FASD become entrenched in the justice system, falling into a cycle of incarceration.

This process is particularly felt among Aboriginal and Torres Strait Islander peoples – who already face significant intervention by child protection and law enforcement authorities and continue to be incarcerated at unacceptably high rates.

Entrenchment in the criminal justice system can be compounded by the unique nature of FASD challenges that people experience. For example, people with FASD can be highly suggestible, making them more likely to agree with propositions put forward in police interviews. They can find it hard to link actions with consequences, making it difficult to comply with bail conditions or community-based orders. People with FASD can also face challenges with memory, putting them at a disadvantage when explaining their behaviour, which can sometimes trigger the fabrication of memories.

Even where a court might account for these differences in processing, learning and behaviour, this can result in a person being ruled unfit to stand trial. This often results in the indefinite detention of the person. A recent Guardian investigation estimated more than 1,200 people with neurodevelopmental conditions and disabilities [are being detained indefinitely in Australia.](https://www.theguardian.com/society/2022/aug/12/more-than-1200-people-are-detained-indefinitely-in-australia-with-no-criminal-conviction)

There is clearly an urgent need to give people with disabilities like FASD the support they need and prevent this inhumane treatment in the justice system.

So, what can be done?

FARE is currently working closely with and building on the work done by researchers, health professionals, justice advocates, communities, governments, and Aboriginal and Torres Strait Islander organisations to identify how we can bring about real-world change.

A key component of change is raising awareness of FASD, especially among education, health and justice professionals. Being able to recognise and understand neurodisabilities like FASD can mean more tailored support. Across Australia, there are expert trainers delivering professional development, which are essential programs that continue to grow.

In the ACT, positive changes have been seen in the recent 2022-23 Budget, where [a new program was announced](https://www.cmtedd.act.gov.au/open_government/inform/act_government_media_releases/barr/2022/additional-funding-to-reduce-over-representation-of-first-nations-people-in-act-justice-system) to assess cognitive disability in people in Canberra’s adult correctional centre. Such programs are vital to ensure FASD can be diagnosed and the right support is given.

Nationally, there is advocacy to [raise the age](https://www.raisetheage.org.au/) of criminal responsibility from 10 to 14 years old. This will make a meaningful difference for children with FASD, as the right disability support can be given to children instead of locking them up.

We need systemic changes to ensure that people with FASD get the support they need, and we will continue to work alongside community advocates to make them happen.