

Empowering Voices: The Need for a Dedicated Advocacy System for Tāngata Whaikaha Hinengaro in Aotearoa

Overview and Gaps in New Zealand's Criminal Justice System

Introduction

Understanding the need for a dedicated advocacy system for Tāngata Whaikaha Hinengaro is crucial for ensuring fairness and effectiveness within New Zealand's criminal justice system.

Overview of the Issue

- Tāngata whaikaha hinengaro, individuals with intellectual disabilities, face significant challenges within New Zealand's criminal justice system, including systemic discrimination and lack of tailored support.
- This demographic is often placed at a disadvantage due to existing frameworks that fail to adequately provide for their needs during the justice process.



Presentation Structure

- This presentation will outline the current advocacy landscape in New Zealand, highlighting existing frameworks and their limitations. It will also delve into the urgent need for dedicated advocacy for Tāngata whaikaha hinengaro.



New Zealand's Current Framework

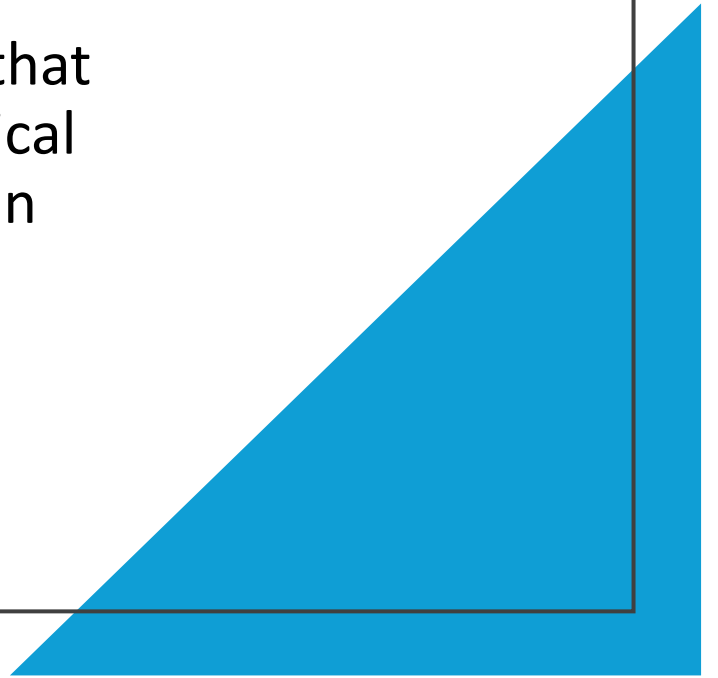
An examination of the current legislative and supervisory structures governing the care and rehabilitation of tāngata whaikaha hinengaro in New Zealand reveals significant gaps and challenges.



WHAT IS INTELLECTUAL DISABILITY?

DEFINITION

- Intellectual disability is a neurodevelopmental disorder that significantly affects an individual's intellectual and practical abilities, hindering their capacity to function effectively in society.





UNDERSTANDING INTELLECTUAL DISABILITY

LIFE LONG DEFICITS

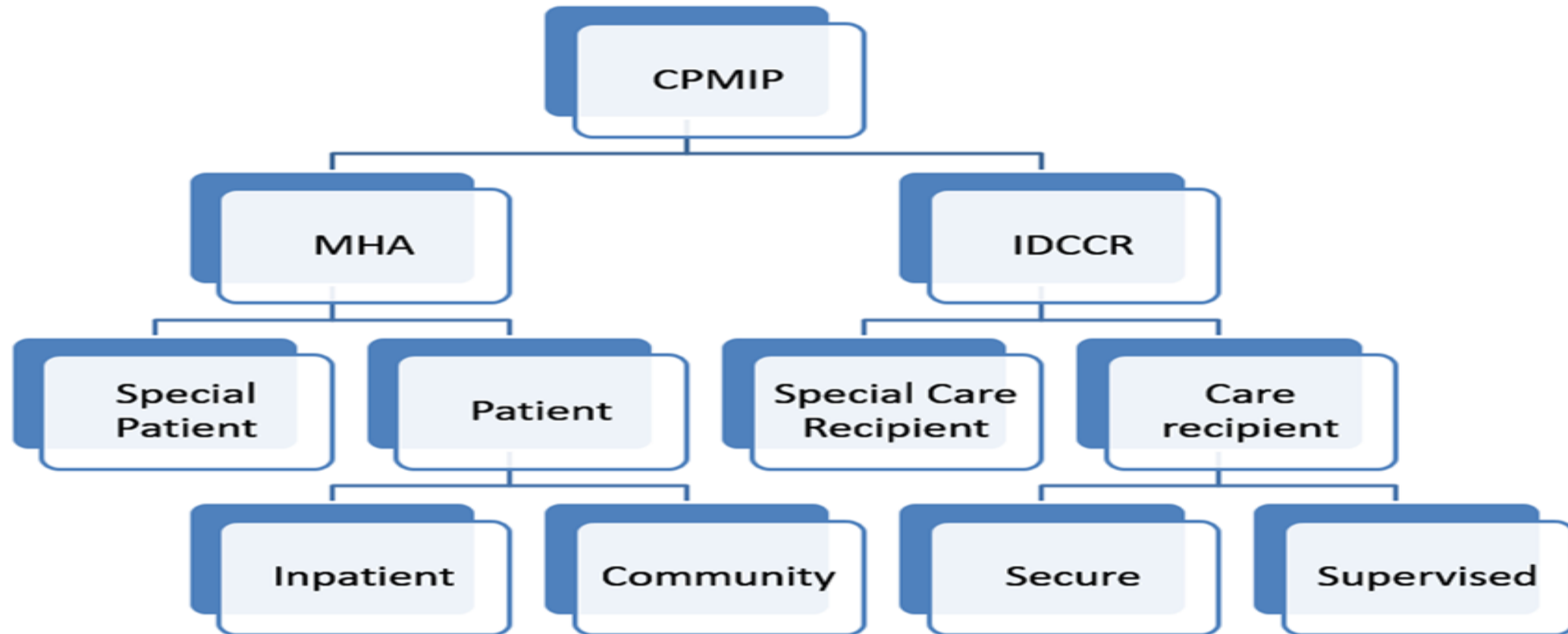
- According to the DSM-5, the deficits associated with intellectual disabilities are persistent and impact individuals throughout their lives, necessitating lifelong support and understanding.

IMPACT ON FUNCTIONING

- Individuals with intellectual disabilities often experience a reduced capacity for effective functioning across various life domains, which can affect their social interactions and daily activities.
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CRIMINAL JUSTICE SYSTEM and ID

Criminal Justice System & ID



The IDCCR Act

- The Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 provides a legislative framework for the care and rehabilitation of individuals with intellectual disabilities in New Zealand.
- It emphasizes their rights, offering provisions for their treatment within the criminal justice system, but does not create specific advocacy roles.

Version as at 13 December 2022



Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003

Public Act 2003 No 116

Date of assent 30 October 2003

Commencement see section 2

THE DISTRICT INSPECTOR

And their Role within the IDCCR Act

DISTRICT INSPECTORS (DI)

- District Inspectors are statutory officers under New Zealand's **Mental Health (Compulsory Assessment and Treatment) Act 1992** and the **Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003**.



KEY RESPONSIBILITIES

Advocacy and Rights Protection:

- They advocate for individuals' rights, ensuring legal and procedural compliance within mental health services and compulsory care.
- They can make reports or recommendations but do not directly represent individuals in court or legal processes.





KEY RESPONSIBILITIES

Monitoring and Investigating

- District Inspectors are tasked with overseeing the treatment and care of individuals under compulsory mental health or intellectual disability care.
- They investigate complaints about breaches of rights, improper care, and abuse of power in the system.

LIMITATIONS OF THE DISTRICT INSPECTOR

- 1. Reactive Role:** District Inspectors typically respond to complaints or issues raised after a breach or concern has already occurred, rather than providing proactive, ongoing support or advocacy for tāngata whaikaha hinengaro.
- 2. Lack of Individual Focus:** Their role is broad, focusing on systemic oversight and rights compliance, rather than offering personal advocacy or tailored assistance for specific needs, such as navigating legal systems, communication challenges, or rehabilitation programs.
- 3. Limited Involvement in Legal Proceedings:** They don't act as legal representatives in court; their role remains limited to monitoring and advising on treatment conditions rather than actively participating in criminal justice proceedings where tāngata whaikaha hinengaro might face particular disadvantages.
- 4. Lack of Disability and Cultural Expertise:** District Inspectors are not required to have specialized training in supporting people with disabilities, nor are they mandated to develop cultural competencies. This gap can hinder their ability to effectively support individuals from diverse backgrounds, particularly tāngata whaikaha hinengaro.

THE WELFARE GUARDIAN

Role of the Welfare Guardian

Welfare Guardian Role

- A **Welfare Guardian** is appointed by the Family Court under the **Protection of Personal and Property Rights Act 1988** (PPPR Act).
- They are responsible for making important decisions for a person who lacks the capacity to make their own decisions, typically concerning personal care, medical treatment, or living arrangements.
- **Personal Decision-Making:** Welfare Guardians make decisions in the best interest of the individual (the person with intellectual disabilities or mental health conditions) in situations where they lack capacity.
- **Focus on Wellbeing:** Their primary focus is on personal care and welfare decisions, such as where the person should live, what healthcare they should receive, or other day-to-day matters.



LIMITATIONS OF THE WELFARE GUARDIANSHIP

- 1. Narrow Focus on Personal Welfare:** Welfare Guardians' legal authority is restricted to personal and welfare decisions, not legal or criminal justice matters. They do not provide advocacy in court, and their ability to influence criminal justice processes (e.g., ensuring fair legal treatment or access to rehabilitation) is limited.
- 2. Limited Scope for Advocacy:** Welfare Guardians may lack the specialized knowledge or support to advocate effectively for tāngata whaikaha hinengaro in complex legal matters, such as interactions with police, criminal proceedings, or rehabilitation services.
- 3. No Proactive Role in Rights Protection:** While they help in personal decisions, Welfare Guardians do not necessarily advocate for the rights of tāngata whaikaha hinengaro within the criminal justice system, such as ensuring appropriate accommodations during legal processes or preventing systemic discrimination.
- 4. No forensic knowledge.**



Why is Advocacy urgent?

The urgent need for dedicated advocacy arises from the systemic challenges faced by tāngata whaikaha hinengaro in New Zealand's criminal justice system.

Challenges for Tāngata whaikaha hinengaro

- Tāngata whaikaha hinengaro often encounter challenges in the criminal justice system, particularly as they may be found unfit to stand trial, and legal professionals may lack training to address intellectual disabilities. This raises important questions about fairness and highlights the need for specialized advocacy to ensure equitable treatment.
- Systemic discrimination, lack of accommodations
- Issues in decision-making (Wong et al. 2000)
- Complications during discharge, reintegration to community.



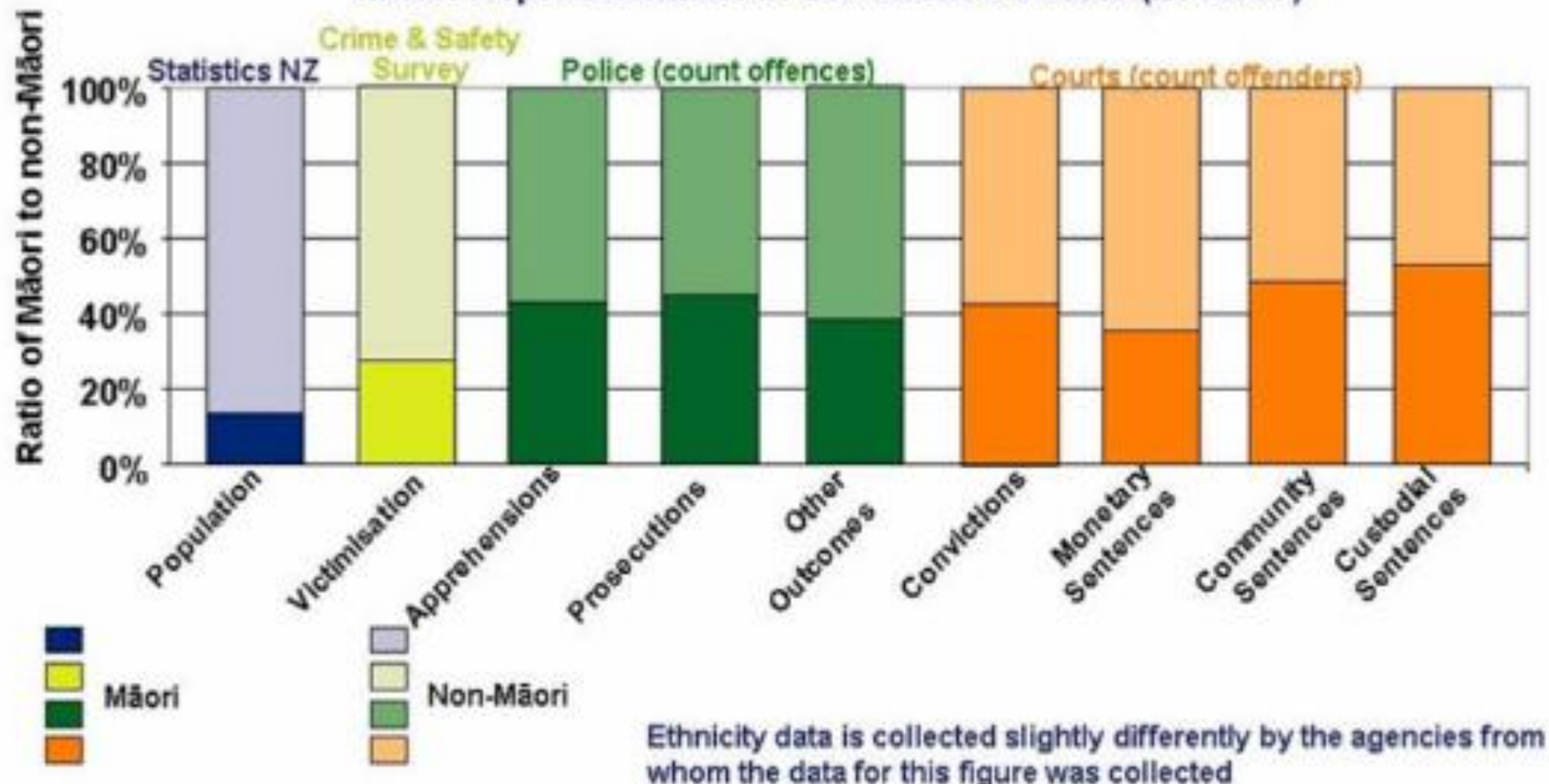
Fragmented Support Systems

- The support systems for tāngata whaikaha hinengaro are often fragmented, lacking cohesion and continuity. This disjointedness impairs access to necessary resources and the effective navigation of the justice process, thus necessitating a unified advocacy approach
 - *Example: Talking trouble set up on 2015 – support on court matter – no support after.*
 - Current reactive advocacy models (linked to complaints, breaches of rights)
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Inequities for Maori

- Māori are disproportionately represented at every stage of New Zealand's criminal justice system, despite making up only about 15% of the population. They comprise 37% of individuals proceeded against by Police, 45% of convictions, and 52% of the prison population, with Māori women making up 60% of incarcerated females. These disparities are particularly concerning when considering that the Māori imprisonment rate is approximately six times higher than that of non-Māori. Such figures highlight the urgent need for culturally informed advocacy to address the structural and procedural inequities that Māori face within the justice system, ensuring their cultural values and needs are respected throughout legal processes.
- There is not statistic taken by New Zealand government in regards of people with Intellectual disabilities that access the Criminal Justice System.

Māori Representation in the Justice Sector (2006/07)



Limitations of Reactive Advocacy Models

- Current advocacy models are largely reactive, addressing issues only after they arise rather than providing proactive support. The lack of a dedicated advocate for tāngata whaikaha hinengaro results in missed opportunities for preventative measures and tailored guidance throughout legal processes





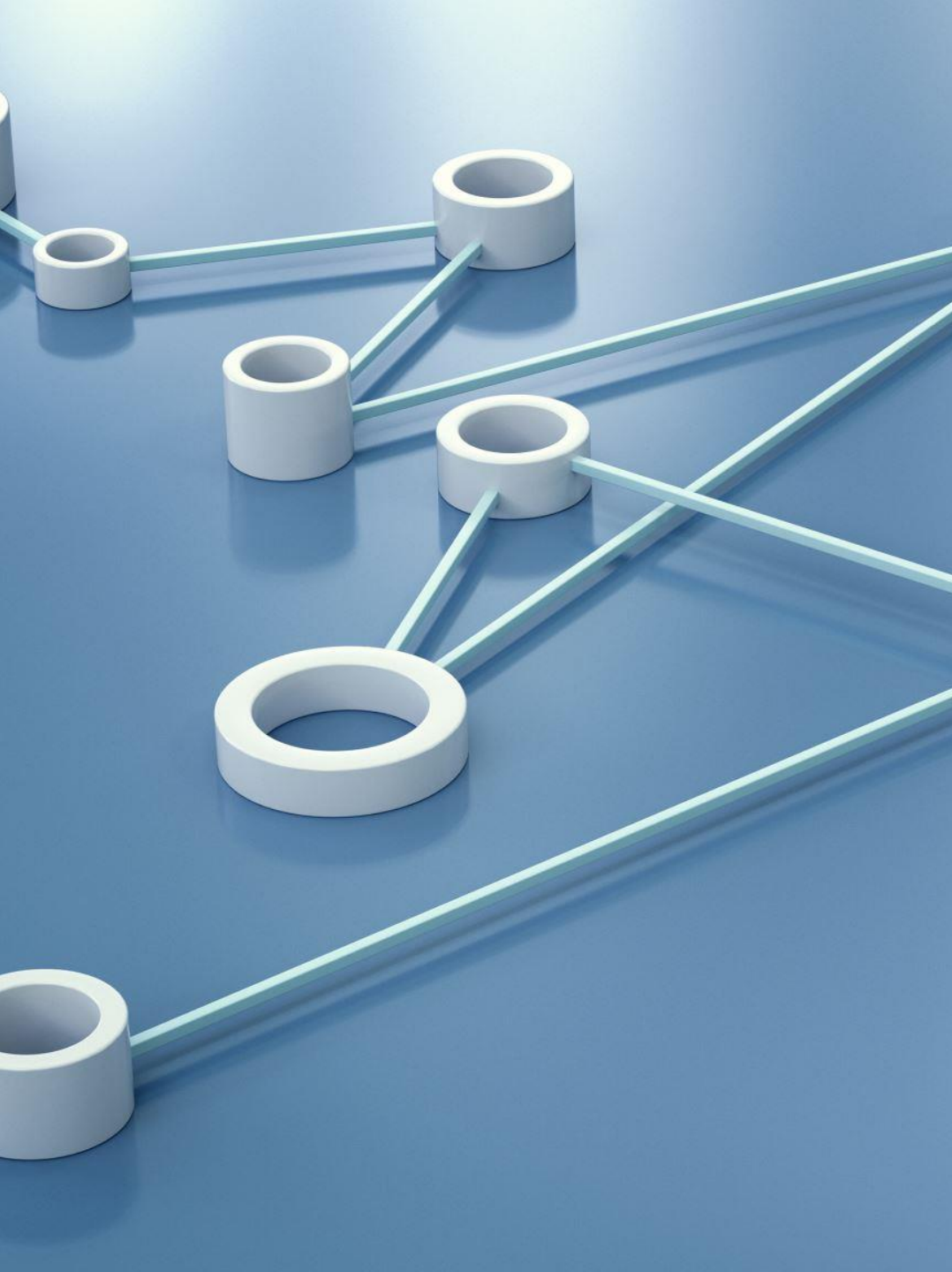
Gaps in Advocacy and Support / Current Limitations in Context:

- 1. Lack of a Unified, Dedicated Advocate Role:** Neither the District Inspector nor Welfare Guardian offers the holistic, proactive, and culturally appropriate advocacy that tāngata whaikaha hinengaro need within Aotearoa's criminal justice system. There is no statutory advocate dedicated specifically to supporting them throughout the entire justice process (arrest, court proceedings, rehabilitation, etc.).
- 2. Gap in Legal Advocacy:** Neither role directly supports individuals in the courtroom or helps navigate legal intricacies. Advocacy efforts are fragmented among multiple agencies, often resulting in an uncoordinated response to the needs of tāngata whaikaha hinengaro. This disjointed system leads to gaps in support and missed opportunities for effective intervention. Tāngata whaikaha hinengaro often face communication difficulties, misunderstandings of their rights, or are vulnerable to harsher treatment due to their conditions. A dedicated advocate could mitigate these challenges.
- 3.** The reliance on District Inspectors and Health Disability advocates limits opportunities for proactive engagement. By responding only to complaints, these roles fail to address systemic issues and empower individuals throughout the legal process.

Benefits of a Dedicated Advocacy System for Tāngata Whaikaha Hinengaro

- A proactive, holistic structured advocacy system is essential to support Tāngata Whaikaha Hinengaro throughout the criminal justice process, ensuring their rights and needs are effectively addressed.





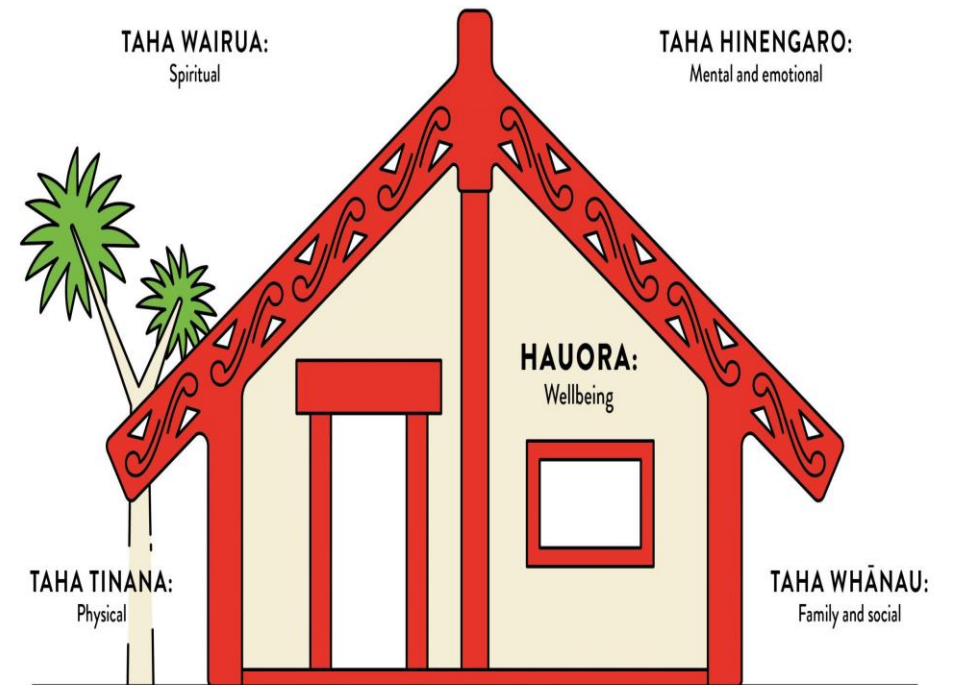
Structure of a Dedicated Advocacy System

- This system focuses on providing comprehensive support throughout the justice process, involving trained advocates who understand the needs of Tāngata Whaikaha Hinengaro. They will facilitate access to resources, legal representation, and personal advocacy, creating a more cohesive and supportive network.

Importance of a Proactive Approach

- Transitioning from reactive to proactive advocacy will improve individuals' outcomes within the criminal justice system. Early intervention can minimize distress and ensure equitable legal processes for Tāngata Whaikaha Hinengaro.
- A proactive, holistic approach that includes:
 - Legal representation
 - Rights education
 - Community and rehabilitation support
 - Fosters empowerment and agency for people with ID
- Evidence from international research (Gormley & Watson 2021)
- Rights education empowers individuals with knowledge, helping them understand their rights and entitlements, reducing vulnerability.

Te Whare Tapa Whā




Ngā mihi to Professor Sir Mason Durie, who was instrumental in the development of the Te Whare Tapa Whā model.

WHENUA:
Land, place, roots


Incorporating Te Ao Māori Values

- Integrating Māori perspectives into advocacy ensures cultural relevance and sensitivity in the support provided. This approach fosters a deeper connection and understanding among advocates, tāngata whaikaha hinengaro, and the justice system.
- Advocacy plays a vital role in safeguarding the rights of Tāngata whaikaha hinengaro, empowering them during legal processes, and ensuring equitable treatment. A dedicated advocacy system would address their unique needs, promoting a more inclusive and effective justice system that recognizes their capabilities and rights.


There are 3 main ideas in the Treaty. We remember them on Waitangi Day.



PROTECTION
Looking after Māori knowledge, language and values.



PARTNERSHIP
Working together as Māori and Pakeha.



PARTICIPATION
Everyone gets a fair chance to be part of NZ.

Montessorikiwi 2016 - LDG

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