



30 May 2013

Members
Justice Committee

Inquiry into white collar vs. blue collar offending: do current sentences reflect the economic and social impacts of these crimes?

The Justice Committee has been asked to conduct an inquiry into 'white collar vs. blue collar crimes: do current sentences reflect the economic and social impacts of these crimes?' This paper has been prepared to assist the Committee with its examination. The paper identifies issues and proposes possible lines of inquiry for the Committee to consider. The Committee may also wish to raise these matters with the witnesses who have been asked to appear before the Committee to give evidence on this inquiry.

Introduction

Both white and blue collar criminal offending have a number of social impacts, detrimentally affecting the wellbeing of victims, offenders and communities. The economic costs of crime are considerable and maintaining the criminal justice system is costly. To date, the best estimate on the overall cost of crime in New Zealand comes from a 2006 report by the New Zealand Treasury¹. Using figures from the 2003/2004 financial year the report estimated the total cost of crime as \$9.1b each year².

This paper defines what white and blue collar crimes are, outlines New Zealand's current purposes and principles of sentencing, looks at the economic and social impacts of white and blue collar crimes, as well as the current conviction rates and sentences imposed. It also suggests some policy options to ensure current sentences reflect the impacts of blue and white collar offences.

This paper looks at blue and white collar offences committed by adult offenders (i.e. aged over 17 years). The Children, Young Persons and Their Families Act 1989 (CYPF Act) sets out separate justice processes for children and youth. A key principle of CYPF Act is diverting young people from formal justice processes as frequently as possible. Section 208 (a) of the CYPF Act states "unless the public interest requires otherwise, criminal proceedings should not be instituted against a child or young person if there is an alternative means of dealing with the matter". Police Youth Aid³ diverts the majority of young offenders out of the youth justice system.

¹ Roper, T., & Thompson, A. (2006). Estimating the costs of crime in New Zealand in 2003/04. New Zealand Treasury Working Paper 06/04.

² Treasury stresses this is just an estimate and may be an underestimate at best.

³ Police Youth Aid is a specialist section of the New Zealand Police, dedicated to dealing with child and youth offending.

How are white and blue collar offences defined?

White collar offending has been defined in a number of ways. Most contemporary definitions refer to this as non-violent offences committed by people/groups in positions of power, often in the course of their job, with the purpose of achieving significant financial gain. Common examples include corporate fraud, tax evasion and embezzlement.

There is a general perception that individuals and organisations who commit white collar offences are well educated, technologically literate, of middle age and well respected in their communities. In contrast, blue collar offenders are sometimes thought to have less stable work, family and community backgrounds.

Young offenders are more likely to commit blue collar than white collar offences. Property and violent crime rates typically increase with age during adolescence, reaching a peak during later teenage years and declining thereafter. Participation in crimes requiring little market skill, such as grievous bodily harm, generally decline with age whereas participation in white collar crimes often peak later and decline more slowly with age.

Blue collar offending is highly visible as it is generally more physically noticeable and often occurs in public spaces. In contrast, white collar crime is often only detectable through a paper trail. Examples of blue collar offences include rape, burglary and assault.

A common background of financial privilege among white collar offenders has lead theorists to suggest one of the most significant differences between blue and white collar offenders is their social status.

Economic and social impacts of white versus blue collar crimes

Impacts of white collar offending

A number of social and economic harms are associated with white collar offending. Loss of revenue is most prominent. Because white collar crime is typically associated with financial loss it is usually easy to work out the value or 'cost' of this type of offending.

White collar offending is also associated with significant breaches of trust. This may play out in forms such as the abuse of a professional position, the misuse of a position of authority, defrauding the public or an employer, or abusing a supervisory role. Fraud committed by companies (e.g. finance companies) not only results in the loss of personal savings but may also destroy the public's confidence to invest their money.

White collar crimes are often considered indirect and impersonal. Because the harms are often diffused among multiple victims, its totality can be overlooked. Loss of money may not necessarily be viewed in the same way as physical injury or visible theft of an item. However, although the amount of financial loss in each case may vary significantly (e.g. one person might lose \$500, another \$500,000) it can have significant short and long term effects on victims. The short term effect is the immediate loss of money and in the long term offending may impact on the victim's livelihood (e.g. loss of retirement savings or loss of home deposit).

Impacts of blue collar offending

Blue collar offending can have a range of impacts on victims. This can include financial loss (e.g. theft or damage to a property) as well as physical and mental injury. The impact of blue

collar offending may be small, or it may be significant. As with white collar crime, the effects of the offending can be both short and long term.

For example, in the case of motor theft, the short term impact on the victim will be the cost of replacing the car which could be covered by insurance. If the victim has no insurance the long term impact would be the daily inconvenience of not having a car and the financial cost of paying for a new one.

As a more serious example, take the case of a victim of an assault who suffers brain damage. The short term cost of the offence is medical care, and time off work. The longer term costs include rehabilitation from the injury, carers and on-going medical support, loss of income, or loss of earning potential if the victim cannot work fulltime or is not able to be promoted in their job because the injury affects their ability to do so.

Victims of blue collar offending may face financial burdens such as having to take time off work to attend court hearings or replacing items which have been stolen or damaged. The mental and emotional impacts of blue collar crimes may also affect a victim's abilities to work and contribute to society.

How is the impact of offending considered in the criminal justice system?

Throughout the sentencing process victims of crime are supported in a number of ways. A judge will consider the many factors relevant to a decision about what sentence an offender will be given. For example, the introduction of the Victim's Rights Act 2002 enabled a formal mechanism by which victim's views about an offence could be provided to the sentencing judge through a victim impact statement. This statement may include information detailing any physical injuries, property loss, and other effects (particularly psychological effects) which the victim suffered as a result of offending.

Alternative resolutions such as restorative justice also provide a way for victims to be involved in the criminal justice process. A sentence of reparation can also be used for the offender to 'pay back' an amount of money to compensate for loss, damage or emotional harm caused by a physical or emotional injury.

New Zealand legislative framework

New Zealand has several laws which provide a legal framework for how offenders are sentenced and what judges must take into account when making sentencing decisions.

Sentencing Act 2002

Sentencing can be defined as a judgment by a court specifying the punishment of somebody convicted of a crime. In New Zealand, the Sentencing Act 2002 sets out the legal framework for how offenders are sentenced and what judges must take into account when making sentencing decisions.

The hierarchy of sentences and orders from the least restrictive to the most restrictive is as follows: a) discharge or order to come up for sentence if called on; b) fines and reparation; c) community-based sentences of community work and supervision; d) community based sentences of intensive supervision and community detention; e) home detention; f) imprisonment.

The sentence imposed on a convicted offender is determined by the sentencing judge. During sentencing the judge considers the maximum penalty for the offence and how serious

the offending in the particular case was. They then consider anything that is relevant about the offender, such as their age or a guilty plea. The judge is also required to take into account any information concerning the effect of the offending on the victim or the victim's family.

The judge must also take account of other sentences imposed on similar offenders for comparable offending so that, as far as possible, sentencing is a consistent exercise.

When making sentencing decisions, or otherwise dealing with offenders, judges must account for a number of sentencing principles and purposes (see Appendix A for a full list).

Desired outcomes from sentencing

Deterrence

Individual and general deterrence are frequently recognised sentencing goals. One theory⁴ is that general deterrence is particularly applicable to white-collar criminals who are more likely to weigh up the benefits of committing a crime against the costs of being caught and punished.

Evidence does not suggest increasing sentencing levels will deter offenders. Some evidence suggests the impact of prison on crime is minimal. Recent research⁵ which seeks to establish the impact of imprisonment on crime rates (i.e. the general 'deterrence' effect of imprisonment) suggests that prison has, at most, a small impact on crime rates.

Protecting the community

Protecting the community is an important sentencing outcome. It is unlikely that the courts will consider white collar offenders 'dangerous' the same way as blue collar offenders who may have committed violent offences over a number of years or who have continued to offend. This may result in the perception that white collar offenders are given an 'easy ride' by the criminal justice system.

Maximum penalties

Offenders and types of offending coming before the courts vary greatly, thus legislation is unable to be drafted to specify the individual aspects of each case. As such, New Zealand broadly defines offences in terms of maximum penalties to allow for the most serious instances of each offence. This leaves discretion for the courts to impose a sentence within the prescribed range depending on the seriousness of the offence and circumstances of the offender in accordance with the Sentencing Act.

For example, the offence of burglary carries a maximum penalty of 10 years imprisonment. A very serious burglary should result in a sentence at, or close to 10 years imprisonment and less serious burglaries should attract a lesser sentence. The idea is that judges have the ability to impose a sentence that reflects the seriousness of the offending in each individual case.

⁴ See 'Sentencing white-collar criminal's', a paper presented by Professor Arie Freiberg at the Fraud Prevention and Control Conference convened by the Australian Institute of Criminology.

⁵ See Carter (2003) and Liedka et al. (2006).

Conviction rates and sentences imposed

The following offences – tax evasion, welfare fraud and burglary - are used to demonstrate the similarities and differences of conviction rates and sentencing outcomes in New Zealand. Specific cases are used as examples.

Tax evasion

Tax evasion is an example of a white collar crime. A key difference of tax evasion from welfare fraud is that typically welfare fraud is committed by low income earners whereas tax offenders come from a range of backgrounds.

In 2011 tax evaders cost New Zealand between \$1 and \$6 billion, averaging approximately \$270,000 per offender. Research conducted by Victoria University in 2011 found 22 per cent of tax offenders received a custodial sentence.

In 2011, a Wellington Real Estate agent who used money owed to the Inland Revenue Department to travel to Australia was sentenced to eight months home detention and 250 hours community work for tax evasion. The woman, aged 50, admitted nine charges of helping her companies to evade tax on property transactions, one charge of helping a company to not file a tax return and two charges of providing false information to the IRD, equating to a total cost of \$227,777. The maximum penalty for tax evasion is five years imprisonment and/or a fine of up to \$50,000.

Welfare fraud

Welfare fraud, while a financial crime, can be considered a blue collar offence due to the generally low income and social group of the offenders involved.

In 2011 welfare fraud cost New Zealand approximately \$39 million, averaging around \$67,000 per offender. Research conducted by Victoria University found while there has been a general trend away from custodial sentences for fraud, this is not apparent in benefit fraud sentences. The 2011 study reported that approximately 60 per cent of welfare fraud offenders received a custodial sentence.

In 2010, a Palmerston North mother was sentenced to eight months imprisonment on nine counts of social welfare fraud and one count of breaching community work. The woman began receiving the Domestic Purposes Benefit in 2004 and agreed to tell the Ministry of Social Development if there were any changes to her circumstances. In 2008 she failed to declare her marriage and continued receiving the benefit, resulting in her conviction. The maximum penalty for welfare fraud is 7 years imprisonment.

Burglary

Burglary is an example of a blue collar offence. Treasury has estimated that burglary costs New Zealand approximately \$942 million per year, averaging around \$16,650 per burglary.

On 5 May 2013, a 34 year old man was sentenced to three years in prison on charges of burglary and money laundering. The man was found guilty of stealing an Xbox, television and iPod from a house in Stratford and later selling the Xbox. Prior to this the man had served 59 criminal sentences as an adult for a large range of offences including participating in an organised criminal group, driving while disqualified, aggravated robbery and receiving stolen goods. The maximum penalty for burglary is 10 years imprisonment.

Policy options

Sentencing councils

One way to manage possible sentencing inconsistencies is the introduction of a sentencing council. Sentencing councils are made up of expert bodies to assist with the development of sentencing policy. Introducing a sentencing council could provide consistency and transparency in sentencing, as well as ensuring that an appropriate range of sentences is available to the judiciary⁶. The way they do this varies, but often includes drafting sentencing guidelines⁷. Sentencing councils have been established in similar jurisdictions including Victoria, New South Wales, England and Wales.

Maximum penalties

The maximum penalties for each offence are contained within a wide range of legislation including the Crimes Act 1961, Misuse of Drugs Act 1975, Land Transport Act 1998, Arms Act 1983, and Summary Offences Act 1981. As mentioned above, the maximum penalties account for the most serious instances of each offence which allows for discretion at sentencing as no two cases or offenders are the same.

One option could be to review the maximum penalties contained within legislation to correct any anomalies. Whether a maximum penalty regime is appropriate for certain offences could also be considered. Other options may include minimum or mandatory penalties.

Victims of Crime Reform Bill

The Victims of Crime Reform Bill was introduced to Parliament in 2011. If passed, it will make amendments to the Victims' Rights Act 2002; the Children, Young Persons, and Their Families Act 1989; the Parole Act 2002; and the Sentencing Act 2002. The objectives are to:

- strengthen existing legislation to provide better outcomes for victims of crime
- broaden the rights of victims of serious offences
- provide more opportunities for victims to be involved in criminal justice processes
- apply consistent victim rights in adult and youth criminal jurisdiction, ensuring victims are better informed of their rights.

Report to the House

The Committee is required to report its findings on this inquiry to the House. The purpose of your report is first to inform the House and stimulate debate. In doing so your report should reflect both the oral and written evidence the Committee received, the issues the Committee considered in-depth, and the views of the members. From these the Committee should develop conclusions and recommendations to the Government.

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Youth Parliament 2013
Ministry of Youth Development

⁶ For more information see the third reading on the Sentencing Council Bill: http://www.parliament.nz/en-NZ/PB/Debates/Debates/0/4/6/48HansD_20070724_00001127-Third-Readings.htm

⁷ For more information on sentencing councils see: http://www.lawcom.govt.nz/sites/default/files/press-releases/2006/08/Publication_126_336_Sentencing%20Council%20Fact%20Sheet%20SG%20PR.pdf

Appendix A

New Zealand sentencing purposes and principles as set out in the Sentencing Act 2002:

s7 Purposes of sentencing or otherwise dealing with offenders

- (1) The purposes for which a court may sentence or otherwise deal with an offender are—
 - (a) to hold the offender accountable for harm done to the victim and the community by the offending; or
 - (b) to promote in the offender a sense of responsibility for, and an acknowledgment of, that harm; or
 - (c) to provide for the interests of the victim of the offence; or
 - (d) to provide reparation for harm done by the offending; or
 - (e) to denounce the conduct in which the offender was involved; or
 - (f) to deter the offender or other persons from committing the same or a similar offence; or
 - (g) to protect the community from the offender; or
 - (h) to assist in the offender's rehabilitation and reintegration; or
 - (i) a combination of 2 or more of the purposes in paragraphs (a) to (h).

- (2) To avoid doubt, nothing about the order in which the purposes appear in this section implies that any purpose referred to must be given greater weight than any other purpose referred to.

s8 Principles of sentencing or otherwise dealing with offenders

- In sentencing or otherwise dealing with an offender the court—
 - (a) must take into account the gravity of the offending in the particular case, including the degree of culpability of the offender; and
 - (b) must take into account the seriousness of the type of offence in comparison with other types of offences, as indicated by the maximum penalties prescribed for the offences; and
 - (c) must impose the maximum penalty prescribed for the offence if the offending is within the most serious of cases for which that penalty is prescribed, unless circumstances relating to the offender make that inappropriate; and
 - (d) must impose a penalty near to the maximum prescribed for the offence if the offending is near to the most serious of cases for which that penalty is prescribed, unless circumstances relating to the offender make that inappropriate; and
 - (e) must take into account the general desirability of consistency with appropriate sentencing levels and other means of dealing with offenders in respect of similar offenders committing similar offences in similar circumstances; and
 - (f) must take into account any information provided to the court concerning the effect of the offending on the victim; and
 - (g) must impose the least restrictive outcome that is appropriate in the circumstances, in accordance with the hierarchy of sentences and orders set out in section 10A; and
 - (h) must take into account any particular circumstances of the offender that mean that a sentence or other means of dealing with the offender that would otherwise be appropriate would, in the particular instance, be disproportionately severe; and

- (i) must take into account the offender's personal, family, whanau, community, and cultural background in imposing a sentence or other means of dealing with the offender with a partly or wholly rehabilitative purpose; and
- (j) must take into account any outcomes of restorative justice processes that have occurred, or that the court is satisfied are likely to occur, in relation to the particular case (including, without limitation, anything referred to in section 10).

Members may wish to ask:

- Can you think of any recent high profile cases involving white or blue collar offences?
Do you think the sentencing outcomes fair?
- Do you think New Zealand should introduce a sentencing council?
- What do you see as problematic or beneficial with having a maximum penalty sentencing structure?
- How could our judicial system better recognise the impacts which white collar crimes have on victims?
- Do we need to change or influence public perceptions about different types of crime?
- Do you think it is appropriate that judges have some flexibility to impose a sentence suitable for the circumstances of each offence?
- In your opinion, is the current maximum penalty sentencing structure is fair?

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Further Reading:

Suggested keywords and phrases for internet searches:

- white collar crime
- blue collar crime
- criminal sentencing in New Zealand
- social impacts of white collar crime
- social impacts of blue collar crime
- economic impacts of white collar crime
- economic impacts of blue collar crime
- white collar crime compared to blue collar crime

<http://www.courtsofnz.govt.nz/about/system/role/sentencing/#sentencing>

<http://www.management.co.nz/Editorial.asp?eID=62229&Wcat=104>

<http://www.stuff.co.nz/nelson-mail/opinion/editorial/3727797/Editorial-Its-time-to-make-the-punishment-fit-the-white-collar-crime>

<http://www.conferenz.co.nz/whitepapers/is-white-collar-crime-in-new-zealand-on-the-rise>

<http://www.voxy.co.nz/national/justspeak-condemns-unequal-treatment-blue-collar-crime/5/141095>

<http://www.teara.govt.nz/en/cartoon/31189/blue-collar-and-white-collar-crime>

Glossary

Community work	Community-based sentence which requires offenders to do unpaid work in the community
Criminogenic needs	Attributes of offenders directly linked to criminal behaviour. Effective correctional treatment should target these needs.
Custodial Sentence	A judicial sentencing consisting of mandatory custody of the convict in a prison.
Embezzlement	The fraudulent appropriation of funds or property entrusted to your care but actually owned by someone else.
Denunciation	An accusation of crime before a public prosecutor or tribunal
Deterrence	The use of punishment as a threat to prevent an offender from becoming a repeat offender and to deter others from committing the same offence
Home Detention	Home detention (HD) is a sentence that requires an offender to remain at an approved residence at all times under electronic monitoring and close supervision by a probation officer.
Rehabilitation	The process of treating someone so they can resume a useful place in society
Accountability	Holding someone responsible for a particular crime
Restorative Justice	Restorative justice is a process for resolving crime that focuses on redressing the harm done to victims, while holding offenders to account and engaging the community in the resolution of conflict. It does this primarily through a meeting between the victim and the offender called a restorative justice conference.
Supervision	Supervision is a rehabilitative community-based sentence which requires offenders to address the causes of their offending. Offenders can be sentenced to Supervision for between six months and two years.