

Institute of Public Affairs opening statements to the Senate Inquiry into Criminal, Civil and Administrative Penalties for White Collar Crime

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The Institute of Public Affairs welcomes the opportunity to present at this Senate Inquiry this morning.

Our submission is informed by the work of our ongoing criminal justice project, which is developing policy reform across the criminal justice system, from incarceration, to policing, to the criminal law.

To begin, we would like to place our submission to this inquiry into the broader context of a wider, developing conversation about Australia's criminal justice system.

Institute of Public Affairs research released this past Friday shows that there are some worrying trends in criminal justice across the country. Our prison population is booming - costing us nearly \$4 billion per year.

Approximately 46 per cent of the prisoners in Australia are there because their most serious offence is a non-violent offence. And prisons are not stopping reoffending: 59 percent of prisoners have been in prison before.

The IPA has become one of the leading voices advocating punishment reform for nonviolent offenders.

The aim is to rationalise the criminal justice system towards the goal of minimising crime. This means finding savings in the prison system and redirecting them towards programs known to be effective in reducing crime, such as policing, community supervision, and managed release into the community.

The number one goal of the criminal justice system is to keep the community safe from crime and from criminals. In this, punishment is vital: it is the only way to maintain a system that is based on individual rights and personal responsibility.

Further, the interests of victims must always be paramount, and we should not show undue sympathy towards criminals, who must be held to account for their choice to commit crime.

The question, then, is not whether or not to punish criminals but what punishments they deserve.

The overarching theme of our submission is the fundamental principle of proportionality—that the 'punishment must fit the crime'.

As our research shows, and as is becoming increasingly understood in comparable jurisdictions, it is desirable public policy to distinguish between violent and nonviolent offenders.

Violent offenders need to be incarcerated—it is the only way to keep the community safe. But prison is expensive and strongly correlated with repeat, and escalating, offending.

For this reason, nonviolent offenders are increasingly given alternative punishments. This recognises that the costs of imprisonment for people we are merely ‘mad at’—as opposed to ‘afraid of’—are not justified by the benefits of that punishment.

This is the context for the central contention of our submission: white-collar crime is not special, and white collar criminals should not be singled out for special treatment. The principles that apply to the punishment of nonviolent offending also apply to white collar crime.

The concept of ‘white-collar crime’ is vague and it is broad. Generally, white-collar crime is an umbrella term for a diverse set of non-violent, financially motivated, crimes.

The term itself was invented for explicitly political purposes, based on the idea that extra scrutiny should apply to supposedly wealthy white collar workers.

We should not undermine the concept of equality before the law in this way. Instead, our research has demonstrated that white-collar crimes should be penalised consistently with other non-violent crimes.

That is, a focus should be placed on non-custodial sentences where possible, imposing alternative punishments such as home detention, community service, professional disqualification, restitution orders, and fines.

- Home detention and community service can be sufficiently punitive to deliver retribution for the victim and society.
- Professional disqualification is an effective specific deterrent that reduces the criminal’s chance of reoffending.
- Restitution orders and fines can be used to make the victim whole—and this should be at the heart of the criminal justice system, especially in relation to crimes involving money.

Against this, it is often claimed that “white collar criminals only respond to the threat of prison”. This is the idea that, because of the specific nature of white collar crimes and the people who commit them, incarceration is necessary for general deterrence—that is, that a stronger penalty is necessary in order to send a signal to society and other potential criminals.

We do not accept this logic in any other part of the criminal law. General deterrence is a weak justification for increasing penalties because it effectively punishes someone for the potential crimes of others.

The idea of treating white-collar crime differently is wrapped up in populist sentiment, and a belief that the corporate sector is inherently criminal and unjust. And that white collar criminals are somehow different from other criminals in such a way that non-carceral punishments don’t fit their crimes.

Making sweeping generalisations about not only the type of crime, but of the characteristics of the criminals who commit those crimes, is not a stable, rational or consistent foundation on which to base the criminal justice system.

The punishment fits the crime, not the criminal. In any other context, we would rightly never accept the idea that a punishment should be chosen because of the accused’s membership of a particular class. The education, wealth, or social status of a criminal is not a relevant consideration in whether or not he or she should be treated the same as other citizens.

In short, white collar crime is of a piece with other kinds of nonviolent offending and its perpetrators should be treated as such.

As regards the main purpose of this inquiry, which is to determine whether or not white collar crime penalties should be increased, including incarceration, our research indicates that they should not be, for the following reasons:

- White-collar crime is a form of nonviolent crime. Consistent with how nonviolent crime is increasingly treated, we recommend that white collar crime be punished wherever possible with alternatives to incarceration, including home detention, community service, and monetary penalties.
- Treating white collar crime differently from other nonviolent crime is an unconscionable departure from the principle of equality before the law. The only reason to treat this class of criminals in a special way is political cynicism.

Thank you.