

Are We All Equal in New Zealand?

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Primary Issue

Ways in which we treat people receiving welfare benefits differently from other people

Agenda

- Data
 - Tax evasion and welfare fraud
 - Debts
 - Partners
- Explanations?
- A way forward

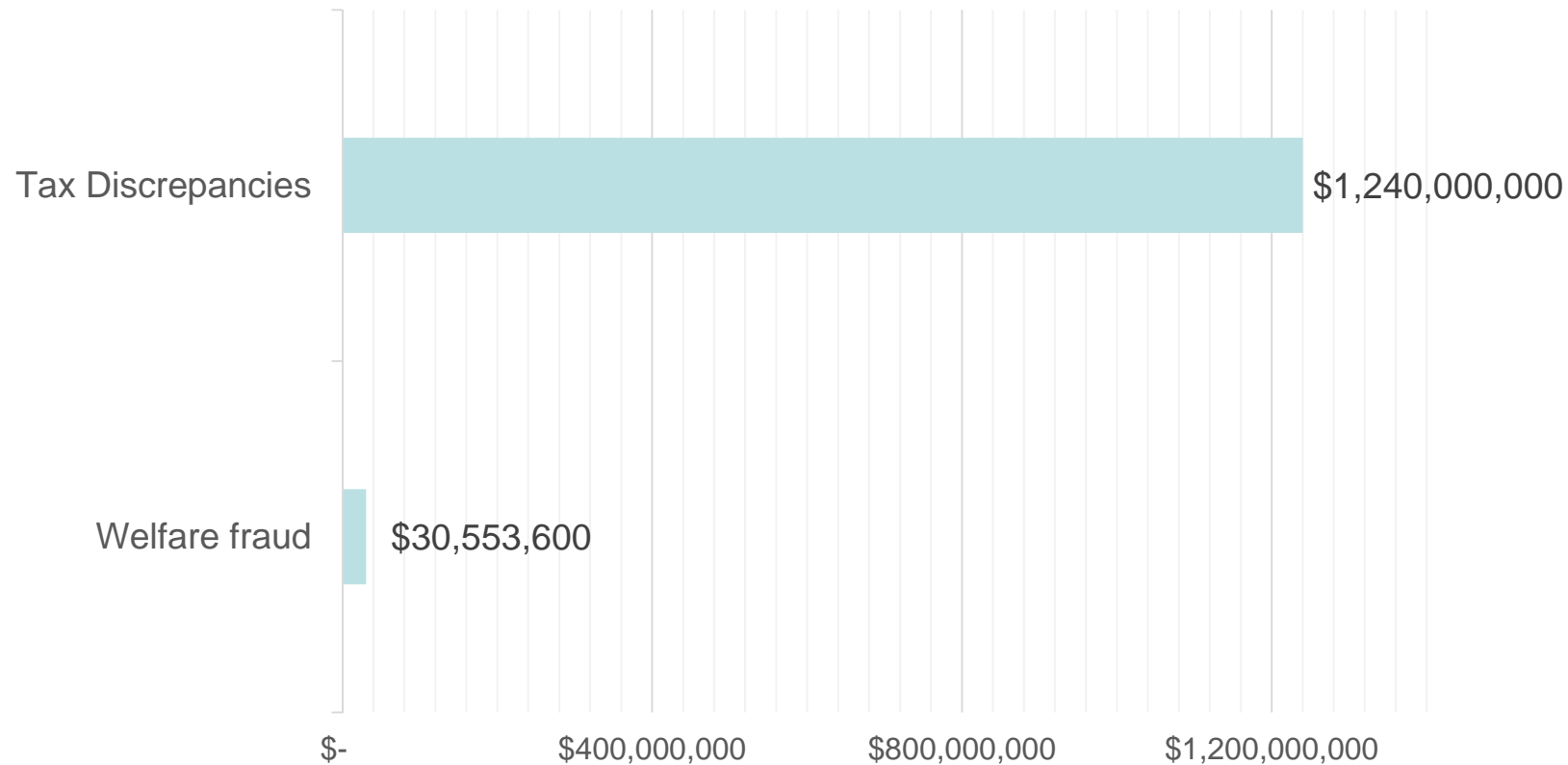
Background



Orana Wildlife Park
(Christchurch)



The Size of the Issue (NZ\$) 2014



Investigations & Prosecutions

- Investigations: approximately 5% of welfare beneficiaries per annum vs 0.01% of taxpayers
- Prosecutions: 800-1,000 per annum for welfare fraud vs 60-80 for tax evasion

Tax Evasion (2008/09-2013/14)

Year	No of Cases	Average Offending	Comm. Work	Comm. Detention	Home Detention	Prison	Fine
2008-09	55	\$193,539	23	5	19	14	4
2009-10	62	\$413,793	28	9	29	13	0
2010-11	59	\$242,164	27	12	28	12	3
2011-12	68	\$207,379	38	13	34	10	5
2012-13	81	\$151,881	41	27	23	12	4
2013-14	74	\$168,069	33	14	24	9	9
Total	399	\$229,471	190 (48%)	80 (20%)	157 (39%)	70 (18%)	25 (6%)

Welfare Fraud (2008-2014)

Year	No of Cases	Average Offending	Comm. Work	Comm. Detention	Home Detention	Prison
2008	7	\$48,961	4	1	2	2
2009	7	\$64,361	2	0	1	6
2010	6	\$91,977	4	1	1	4
2011	6	\$76,855	1	1	0	5
2012	6	\$45,343	0	0	0	6
2013	9	\$92,902	4	2	2	5
2014	4	\$115,449	1	1	2	2
Total	45	\$76,550	16 (36%)	6 (13%)	8 (18%)	30 (67%)

Repayment?

- Tax: two cases – one in full, one \$5,000
- Welfare: *“Reparation order not sought: the Ministry will recover the full amount of the overpayment directly from the Defendant”*

Commentary

- Tax Judge: *'your career is now devastated. You have given 33 years of selfless service to the law...[your solicitor] submits that you do not have a malicious bone in your body and, if anything, you are too eager to help others'*
- Fraud relating to GST refunds of \$250,000

- Tax Judge: *'Your counsel said, well the Inland Revenue is not like a vulnerable person who is a member of a superannuation fund...it is a state enterprise'*
- GST Fraud \$1,400,000

- Welfare Fraud Judge: *‘You have defrauded all of us...this is serious offending. As a principle of sentencing it strikes at the heart of the system put in place by the community, paid for by the taxpayer, to provide sustenance and support for the disadvantaged. You, to coin a modern phrase “ripped the system off”. You have to be accountable for that and your conduct denounced and you deterred from acting in this way. A sentence must be imposed that will deter others like minded from acting in this way’.*
- Welfare fraud: Offending of \$30,501.

Debt Recovery

– Comparison using:

- The Inland Revenue Department (IRD): responsible for largest proportion of government revenue (91%)
- The Ministry of Social Development (MSD): responsible for largest proportion of government expenditure (37%)

IRD Debt

Debt type	2009/10 (\$M)	2010/11 (\$M)	2011/12 (\$M)
Debt under arrangement	\$937.7	\$1,146.6	\$1,176.3
Other collectable debt	\$2,548.6	\$2,663.5	\$2,582.7
Total collectable debt	\$3,486.3	\$3,810.2	\$3,759.0
Total non-collectable debt	\$1,664.3	\$1,711.9	\$2,157.4
Total debt	\$5,150.6	\$5,522.1	\$5,916.4
Penalties and interest	\$2,149.7	\$2,359.0	\$2,711.3
Penalties and interest (%)	41.7%	42.7%	45.8%
Customers in debt (cases)	363,814	389,947	408,606

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MSD Debt: Recoverable Assistance Loans (\$M)

Year	Opening	Expenditure	Recovered	Write-off	Adjustment	Closing
2007/08	\$340.5	\$119.5	\$106.8	\$0.6	\$0.5	\$353.1
2008/09	\$353.1	\$157.5	\$132.3	\$1.3	\$1.6	\$378.6
2009/10	\$378.6	\$176.8	\$145.7	\$1.2	\$2.0	\$410.5
2010/11	\$410.5	\$162.7	\$158.7	\$1.7	\$1.5	\$411.3
2011/12	\$411.3	\$147.0	\$147.0	\$2.7	\$1.6	\$407.0

MSD Debt: Overpayments (\$M)

Year	Opening	Established	Recovered	Write-off	Adjustment	Closing
2007/08	\$429.6	\$176.4	\$134.3	\$11.8	\$13.4	\$446.5
2008/09	\$446.5	\$172.7	\$121.0	\$6.7	\$13.2	\$478.2
2009/10	\$478.2	\$207.5	\$145.6	\$8.5	\$12.0	\$519.6
2010/11	\$519.6	\$217.6	\$141.8	\$6.7	\$2.8	\$585.9
2011/12	\$585.9	\$208.0	\$140.0	\$6.0	Unknown	\$647.9

IRD and MSD

	IRD	MSD
Total Debt	\$5,916 M	\$1,054 M
Average debt per taxpayer/beneficiary in debt	\$14,479	\$2,523
Debt as a proportion of total tax revenue/total social welfare expenditure	10%	4.1%

Processes: IRD

- Payment by instalment
- Deduction notices
- Bankruptcy / no asset procedure
- Writing-off outstanding debt (\$435m 2012)
- Writing-off penalties and interest

Penalties, Interest and Debt IRD)

	2009/10 (\$M)	2010/11 (\$M)	2011/12 (\$M)
Penalties applied	\$343.0	\$346.2	\$451.6
Penalties collected	\$110.0	\$121.9	\$146.1
Penalties written off	\$198.6	\$193.0	\$244.3
Interest applied	\$500.7	\$263.2	\$280.9
Interest collected	\$412.1	\$147.2	\$158.1
Interest written off	\$104.4	\$120.1	\$130.5
% Penalties collected	32.1%	35.2%	32.4%
% Penalties written off	57.9%	55.7%	54.1%
% Interest collected	82.3%	55.9%	56.3%
% interest written off	20.9%	45.6%	46.5%
Debt written off	\$316	\$424	\$435
Debt written off as % of collectable debt	9%	11.1%	11.6%

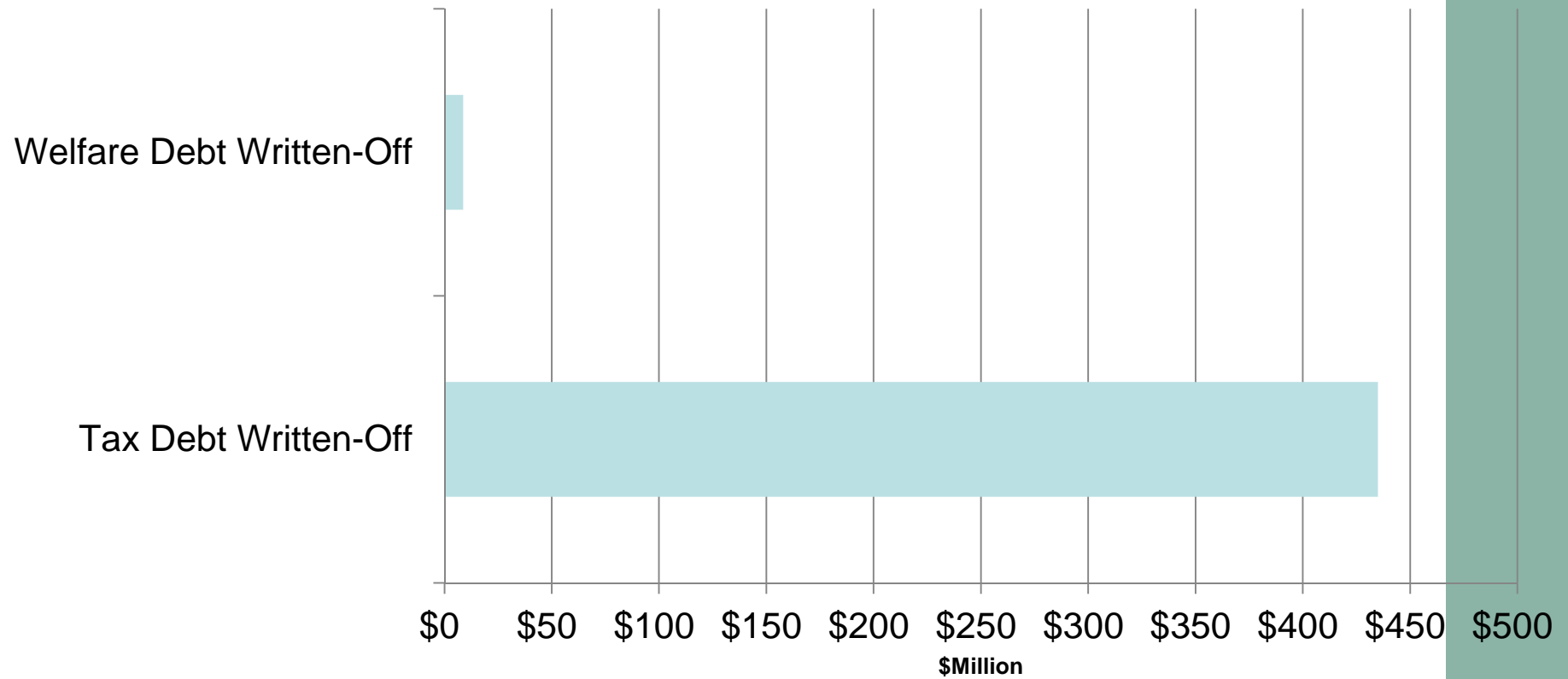
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Debt Recovery Processes: MSD

- Instalment arrangements (including deductions from NZ Superannuation)
- Deductions from current clients benefits
- Deduction notices
- *“All monies owed to the Crown are actively pursued and debts remain with each individual until all avenues to recover have been exhausted”*
- Writing-off outstanding debt (\$8.7M in 2011/12)

Debts written-off (2011-12)



Hardship: for tax

- Significant financial difficulties that arise where:
 - the taxpayer or their dependant has a serious illness;
 - the taxpayer would be unable to meet: minimum living expenses estimated according to normal community standards of cost and quality; the costs of medical treatment for an illness or injury of the taxpayer or their dependant; the cost of education for the taxpayer's dependants;
 - or other factors that the Commissioner thinks relevant

Hardship: for welfare

- “*negotiating realistic repayment rates with debtors so that significant hardship is not caused*”
- “*hardship does not necessarily preclude recovery*”
- In “*exceptional circumstances*” payment may be temporarily deferred until a person’s financial circumstance improves in order that significant hardship is not caused

- Cost of debt recovery: \$17/\$100 (welfare)
\$2.86/\$100 (tax)
- 92 per cent of MSD current clients with outstanding payments are repaying these with average payments of \$14.32 per week
- 88 per cent of former clients commence repayment within 12 months, with repayments averaging \$23.27 per week
- IRD: 13 per cent are paying by instalment

Explanations for these differences?

- Legislation
- 'Not Giving' vs. 'Taking'
- Status...?
- Is this what society wants?

Survey...

- Online survey (1,500 respondents in Australia and 1,500 respondents in NZ)
- Using FlyBuys database
- 80 questions including:
 - 17 questions on attitudes to tax evasion & welfare fraud

Examples of questions asked

- I am concerned at the level of welfare fraud in society
- I think welfare fraud is a more serious offence than tax evasion
- People who commit welfare fraud know full well what they are doing when they break the law

Demographic Characteristics

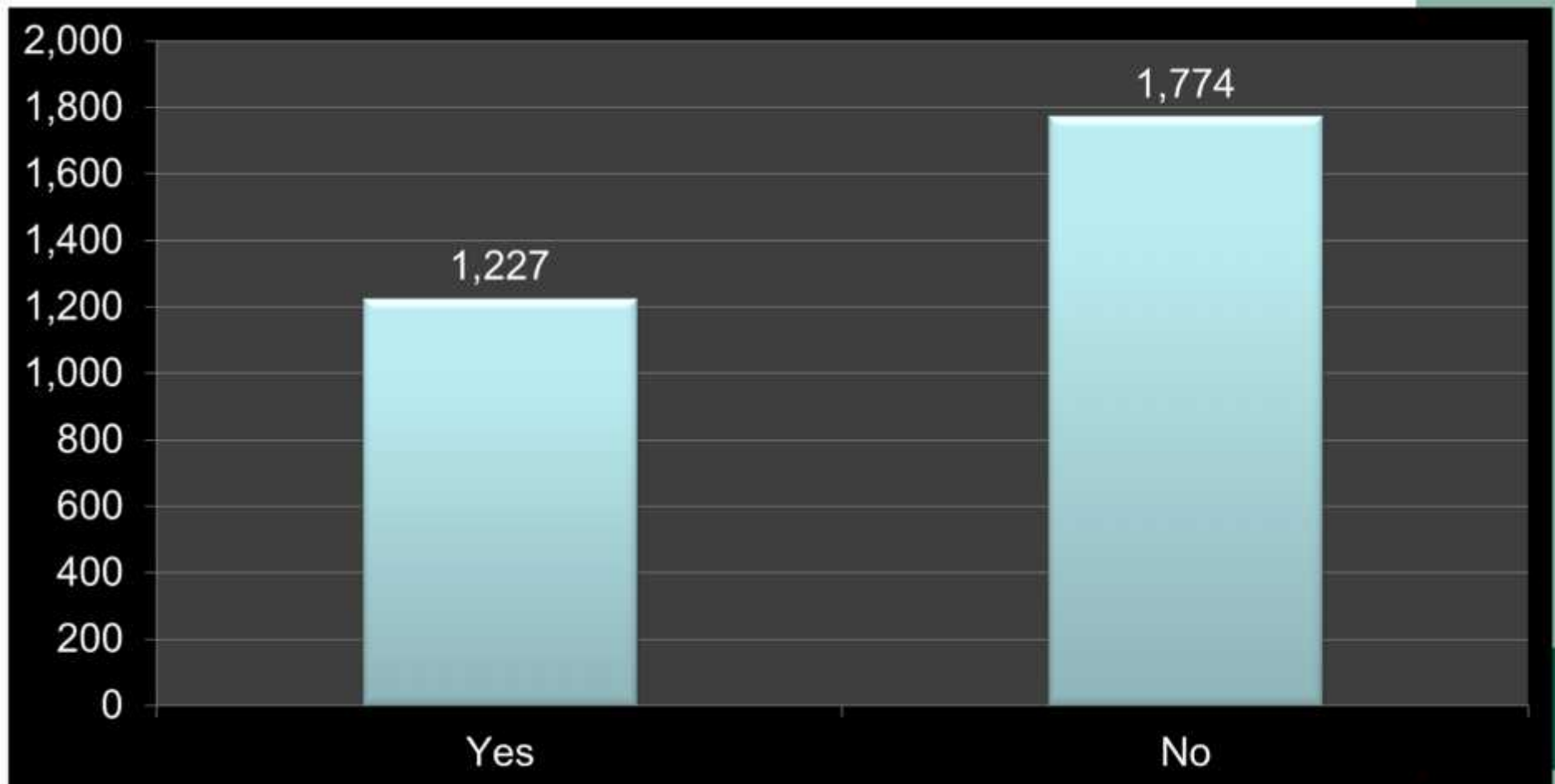
AGE	GENDER
ETHNIC GROUP	EDUCATION
INCOME (AMOUNT)	INCOME (SOURCE)
OCCUPATION GROUP	EVER RECEIVED WELFARE ASSISTANCE

Survey findings

- Tolerance of tax evasion decreases with age
- Females were less tolerant of welfare fraud than males
- Tolerance of welfare fraud reduced with education and increased income

BUT...for all variables tax evasion produced a higher maximum mean response in all groups except two (the youngest people and those with income from capital), suggesting that attitudes towards tax evasion are less favourable than welfare fraud

Do you perceive any differences in someone who commits welfare fraud and someone deliberately not paying tax?



For those who answered 'yes':

Welfare fraud causes more harm to society than tax evasion

Tax evasion causes more harm to society than welfare fraud

Tax evasion is less deliberate than welfare fraud

Welfare fraud is less deliberate than tax evasion

Those who commit welfare fraud do so because they need the money, whereas those who evade tax do so because they are greedy

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As taxes are high, it is reasonable that people try to increase their income by evading tax, but it is not reasonable for people to try to increase their income by committing welfare fraud

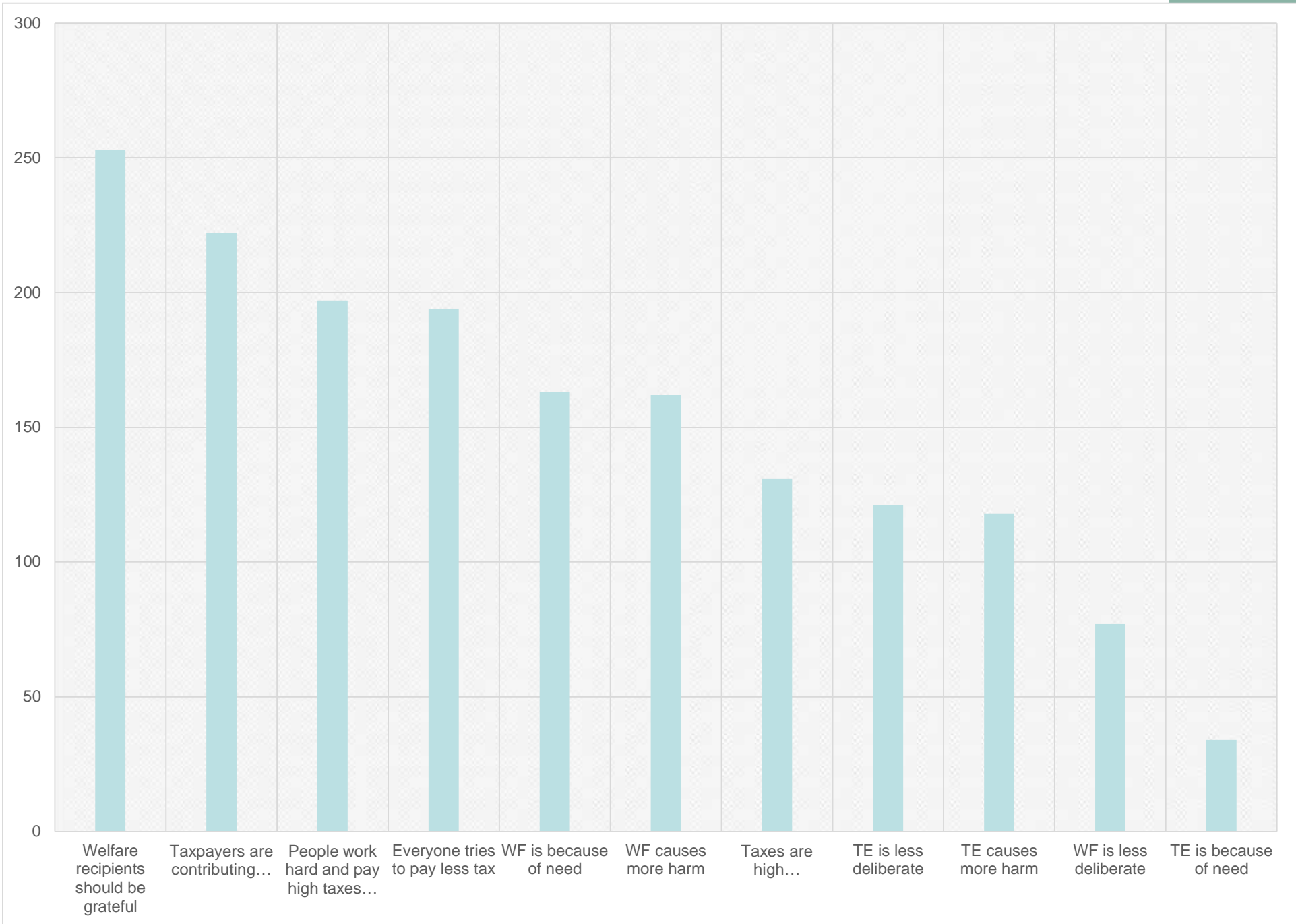
People who are receiving welfare benefits should be grateful that they are getting assistance from the Government and they should not try to take more than they are entitled to

Some people work hard to make their way in life and end up having to pay a lot of tax, whereas some people make no effort and rely on welfare, so it is more understandable if people evade tax

Taxpayers are already contributing to society, whereas those on welfare are not

Everyone tries to pay less tax than they are supposed to - but not everyone commits welfare fraud

Other (please expand...)



For those who answered 'yes':

1	People who are receiving welfare benefits should be grateful that they are getting assistance from the Government and they should not try to take more than they are entitled to
2	Taxpayers are already contributing to society, whereas those on welfare are not
3	Some people work hard to make their way in life and end up having to pay a lot of tax, whereas some people make no effort and rely on welfare, so it is more understandable if people evade tax
4	Everyone tries to pay less tax than they are supposed to - but not everyone commits welfare fraud
5	Those who commit welfare fraud do so because they need the money, whereas those who evade tax do so because they are greedy
6	Welfare fraud causes more harm to society than tax evasion
7	As taxes are high, it is reasonable that people try to increase their income by evading tax, but it is not reasonable for people to try to increase their income by committing welfare fraud
8	Tax evasion is less deliberate than welfare fraud
9	Tax evasion causes more harm to society than welfare fraud
10	Welfare fraud is less deliberate than tax evasion
11	Those who evade tax do so because they need the money, whereas those who commit welfare fraud do so because they are greedy

A further issue...

- Amendments to the *Social Security Act 1964* in 2014
- Allows for:
 - Partners of people engaging in welfare fraud to be prosecuted for the crime
 - Partners of people engaging in welfare fraud to be jointly liable for the debt
- Where the partner ‘knew, or ought to have known’ of the fraud

- Around 300,000 people receiving a main welfare benefit
- 208 cases of relationship fraud in 2014 (0.07%)
- No 'positive act' required – departure from general principles of criminal law
- Symmetry of treatment: no attempt to hold partners of those who engage in other forms of financial offending similarly liable (e.g. tax evasion)

- Revenue negative (\$1.2M additional costs)
- As at August 2016, \$200K collected
- Changes result in no gain from an equity or economic perspective
- Precedent for targeting vulnerable groups in society for more punitive treatment in the justice system?

What does it mean?

- Usually punishment reflects severity of offence
- Outcomes in NZ indicate presence of other factors influencing outcome
- Literature suggests justice system should reflect views of society
- But research finds no support for suggestion that welfare fraud is seen by the majority of society as being a more serious offence
- Prosecution guidelines?
 - Sufficient evidence
 - Public interest

Purposes of Sentencing

- Sentencing Act 2002
 1. Accountability
 2. Responsibility
 3. Interests of the victim
 4. Reparation
 5. Denounce conduct
 6. Deterrence
- Why would these be more desirable for welfare fraud than tax evasion?

Questions raised

- Blue-collar offence / offender is not an aggravating factor
- White-collar offence / offender is not a mitigating factor
- Treating people as equals?

What can be done?

- Improved data
- Greater transparency of measurement and reporting
- Independent review

Application to speak to judges

- *‘The decisions (judgments) Judges make must speak for themselves. Judges cannot add reasons or provide an explanation for a decision they have made’.*
- [In relation to my research] *‘Judges will inevitably be drawn into comment on sentencing decisions, which cannot appropriately be subject to expansion or explanation and must speak for themselves. Judges could also be drawn into comment on the conduct of prosecutions. In neither case is judicial comment appropriate. Accordingly, the application to interview Judges for this project is declined’.*

Concluding comment

All are equal but some are more equal
than others *(adapted from original: George Orwell (1945) Animal
Farm)*

Thank you

Questions / Comments?

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