

The Allen Consulting Group



THE UNIVERSITY OF
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Responding to gambling-related crime

Sentencing options and improving data collection in courts and prisons

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Report to the Tasmanian Government Department of Treasury and Finance

The Allen Consulting Group

Allen Consulting Group Pty Ltd
ACN 007 061 930, ABN 52 007 061 930

Melbourne

Level 9, 60 Collins St
Melbourne VIC 3000
Telephone: (61-3) 8650 6000
Facsimile: (61-3) 9654 6363

Sydney

Level 1, 50 Pitt St
Sydney NSW 2000
Telephone: (61-2) 8272 5100
Facsimile: (61-2) 9247 2455

Canberra

Empire Chambers, Level 2, 1-13 University Ave
Canberra ACT 2600
GPO Box 418, Canberra ACT 2601
Telephone: (61-2) 6204 6500
Facsimile: (61-2) 6230 0149

Online

Email: info@allenconsult.com.au
Website: www.allenconsult.com.au

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Executive summary

The Tasmanian Government's Department of Treasury and Finance commissioned a consortium comprising the Allen Consulting Group and the University of Melbourne to examine aspects of the interaction between problem gambling and the criminal justice system. In particular, this report:

- considers the merits, and evaluates the prospective effectiveness, of a range of sentencing options available for gambling-related crimes; and
- assesses the ability and effectiveness of improving data collection in courts and prisons.

In this report, 'sentencing' refers generally to all forms of court directed intervention, including diversionary options that may arise before trial, or before the final decisions of judicial officers at trial.

This report was prompted by uncertainty in Tasmania about the extent of gambling-related crime, and about what policy settings respond most appropriately to it. To help fill this gap, the review examines five potential sources of information about the prevalence of gambling-related offending:

- police arrests and charges;
- applications for legal aid;
- charges and sentences at court;
- offender records from corrections services; and
- estimates of self-reported offending in relation to gambling.

Court data were found to be the most useful source as there are several completed studies of court records in Tasmania and other Australian jurisdictions. On the basis of this material, this report estimates that around two per cent of criminal matters are 'caused by gambling', and around four per cent are 'gambling-related'.

This report finds that, in general, gambling is not regarded as a mitigating factor for sentencing by the courts. Australian case law on this issue is unclear and inconsistent, with substantial variability between (and in some cases within) jurisdictions in the treatment of problem gambling. For instance, problem gambling can be considered as an addictive behaviour, or as a mental disorder warranting special treatment.

It is also considered that Tasmanian courts are presented with poor quality advice on the severity and consequences of problem gambling, with little or no systematic assessment of defendants.

Finally, the report finds that there is no formal mechanism to issue some form of rehabilitative sentence for individuals suffering from problem gambling at the time of their offence. There is precedent for such action in other areas of criminal activity. For example, in many jurisdictions there are specialist drug courts to deal with drug-related crime.

In this light, it is considered that there is clear scope to give consideration to ‘problem gambling’ in sentencing policy. This can be achieved in the context of pursuing the overarching goals for sentencing common to most jurisdictions, which are to:

- exact retribution for the harm caused by the offence;
- express society’s denunciation of the crime; and
- deter the offender or other potential offenders from committing further offences.

Thirteen recommendations regarding sentencing options are outlined below.

Recommendations

1. *Rehabilitative sentencing policy in relation to problem gambling should be guided by the principle that the goal of sentencing is to prevent future harm to the community, the offender’s family and the offender arising from continued problem gambling and any associated offending.*
2. *There should be provision for the systematic screening of problem gambling in court assessments.*
3. *If established, any Collaborative Court Support model should include assessment for, and treatment and support responses to, problem gambling in the case management model.*

The relatively low prevalence estimates of gambling-related offending, and its likely wide distribution across Tasmania, suggest that an appropriate sentencing response should be integrated into existing rehabilitative sentencing processes. The Sober Driver program provides an example of a model for the delivery of treatment and support by probation officers working in conjunction with community agencies. While there is number of problem gambling intervention approaches of demonstrated effectiveness, adaptations are needed to make them appropriate for an offender client group.

Recommendations

4. *Community corrections orders should be seen as the primary sentencing response to offences involving problem gambling where the court wishes to respond with some form of rehabilitative sentence.*
5. *A specialised order or therapeutic jurisprudence program targeting problem gambling should not be established.*
6. *Treatment of imprisoned offenders’ problem gambling should be focused on preventing gambling-related harms from arising after offenders are released.*
7. *Treatment responses to problem gambling should be provided by the Community Corrections Service with support from community agencies.*
8. *The Sober Driver program provides an appropriate delivery model for offenders with problem gambling. However, this model would require substantial modification through the development of appropriate content and delivery protocols.*

9. *Funds from the Community Support Levy should be made available to support the development and delivery of programs for problem gambling offenders.*

One of the challenges identified in this report is the lack of specific data collections allowing analysis of the extent to which gambling-related crime leads to court attendance and, ultimately, a court-imposed sentence. There are a number of opportunities to address these matters.

Recommendations

10. *Police records should not be used to systematically identify cases of gambling-related crime, as these data are an unsatisfactory basis for estimating the prevalence of gambling-related offending.*
11. *Estimates of the prevalence of offending involving problem gambling should be based on assessments of offenders at court. Magistrates' case file records should include a data item on problem gambling that records the identifier for the relevant assessment and the assessment outcomes.*
12. *Community corrections offender records should provide for problem gambling assessment data to be linked to offenders' general records via an assessment record identifier. In addition, information about offenders' attendance and progress in treatment should be recorded.*
13. *Prisoner records should not include any specialised data collection on problem gambling.*

Chapter 1

Introduction

1.1 Overview

This report examines the way that problem gambling interacts with the process of sentencing and, more generally, the impact of problem gambling upon the criminal justice system. In this report, the term ‘sentencing’ is used to refer generally to all forms of court directed intervention following a person’s arrest up to and including final decision making at trial. This includes options such as assessment and diversion, which can be ordered at the bail stage and during the hearing process.

The focus of this report is on gambling that may *drive* criminal conduct, rather than situations in which gambling might be used as the vehicle for crime but is not necessarily its motivation, such as money laundering. Where possible, the analysis presented is based on data, cases and stakeholder advice about specific characteristics or processes in the Tasmanian jurisdiction. This analysis is compared with analyses derived from other Australian or international jurisdictions.

Issues considered in this report include: the prevalence and severity of problem gambling as a cause or contributing factor in offending; the way that the attributes of problem gambling relate to charge, hearing and sentencing processes; and the relationship between problem gambling and other social and individual problems addressed through the sentencing process. The report also considers existing and potential data collection practices with a view to informing both diversionary and sentencing processes, and considers the role of gambling in the criminal justice system.

Based on the analysis presented, a series of programmatic and sentencing options is considered and assessed against a range of criteria. These criteria include:

- consistency with general sentencing practice;
- the capacity to rehabilitate offenders, and prevent or ameliorate harm to the community; and
- practical considerations associated with implementation.

This assessment also considers the legislative and procedural changes necessary to put each option into effect.

It is important to focus on sentencing options, as sentencing is a key stage in the operation of the justice system. No other stage in the criminal justice process offers the same capacity to respond to offenders. Everything that happens prior to an offender's court appearance is preparation for the judicial decisions that take place in court, and everything that happens after court involves giving effect to those decisions. In particular, all treatment or rehabilitative interventions for offenders are derived from decisions at the court stage. However, if we wish to understand how sentencing should operate, it is important to also consider the preceding and succeeding stages. Hence, this report provides advice on the orders and other outcomes available to judges and magistrates, as well as advice on how responses to problem gambling can be addressed through pre-trial processes (including arrest), and through post-sentence processes (including parole and post-release support).

Any sentencing or program response to problem gambling, whether pre, during or post-trial, should be informed by reliable information about the extent of the problem, the characteristics of the persons involved, and the results generated by any sentencing or program interventions. Unfortunately, there is relatively little information available on these issues in Tasmania or elsewhere in Australia. Thus, this report examines how to generate information to accurately measure the prevalence of offending associated with problem gambling. In addition, the report considers how information on the attributes of offenders and the outcomes of problem gambling interventions can be integrated into existing court and correctional information systems. Such integration would allow assessment of the effectiveness of interventions in reducing the level of individual and social harm arising from offending associated with problem gambling.

1.2 Report structure

The remainder of this report is structured in the following way:

- Chapter 2 — outlines the conceptual framework through which this report regards gambling and crime;
- Chapter 3 — presents the research methodology implemented to identify sentencing and data collection options;
- Chapter 4 — explores the policy context for gambling-related crime, and policy objectives to address it;
- Chapter 5 — describes how the court system considers gambling as a factor during sentencing, presents recommendations and advice to courts on how to approach cases involving problem gambling, and outlines current sentencing practices and services available for offenders with gambling problems;
- Chapter 6 — provides an evaluation of sentencing options and recommendations for developing programs to address problem gambling in a criminal context; and
- Chapter 7 — presents findings and recommendations on the collection of data about gambling problems within the criminal justice system.

Chapter 2

Conceptual framework for gambling and crime

This chapter develops a conceptual framework through which to examine the relationship between gambling and crime, and thus the need for gambling-related crime to receive due consideration in sentencing policy.

2.1 Relationship between gambling and crime

Any strategy to address problem gambling through the criminal justice system needs to be based on an explicit model of how problem gambling and crime are related. This section examines four possible relationships between problem gambling and offending.

There is little doubt in the literature that gambling and offending tend to occur in combination with one another. This relationship can be construed at an individual level or at a population level. At an individual level, offenders are more likely to report problem gambling, and problem gamblers are more likely to report engaging in offending. From this perspective, problem gambling is defined as an activity:

...which leads to adverse consequences for the gambler, others, or for the community.

Neal, Delfabbro & O'Neil 2005

There is considerable empirical evidence for the relationship between gambling and crime, with the 2008 report on the Social and Economic Impact of Gambling in Tasmania providing a detailed review of this literature (South Australian Centre for Economic Studies 2008).

A recent Australian Capital Territory study estimates that one-third of offenders (persons under a correctional sentence) reportedly engage in gambling at problematic levels, a rate 18 times higher than in the general population (Lahn 2005). Comparable studies have shown greatly elevated rates of problem gambling across offender groups at various stages in the criminal justice process (Abbott & McKenna 2005; McCorkle 2004). Studies that examine the motivation for crime show that problem gamblers report high levels of involvement in criminal behaviour, and in particular theft and fraud-related offences (Sakurai & Smith 2003). Gambling and crime are also related at a population or geographic level (that is, the relationship is evident in aggregates of people rather than individuals). Studies in United States jurisdictions, South Australia and Tasmania have estimated statistically significant relationships between rates of gambling and crime rates (see Wheeler et al. 2008 for a recent review of this relationship).

2.2 Causal pathway between gambling and crime

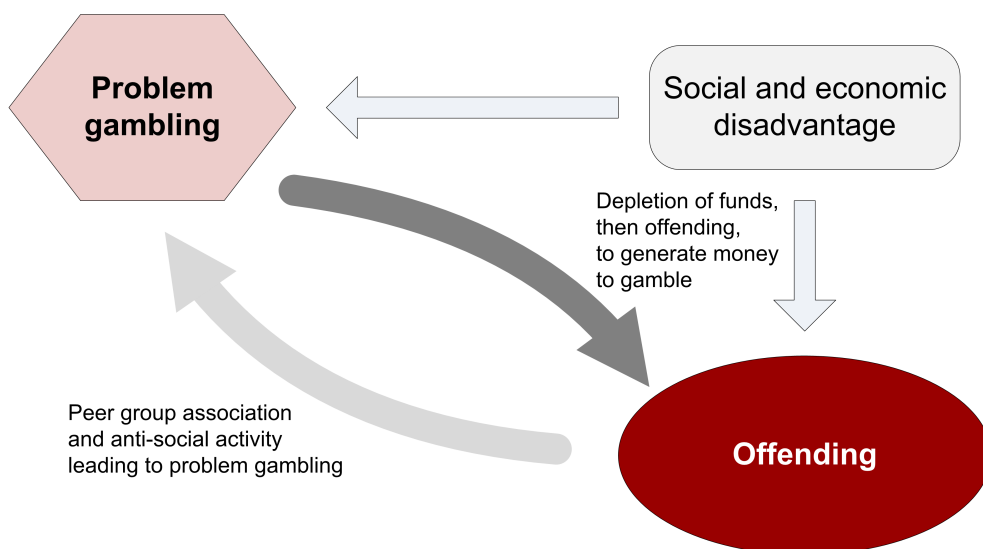
When problem gamblers engage in fraud or other crime to fund gambling, or to pay the debts left by diverting funds to gambling, generally they do not *intend* to commit a crime. Cognitive distortions are typically present among such offenders, with problem gamblers rationalising their behaviour by believing that they are simply ‘borrowing’ money, which they will pay back as soon as they win (which they are certain they will do). There is a substantial literature empirically establishing the range of cognitive distortions associated with problem gambling, the most common being that they are ‘due’ for a win.

Theoretically there are four different ways in which offending and problem gambling may be related (see Figure 2.1).¹ These are that:

- problem gambling may lead to offending via a causal pathway which likely includes depletion of finances and the need to commit offences in order to continue funding the habit and/or compensate for loss of funds;
- offending might lead to problem gambling via a causal chain involving associations with particular peer groups and engagement in activities which enhance the likelihood of becoming involved in excessive gambling;
- a third factor may be common to both phenomena. Problem gambling is known to be associated with social and economic disadvantage, and these factors are also known to be associated with higher rates of involvement in a range of anti-social and criminal activities. However, this association does not imply a necessary causal connection; and
- in an individual case there may be no specific causal relationship between the two problematic behaviours.

Figure 2.1

CAUSAL RELATIONSHIPS BETWEEN GAMBLING AND CRIME



Source: Allen Consulting Group and the University of Melbourne.

¹ The South Australian Centre for Economic Studies (2008) also argues that crime rates may increase or decrease as a result of the aggregate impact of gambling expenditure on the economy. As the present report only concerns the behaviour of individuals, such economy-level relationships are not considered.

However, the impact of problem gambling on individual offenders does not necessarily fall neatly into a single category. For example, a problem gambler may also divert illegally acquired funds into other outlets such as supporting a business or personal acquisitions. Understanding the relationship between problem gambling and offending is further complicated because a range of other variables are also known to be associated with both these behaviours, including drug and alcohol abuse and various forms of mental disorder.

Another typology of the relationship between gambling and crime is that proposed by Blaszcznski and McConaghy (1994). They distinguish between ‘directly related’ offences, where the offence is motivated by a desire to obtain money to gamble, and ‘indirectly related’ offences, where the offences are motivated by a need to cover shortfalls in expenses caused by gambling losses. In practice, these two forms of offending are difficult to distinguish.

If considered at a clinical level, pathological gambling is a diagnosable psychiatric disorder that is similar to alcohol and substance dependence. It has been included as an impulse control disorder in the Diagnostic and Statistical Manual of Mental Disorders (DSM) since 1980. This manual is published by the American Psychiatric Association, and is the standard classification of mental disorders used by mental health professional and others (see American Psychiatric Association 2011).

The next edition of the DSM (DSM-V) is proposing to re-classify pathological gambling with substance and alcohol use disorders under a new category of ‘Substance Use and Addictive Disorders’, predominantly due to neurobiological and genetic similarities between these disorders (Miller & Holden 2010). Understanding the relationship between problem gambling and offending is further complicated because a range of other variables are also known to be associated with both these behaviours, including drug and alcohol abuse and dependence and various psychiatric disorders, such as mood disorders, anxiety disorders, and personality disorders (Lorains, Cowlshaw & Thomas 2011).

The difficulty in demonstrating causality is a critical issue for this report because courts generally hold the view that sentences should only address an issue where it can be demonstrated that it is a causal factor in the commission of a crime, or bears on the likelihood of future criminality. This issue is discussed in more detail in Chapter 4 and Chapter 5.

Chapter 3

Methodology

The methodology for this project involves two main stages that apply to both the sentencing and data collection components of the project: identifying, and evaluating options.

3.1 Identify sentencing and data collection options

This project component concerns:

- the status quo approach to sentencing offenders who have committed a gambling-related crime;
- identifying data collected through existing administrative and other data collections that relate to problem gambling and offending; and
- identifying alternative options for sentencing relevant offenders, and the associated data collection options.

This stage of the project also seeks to understand the broader policy and operational context, focusing on Tasmanian Government strategic objectives relating to sentencing and corrections.

Relevant Tasmanian Government policy documents and frameworks are examined, including: the review of Tasmanian sentencing; the Tasmanian Corrections Strategic Plan; the review of corrections policy, *Breaking the Cycle* (Tasmanian Department of Justice 2008); and reviews of the Community Corrections system. In addition, relevant non-government sources were consulted — in particular Anglicare Tasmania's (2010) report, *Nothing Left to Lose*.

Examining current sentencing approaches, and identifying alternative sentencing options, involves a combination of document and literature review, and stakeholder consultation. Particular attention is paid to the approaches already used in Tasmania for drug and mental health-related offending. Appendix A lists persons and agencies consulted in this part of the project.

3.2 Evaluation of options

The sentencing options identified for consideration are evaluated against a set of criteria established in consultation with stakeholders. These are:

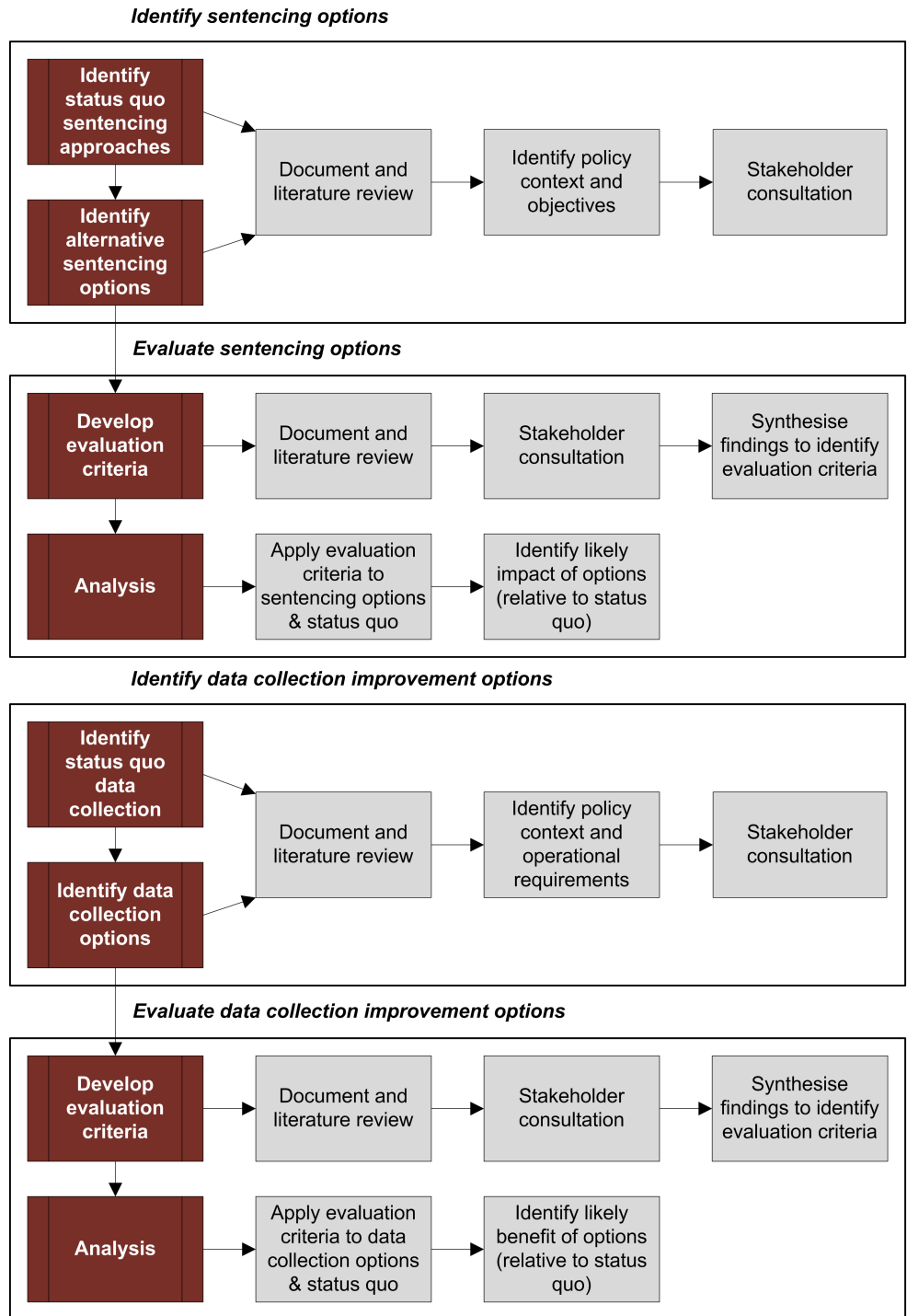
- consistency with general sentencing principles;
- capacity to achieve the goal of preventing future harm; and
- implementability.

3.3 Methodology overview

An overview of the project methodology is detailed in Figure 3.1.

Figure 3.1

METHODOLOGY OVERVIEW



Source: Allen Consulting Group and the University of Melbourne

Chapter 4

Policy context and objectives

This chapter considers three components of the overall policy context for this report:

- criminal justice policy documents, including: the Strategic Plan for the Department of Justice; the review of corrections policy, *Breaking the Cycle* (Tasmanian Department of Justice 2008); and the review of the Community Service Order scheme (Tasmanian Department of Justice 2011). These documents set out the Tasmanian Government's goals and priorities for criminal justice;
- sentencing policy, including: the review of sentencing in Tasmania conducted between 2001 and 2008 (Tasmanian Law Reform Institute 2008); the establishment of specialist rehabilitative programs for mentally ill and drug dependent offenders (Newitt & Stojcevski 2009); and the establishment of integrated court support services in the Magistrates Court (Success Works 2008); and
- estimates of the prevalence of offending caused by problem gambling, including Anglicare Tasmania's analysis of Tasmanian Supreme Court cases (Anglicare Tasmania 2010).

4.1 Criminal justice policy

The Tasmanian criminal justice system comprises three primary areas: police, courts and corrective services.

Tasmania Police operates within the Department of Police and Emergency Management and provides crime control, public safety and emergency management services.

The Department of Justice administers a wide range of justice services including Correctives Services Tasmania (comprising the Prison Service, Community Corrections and the Parole Board). The Supreme Court of Tasmania and the Magistrates Court of Tasmania hear and determine criminal and civil cases. The courts operate independently of the executive arm of government, although the Department of Justice coordinates and facilitates some initiatives undertaken within the courts. Other relevant court participants include the Director of Public Prosecutions and the Legal Aid Commission.

In the last three years the Tasmanian Government has undertaken two reviews focussed on increasing the accountability of offenders for the harm they have caused, and to enable offenders to repair their damage to society and live more productive lives.

Review of community corrections in Tasmania

In 2008, a general review of community corrections in Tasmania was carried out by KPMG (Tasmanian Department of Justice 2008). This review identified a number of key weaknesses in the Community Corrections Service, including:

- inappropriate matching of offenders to staff members;
- caseloads that are too complex or too large;
- limited active case management;
- inconsistent supervision;
- a lack of rehabilitative programs; and
- a lack of investment in workforce management.

It recommended a series of reforms to strategic direction, governance, management, structure, partnerships, and roles and responsibilities.

The most significant outcomes of this earlier review from the perspective of problem gambling are:

- an increased focus on rehabilitation, based on a whole-of-person approach to offender management; and
- developing partnership arrangements with community organisations as a way to better address criminogenic risk factors and improve order compliance.

The KPMG report makes no specific references to problem gambling as a rehabilitation target. However, it notes that professionals associated with services external to the Community Corrections Service (including debt management or problem gambling) might be engaged in these partnerships.

Breaking the Cycle

A second policy review of relevance is *Breaking the Cycle*, the review tasked to develop a strategic plan for Corrective Services Tasmania. The review team released an Issues Paper in 2010, together with three Background Papers. The *Breaking the Cycle* Strategic Plan was issued in April 2011. It sets seven goals to guide program and service development over a ten-year (2011–2021) timeframe, and an Action Plan for the near-term (2011–2013) (Tasmanian Department of Justice 2008). The key elements of this strategy relating to problem gambling are:

- *(Goal 1) Expanding the range of interventions available to offenders to address the underlying causes of an individual's offending behaviour, both within the Tasmania Prison Service and Community Corrections*

The report envisages that although some services will be delivered by the Prison Service and Community Corrections, government and non-government partners will deliver services in areas including substance or gambling addictions, mental health and intellectual disability.

- *(Goal 2) Expansion of the range of non-custodial sentencing options*

An action under this goal is to explore the development of a 'problem solving' court to improve the provision of diversionary and treatment responses to a wide range of issues that contribute to offending behaviour.

4.2 Sentencing policy

In parallel with the reforms to strategic criminal justice policy, the Tasmanian justice system has also undertaken policy and program development in the area of

sentencing. Between 2001 and 2008, the Tasmanian Law Reform Institute (TLRI) completed a major review of sentencing (TLRI 2008). The TLRI report made 96 recommendations for sentencing reform. In general, the review argued to retain the existing sentencing framework (albeit with some strengthening of enforcement and program conditions). It also proposed a new sentencing option (home detention) and a review of the Court Mandated Drug Diversion program (see further comments below).

The TLRI report make no comments or recommendations specifically relating to gambling, although it notes that probation orders may include gambling-related conditions. A member of the TLRI review, consulted as part of this project, noted that the impact of gambling was not raised as an issue during the review itself. Nevertheless, the sentencing review is relevant to this project because it argues for: improving the rehabilitative potential of custody through the provision of programs targeting offenders' criminogenic needs (Recommendations 5 to 7); a revitalisation of probation orders as an independent sentencing option (Recommendation 41); and for the extension of drug treatment orders to offenders convicted in the Supreme Court (subject to a satisfactory evaluation outcome).

Existing programs and policies

With respect to programs and policies already in place, there are currently three major developments in Tasmania that may influence the development of gambling-related programs:

- the establishment of the Mental Health Diversion List (initially as a pilot in 2007, and as a permanent list in 2009);
- the Court Mandated Drug Diversion program; and
- the Sober Driver Program.

The first two of these developments operate within a therapeutic jurisprudence practice model that includes Magistrates' involvement in the monitoring of offenders' progress. Also, since 2007, the Magistrates Court has been able to make rehabilitation program orders in cases involving family violence, although these orders do not involve the court in the ongoing supervision of defendants. The Chief Magistrate has noted that the court is considering the possible extension of this model to areas such as homelessness and alcohol problems (Hill 2010).

The Mental Health Diversion List (Newitt & Stojcevski 2009) and Court Mandated Drug Diversion (Success Works 2008) programs have been the subject of evaluation studies that have found them to be generally successful in meeting their objectives and warranting continued support. A range of stakeholders consulted in the course of this review endorsed these findings. A further development supporting the therapeutic jurisprudence approach within the Magistrates Court is the proposed Collaborative Court Support Model. In this model, multidisciplinary assessment and case management teams provide bail stage (pre-sentence) diversion of defendants with drug and alcohol problems, mental health issues or other special needs. This model would act as a 'front end' to identify offenders with criminogenic and support needs, and direct them into appropriate programs at an early stage. Chapter 6 discusses the Collaborative Court Support Model in more detail.

The third development — the Sober Driver Program — is run through the Community Corrections Service in Tasmania. The program provides a potential model for addressing moderate behavioural causes of gambling-related offending. Introduced in 2008, the Sober Driver Program provides for offenders under a community corrections order to undertake a 9-week drink-driving prevention program facilitated by a trained probation officer. The program model is interactive and flexible, and can be readily delivered in rural and remote locations.

The potential effectiveness of this program may be gauged from a similar program in New South Wales, which has been found to significantly reduce recidivist drink-driving (Mills et al. 2008). Although the Sober Driver Program may present a potential model to treat gambling-related behaviour, there are significant caveats for the design of any such program. In particular, only persons with low and moderate gambling behaviours should be referred to it, and those with higher-level problems should receive appropriate treatment through other means. Section 6.2 of this report provides further information about the use of the Sober Driver Program as a model for treating gambling-related behaviour.

4.3 Prevalence of offending related to problem gambling

Any program response needs to be commensurate with the size of the problem it is intended to address. However, it is difficult to estimate the prevalence of gambling-related offending because there is little evidence about it. This review examines five sources of information about the prevalence of gambling-related offending.

The first four sources were obtained primarily through stakeholder consultation and supplemented by the literature. The fifth source is a survey undertaken as part of a broader Social and Economic Impact Study of Gambling in Tasmania. Each source uses a different definition of what constitutes gambling-related offending, and as a result the estimates derived are highly variable.

Data from stakeholders and evidence in the literature

Typically, stakeholders consulted considered fraud crimes to be an indicator of trends in gambling-related crime, while acknowledging that not all fraud crime is the result of gambling. While this approach has significant limitations, it is consistent with the limited data on the prevalence of gambling-related crime. One of the few primary source studies of police recorded crimes in Edmonton, Canada, finds that 176 of 208 (85 per cent) gambling-related crimes involved some form of fraud (Smith, Wynne & Hartnagel 2003). Nevertheless it is worth noting that research studies identify a wide range of crimes, including offences against the person, as being gambling-related.

Police arrest data

Tasmania Police investigates fraud offences through a specialist Fraud and E-Crime Investigation Unit. Only major frauds are referred to this unit — the definition of major fraud is flexible but can be understood to include incidents involving large sums (usually in excess of \$100,000), long-term or repeated offending, or evidence of organised criminality. While the number of gambling-related frauds reportedly increased following the introduction of Electronic Gambling Machines (EGMs) into the state, the number of matters referred to the Fraud and E-Crime Investigation Unit has since stabilised at around six per year. These offences are frequently, but not invariably, related to problem gambling.

Additionally, the Criminal Investigation Bureau, which deals with general fraud, reported that 454 fraud offences were recorded by Tasmania Police in 2010, and that the total number of fraud offences has declined by about half over the past five years. However, it is important to note that police crime statistics count the number of offences recorded. Fraud crimes often involve repeated offending by an individual, such that changes in crime counts may not reflect a change in the prevalence of fraud offenders.

Legal Aid

Many persons charged with criminal offences use the Tasmanian Legal Aid (TLA) service. During consultations, representatives of Legal Aid noted that problem gamblers ‘all come to Legal Aid’ as typically they have used up their other assets. As with other parts of the justice system, TLA does not keep records that specifically identify problem gambling, but estimated that such cases are common in presentations for fraud. This category of crime was also considered to include substantial numbers of persons charged with welfare fraud where gambling might be an avenue through which illegally acquired funds are spent, but without gambling itself being a direct cause of offending.

Courts

Most of the work examining the prevalence of problem gambling as a cause of offending has been conducted in courts and in custodial populations. The most directly relevant Tasmanian research is the Anglicare Social Action and Research Centre study of Supreme Court cases in Tasmania. This study identifies 41 cases dealt with between January 2004 and December 2009 where ‘gambling [is] cited as being the main reason, or in two of these cases one of the reasons, for the crime being committed’ (Anglicare Tasmania 2010, p. 2). In 13 of these cases, the defendants are described as having a drug or alcohol problem, and in six cases a mental illness or disorder is identified. Full details of the offences are not reported, but six cases involved violent crimes (armed robbery or arson), with the remainder considered likely to be property crimes. The Supreme Court finalises an average of 630 criminal matters per year, thus these 41 cases represent 1.3 per cent of the court’s caseload.

Another Australian estimate can be derived from a study by Crofts (2002) covering the New South Wales Local and District Courts. Crofts examines 2,779 Local and District Court cases and identifies 105 as ‘gambling-related’, of which there is sufficiently detailed information on 63 cases to determine the nature of the relationship between gambling and the offences. Among these cases, three-quarters (76 per cent) involve fraud. This research indicates that approximately four per cent of New South Wales criminal cases are ‘gambling-related’, and approximately two per cent can be identified as ‘caused by gambling’. Both the Anglicare and Crofts estimates used court records — a source that only records gambling issues if they are identified as relevant to the case — rather than general screening of defendants for problem gambling.

The 'best' prevalence estimates of problem gambling as a specific cause of offending are that problem gambling represents between two and four per cent of criminal court cases. Based on the total criminal caseload in the Magistrates Court (excluding road traffic and other vehicle regulatory offences where it is unlikely that problem gambling plays any meaningful role), of around 16,000 cases per year, this would mean approximately 300 to 650 problem gambling cases. These cases are likely to be more or less evenly distributed around the state.

Corrections

Specific Tasmanian estimates from convicted offenders are not available, as this data are not specifically collected. However, sufficient data exist for the Tasmanian Prison Service to identify 41 cases where gambling problems were identified in the general assessment process (out of an annual prisoner intake of around 600, see ABS 2011, p. 20). This is understood to be a point-in-time estimate based on assessment records held at the time of consultation. While an annual estimate is preferable, no further details regarding data accessibility and collection are available.

During consultations, the Tasmanian Prison Service noted that where gambling occurs in combination with drug or alcohol dependence, or mental disorder, gambling is likely to be viewed as a secondary problem and not recorded. While Community Corrections complete general assessments on all offenders under supervision, the assessment does not specifically address problem gambling and no prevalence estimates are available. Both the Prison Service and Community Corrections agreed that problem gambling is a significant issue in correctional populations, but that the intervention priorities are drug and alcohol abuse, mental disorder and homelessness.

Correctional populations have been the subject of a number of studies both in Australia and overseas, mainly with a view to estimating the prevalence of problem gambling as an offender characteristic rather than as a specific cause of offending. Such studies need to be considered with care, as there is little consistency in criteria applied or the nature of the estimates (for example, current versus lifetime problems).

Australian studies include a 1996 study of prisoners in Queensland, which reports that 25 to 30 per cent have problems with gambling, and five per cent admit having committed offences in order to gamble (Australian Institute for Gambling Research and the Labour and Industry Research Unit 1996). A 2002 study in Queensland prisons found an overall rate of problem gambling of 19.5 per cent among the prison population (Powis 2002). Lahn's (2005) study of persons attending Australian Capital Territory correctional centres estimates that about one-third (34.3 per cent) had some form of gambling problem, and about half of these (15.7 per cent of the total sample) had a severe gambling problem. Interestingly, this sample includes approximately equal proportions charged or convicted of property (28.4 per cent) and violent offences (30.4 per cent). Paterson and Garret (2010) interviewed 100 clients of Offenders Aid and Rehabilitation Services in South Australia and identified 43.5 per cent as problem gamblers. Half of their sample reported having committed crimes to fund gambling activity.

In separate research, McCorkle (2002) reviewed a range of United States prison-based studies from the 1960s through to the 1990s. The studies estimate rates of ‘inveterate’, ‘pathological’, or ‘abusive’ gambling at between 25 and 80 per cent, although these estimates include both current and lifetime criteria. Estimates derived from US studies are also problematic from the perspective of this project as US imprisonment rates are much higher than those in Australia.

Summary

There is considerable variability in these estimates and relatively little prevalence data on Tasmanian offenders of gambling-related crime. If viewed in terms of the role of problem gambling as a direct motivation for, or cause of, offending, prevalence is probably relatively low: around two to four per cent of all offences recorded, with fraud and other property crime the primary form of offending. Convicted problem gamblers appear more likely to require legal aid, and to receive correctional sentences, and are therefore more highly represented in these parts of the criminal justice system.

Self-reported offending

A survey of the Tasmanian population was undertaken as part of a broader project examining the Social and Economic Impact of Gambling in Tasmania (Allen Consulting Group et al 2011). This random survey was conducted by telephone, with respondents drawn from Tasmanian adults aged 18 years and older.

Of the 4,303 respondents to the full survey, 2,027 were selected for a supplementary survey that contained questions relating to self-reported offending. This sub-sample was weighted to correspond with a total Tasmanian adult population of 397,315. Respondents were grouped into two gambling categories based on answers to the full survey:

- non-problem gamblers and non-gamblers; and
- low and moderate risk, and problem gamblers.

Respondents selected for the supplementary survey were asked to identify whether they had experienced any of the following events in the previous 12 months:

- imprisonment;
- arrest by police;
- contact with police as a perpetrator of an offence;
- borrowed money from family members or friends without their knowledge; or
- engaged in acts of theft, embezzlement, fraud, or forgery.

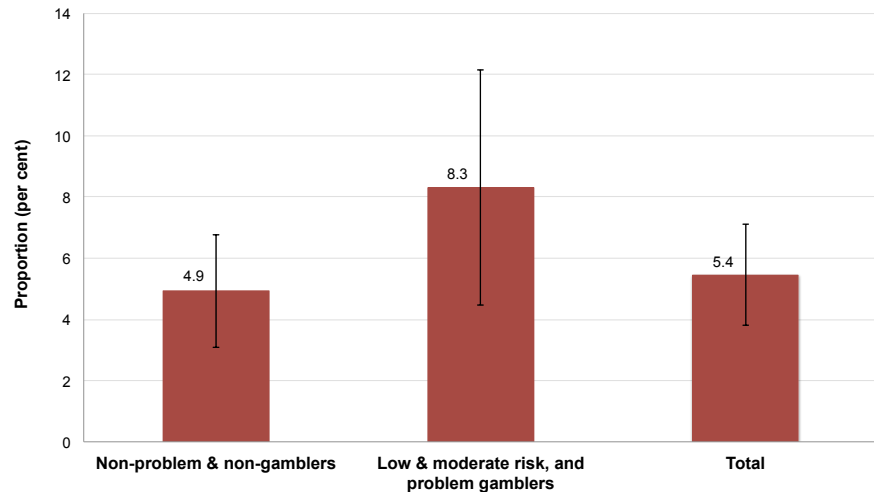
Respondents who had experienced any of these events in the previous 12 months were considered to be a ‘self-reported offender’.

Based on this sample, it is estimated that 4.9 per cent of the population of *non-problem gamblers and non-gamblers* are self-reported offenders, compared to 8.3 per cent of *low and moderate risk, and problem gamblers*. The average prevalence of gambling-related offences in the total population is estimated to be 5.4 per cent. Figure 4.1 below illustrates these results.

The fact that the confidence intervals bars overlap for all three estimates in Figure 4.1 indicates that the difference between these proportions is not statistically significant at the 5 per cent level.

Figure 4.1

SELF REPORTED OFFENDING BY GAMBLER STATUS, AS PROPORTION OF THE TASMANIAN ADULT POPULATION



Notes: This graph provides estimated proportions of self-reported offending, on the basis of gambling status. Estimates are weighted to replicate the total adult population in Tasmania (397,315) at the time of the survey. After weighting the sample to correspond with the population size, the total sample in these estimates is 2,030 persons which is split into *non-problem and non-gamblers* (n=1,692) and *low and moderate risk, or problem gamblers* (n=338).

Of the *non-problem and non-gamblers* in the sample: 70 self-report offending (estimated 4.9 per cent of the population, with a 95 per cent confidence interval of 3.1–6.7 per cent). Of the *low and moderate risk, or problem gamblers* in the sample: 30 self-report offending (estimated 8.3 per cent of the population, with a 95 per cent confidence interval of 4.4–12.1).

Source: Developed from source data collected for Allen Consulting Group et al 2011.

Logistic regression analysis was also undertaken using these data. This analysis found that among the entire adult population in Tasmania, low and moderate risk, and problem, gamblers are 1.75 times more likely to report that they have engaged in gambling-related offending compared to non-problem and non-gamblers (95 per cent confidence interval is 0.92–3.31).

Chapter 5

Gambling and sentencing principles

Sentencing is the ‘hub of the criminal justice system’ (Findlay, Odgers & Yeo 2005, p. 252) through which the courts give effect to the symbolic and instrumental responses to crime by the community. The practice of sentencing is informed and guided by a highly codified and actively negotiated set of rules and procedures, as well as a complex body of knowledge based on documented precedent and accepted standards. It is vital that sentencing should be seen to be fair, consistent and just. This chapter identifies criteria that must be satisfied for successful reform of sentencing for offences involving problem gambling.

5.1 Sentencing goals

In sentencing an offender, a distinction is primarily made between punishment and rehabilitation through educative, treatment or other means. There are three main sentencing options through which these goals can be pursued:

- sentencing involving punishment;
- rehabilitative sentencing; and
- diversion.

The choice of the most appropriate sentencing goal or goals is a function of both the nature of the offence and the characteristics of the offender. Punishment may be the basis for sentencing when the court’s goals are to:

- exact retribution for the harm caused by the offence;
- express society’s denunciation of the crime; and
- deter the offender or other potential offenders from committing further offences (specific and general deterrence).

For very serious offences the court is likely to regard punishment as a necessary element of a sentence. Thus, for offences involving the theft or defrauding of very large sums, the only appropriate sentence that meets the above goals may be a lengthy term of imprisonment, irrespective of the attributes of the offender. Sentences that emphasise punishment may also be intended to have the effect of general or specific deterrence. Taylor (2004) notes that there is a logical inconsistency in attempting to deter members of the community who do not suffer from gambling addictions (general deterrence), or individuals who are unable by reason of their addiction to control their gambling behaviour (specific deterrence).

In comparison, rehabilitative sentencing is viewed as more appropriate for certain kinds of offenders, including:

- young offenders;
- those with little or no prior history of offending; and
- those with some disadvantage or physical or mental disability.

Rehabilitative sentencing may also be appropriate where offences are of moderate or low severity. A key issue in sentencing offenders convicted of crimes where problem gambling is present is the status of problem gambling as an appropriate basis for rehabilitative sentencing. The importance of rehabilitation to addressing problem gambling is further detailed below.

Diversion is a third possible approach to sentencing. Diversion involves a decision to remove an offender from the criminal justice process prior to conviction and sentencing in order to avoid the negative consequences arising from a criminal record and participation in the criminal justice process. Diversionary decisions may be made early in the process (for example, by police issuing Caution notices) or at court by a magistrate or judge (either absolutely, or in combination with an adjournment of the original matter). Diversion can be viewed as a special case of rehabilitation where the rehabilitative goals can be achieved without the requirement for a sentence.

5.2 Overview of rehabilitative sentencing

Rehabilitative sentencing may involve the use of non-custodial penalties or orders that have as their primary goal the treatment, support or development of the offender. In either case, the court may also have as a goal the protection of the community. Punishment and rehabilitation are not necessarily exclusive sentencing goals, and may be combined in a single sentence — for example, a fine in combination with a community corrections order.

Rehabilitative sentencing involves two distinct considerations.

The first consideration is that where an offender acknowledges the harm caused by their offending and wishes to reform their behaviour, he or she should be given the opportunity to do so. This consideration may be relevant in choosing a non-custodial over a custodial sentence, in order to enable the offender to maintain employment and family connections.

The second consideration is that where offending is caused or exacerbated by some form of social or personal condition not under the direct control of the offender, the sentence should provide a means to remedy or treat that condition. A distinctive form of rehabilitative sentencing takes place within a therapeutic jurisprudence model, where the court actively engages in the search for, and application of interventions intended to reduce the likelihood of future offending. The therapeutic, or ‘non-adversarial’, approach to jurisprudence is associated with a range of special jurisdiction or problem-solving courts intended to address particular issues directly.

The most common form of problem-solving court is the drug court. Special purpose courts for offenders with mental disorders are increasingly common. However, while problem gambling is often viewed as a form of addiction or mental disorder, only one problem solving court worldwide (in Buffalo, New York State) has been established to deal specifically with this issue.

5.3 Problem gambling as a factor in rehabilitative sentencing

While some conditions, such as drug or alcohol abuse, or mental disorder, are widely viewed as an appropriate basis for rehabilitative sentencing, their status as a sentencing factor remains problematic. While problem gambling is often described as an attribute with features that liken it to substance dependency or a mental disorder, its status as the basis for rehabilitative sentencing is complex and uncertain. In particular, the development of sentencing options for problem gamblers depends to some extent on the status of problem gambling vis-à-vis other sentencing considerations, such as substance abuse and mental disorder.

Courts generally view mental disorder as the basis for mitigating the severity of a sentence, or making a sentence that gives priority to treatment or rehabilitation (Fox & Freiberg 1999). While a range of special judicial procedures and sentencing options addresses these conditions, key requirements are to establish the nature and seriousness of the offender's mental state and demonstrating a causal connection between the person's condition and the offence. The use of such provisions is necessarily bound by general sentencing considerations. Generally, very serious offences or mental states that pose a significant continuing risk to the community will be ineligible for rehabilitative sentencing (although treatment may take place within a custodial sentence).

Relevant sentencing considerations are identified by the eligibility criteria for the Mental Health Diversion List operated by the Magistrates Court of Tasmania. This List is available to adult defendants with impaired intellectual or mental functioning as a result of a mental illness (but not amounting to insanity), where:

- the defendant is charged with a summary offence, or an indictable offence triable summarily; and
- there is an acknowledgement of guilt/admission of responsibility for the offence by the offender.

If accepted into the Mental Health Diversion List:

- the case is referred for initial assessment by forensic mental health psychiatric nurses at the Court;
- a more detailed Treatment Plan is developed for the offender, involving therapy in the community; and
- there is regular supervision of the offender by the Court whilst undertaking further assessment and treatment in the mental health sector.

In the case of drug and alcohol abuse, while they are a common feature of criminal cases, courts do not necessarily regard these conditions as indicating lessened culpability and may in fact regard them as aggravating circumstances. In this regard, Tasmania's courts have acted consistently with courts in other Australian jurisdictions in rejecting drug addiction as a mitigating circumstance (Taylor 2002).

Perhaps a more important sentencing consideration is the view that, in the case of addicted offenders, traditional sentencing options fail to address the causes of offending, leading to habitual reoffending. As a result, sentencers are unable to have confidence in the effectiveness of their sentences as a means for preventing further offending (Hill 2010). In response, a range of special forms of sentencing have been developed that are directed at drug and alcohol dependent offenders, including drug courts and orders that combine custody and treatment.

In Tasmania, the approach adopted has been a Court Mandated Drug Diversion program that operates both pre-trial (via a bail order) and post-conviction (via a Drug Treatment Order). The program requires that the offender enters a plea of guilty and undergoes assessment by a Court Diversion Officer.

As a general rule, Australian courts have not regarded gambling addiction as a basis for mitigation or rehabilitative sentencing. The Australian Law Reform Commission (ALRC), in its *Same Crime, Same Time* (2006) report on the sentencing of federal offenders, advocates using rehabilitation programs for offenders with a range of issues, including gambling addiction. However, this recommendation has had little apparent impact. In a general review of the status of gambling as a sentencing consideration, Taylor (2004, p. 141) notes that Australian case law is ‘confused and contradictory’ with substantial variability between (and in some cases within) jurisdictions in regard to whether problem gambling has the status of an addictive behaviour or mental disorder warranting special treatment. Taylor notes that while case law in all Australian jurisdictions contains cases in which courts have rejected gambling addiction as a mitigating factor, there is also:

...an approximately equal if not slightly greater number of cases involving established gambling addictions in which the courts have been prepared to consider the gambling addiction as mitigatory or to take it into account in some similar way, for example by emphasising rehabilitation over retribution.

Taylor 2004, p. 145.

Recent Tasmanian court cases make it clear that that problem gambling should not mitigate the severity of sentence. A recently reported Tasmanian Court of Criminal Appeal case (*Johnstone v Tasmania* [2011] TASCRA 9, para. 13) addresses the issue of whether ‘a gambling addiction should be treated as a mitigating factor and, if so, what weight should be given to that factor’. With particular reference to the review by Redlich JA in *R v Grossi* (2008, 23 VR 500, para. 14.), the court does not consider that it ‘should treat as mitigatory the fact that the appellant offended, and offended on a massive scale, because of a gambling addiction’. Even though no psychological or psychiatric report was provided (the finding notes that the judge was only ‘provided with a pamphlet that outlined some of the characteristics of a gambling addiction’), it is worth noting that the court did not dispute the defence counsel’s assertion that the defendant’s conduct was attributable to a gambling addiction.

This situation is mirrored in the United Kingdom. Recent research on Court of Appeal cases in England and Wales by Brooks and Blaszczyński (2011) shows that even where evidence of problem gambling is presented, British courts are reluctant to accept this as an explanation for crime or as a mitigating circumstance. Canada presents a contrasting example where the majority of provinces have moved to a position that recognises a gambling addiction as an appropriate basis for rehabilitative sentencing (Taylor 2004).

5.4 Relevant Tasmanian sentencing legislation

Sentences passed by Tasmanian courts are subject to the provisions of the *Sentencing Act 1997* (TAS) (the Act). The Act provides four ways for courts to require that offenders take part in a rehabilitative program:

- Section 7ab allows magistrates to make a drug treatment order;
- Section 7c allows courts to make a community service order for offences punishable by imprisonment;
- Section 7d allows courts to make a probation order; and
- Section 7ea allows courts to make a rehabilitation program order for family violence offences.

In the case of community service orders, Section 28 of the Act provides that offenders on an order must attend educational or other programs as directed by a probation officer. In the case of probation orders, Section 37 sets out a range of special conditions that may be imposed, including that the offender must attend educational and other programs as directed by the court or a probation officer (Section 37(2a)). The Mental Health Diversion List uses the provisions of the *Bail Act 1994* (TAS) to divert and provide treatment to participants. No provision for deferred sentencing exists in Tasmanian sentencing legislation, although some pre-trial diversionary programs exist in other jurisdictions, for example, the Victorian Court Integrated Services Program.

5.5 Sentencing models for problem gambling

An important element in any attempt to address problem gambling through rehabilitative sentencing is whether this condition represents a form of addictive behaviour, a form of mental disorder, or a distinctive form of behaviour in its own right. While problem gambling is commonly presented to the courts as a ‘gambling addiction’, Taylor (2004) argues that it is more properly represented as a form of mental illness in that the problem gambler experiences an ‘irresistible impulse’ to gamble that is not materially different to the irresistible impulse provisions common in many laws relating to insane defendants. This approach is consistent with the classification of pathological gambling as a disorder of impulse control in the DSM-IV (the fourth edition of the manual). However, the approach is potentially problematic in a practical sense because the clinical definition applies mainly to the impulse to gamble and is less (or not at all) relevant to the impulse to commit crimes to support gambling (Nower & Blaszczynski 2006).

An alternative ‘public health’ framework is proposed by Brooks and Blaszczynski (2011). This framework assumes that problem gambling is not solely an individual problem, but one that is substantially influenced by the social and economic environment within which gambling opportunities are made available. The argument that problem gamblers are to some extent the victims of the increased availability of gambling opportunities has obvious parallels with the public health approaches adopted in responding to offenders with alcohol and drug dependency.

Recommendation 1

Rehabilitative sentencing policy in relation to problem gambling should be guided by the principle that the goal of sentencing is to prevent future harm to the community, the offender's family and the offender arising from continued problem gambling and any associated offending.

However, some problem gambling offences involve serious crimes requiring courts to give priority to the sentencing goals of punishment and denunciation, which may in turn mean that imprisonment is the appropriate sentence. Where a non-custodial sentence is available, sentencing policy should aim to prevent future harm arising from continued problem gambling. Under this approach, courts can continue to see problem gamblers as responsible for their criminal actions. Nevertheless, the courts may also respond to the problem gambling on the basis that this is the most appropriate way to prevent or ameliorate the public health harms that arise to the community and the offenders' families from the continuation of the problem gambling. Such an approach would align sentencing policy in relation to problem gambling with contemporary approaches to sentencing in cases involving drug dependency and mental disorder.

5.6 Advice to courts on problem gambling

Irrespective of whether problem gambling is dealt with by the courts as a 'mental disorder' or a 'public health' problem, a number of practical problems must be addressed if there is to be consistent sentencing practice. These include:

- establishing that the condition presented to the courts genuinely constitutes problem or pathological gambling;
- establishing a clear and appropriate link between the problem gambling and the offences committed; and
- determining the probable consequences for the community and the offender if the problem gambling is left untreated.

Despite the reluctance of the courts to accept gambling as a mitigating factor, defence cases frequently include a claimed gambling addiction (Fox & Freiberg 1999). Minchin (2006, p. 62) argues that judicial practice in cases where gambling addiction is present indicates 'unfamiliarity with this form of addiction'. This may in turn be due to the poor quality of assessment and legal argument made to the courts on this issue. Brooks and Blaszczyński (2011) reviewed 70 cases dealt with by the Court of Appeal of England and Wales in which gambling issues were raised and found that, in the majority of these cases, no evidence of problem gambling was produced, or the only evidence was that the defendant had gambling debts. They noted that:

...introducing baseless claims as a defence serves only to undermine those cases where defendants are genuinely suffering from a gambling problem and where such a condition might be considered a mitigating factor with referral to rehabilitation services.

Brooks & Blaszczyński 2011, p. 85.

Similarly, Crofts (2002, p. 40) noted after a study of Local and District Court files in New South Wales that ‘fake’ problem gambling is an issue for the courts, and that more consistent sentencing requires that courts distinguish between ‘real’ and ‘fake’ problem gambling. A brief review of Tasmanian Supreme Court appeal cases indicates that cases with inadequate or contradictory evidence of problem gambling also occur in Tasmania (see for example, *Nolan v Jarvis* [2006] TASSC 64; *Johnstone v Tasmania* [2011] TASSCA 9). Thus, if problem gambling-related crime is to be subject to specific sentencing guidelines, a key pre-requisite is that there should be systematic and expert assessment of claims of problem gambling, in much the same way that claims of drug or alcohol addiction are routinely the subject of systematic assessment.

Providing the courts with accurate and systematic assessment of problem gambling presents significant problems. In their advice to the present review, the Tasmanian Sentencing Advisory Council noted that providing such advice would be ‘beyond the resources of most, if not all, accused’ (Sentencing Advisory Council, pers. comm. 23 June 2011). At present, Tasmanian courts have access to relatively detailed pre-sentence reports administered by the Community Corrections Service. Such reports are based on an assessment conducted using the Level of Service – Case Management Inventory (LS-CMI). This tool is used widely for risk and need assessments, and is also used for referrals to the Court Mandated Drug Diversion program and the Safe at Home family violence program. However, the interview items in the LS-CMI schedule do not include questions on problem gambling. Offenders with suspected gambling problems can be referred to the Gateway Services where a Common Assessment Framework is used. This is a wide-ranging schedule that includes one item on whether any family member has a gambling problem (Item 87j) and is inadequate as a basis for sentencing. The Sentencing Advisory Council noted that from their experience ‘there appears to have been no information given to the Courts by the probation service on problem gambling’ (Sentencing Advisory Council, pers. comm. 23 June 2011).

A further related sentencing problem arises when problem gambling is present in combination with drug or alcohol abuse, or a mental disorder. In such cases, the sentencer’s problem is not just whether to respond with some form of treatment-based sentence, but whether one condition should be prioritised over another. Again, the key requirement in such cases is for the court to receive a detailed and comprehensive assessment of the offender, covering the nature and severity of all relevant conditions as well as any connections between them.

It is noted above that a ‘public health’ approach to sentencing in cases where problem gambling is present is consistent with the courts’ responsibility to prevent further harm to the community. It is well established that the harm arising from problem gambling extends to the gambler’s family and community (Dowling et al. 2010), thus where a court is considering a rehabilitative sentence for offenders with a gambling problem, relevant considerations include assessments of the person’s prospects for rehabilitation and the potential future harm arising if the condition is untreated.

Recommendation 2

Incorporate systematic screening for problem gambling in court assessments.

A range of validated screening questions for problem gambling are available and can be incorporated into existing court assessment procedures. We propose that either the judicial officer hearing the case, counsel or court staff be enabled to request offenders to undertake a screening process:

- a brief 3-item screen evaluating current (12 month) gambling problems for cases where problem gambling is suspected — the Brief Biosocial Gambling Screen (BBGS), developed by Gebauer, LaBrie & Shaffer (2010); and
- a 9-item screen for cases identified via the 3-item screen, or where problem gambling is nominated as a case issue — the Problem Gambling Severity Index (PGSI) (Ferris & Wynne 2001).

The BBGS instrument is designed to detect current gambling disorders, and each of its three items refer to one of the three clinical domains associated with problem gambling:

- neuroadaptation (restlessness, irritability or anxiety when trying to stop gambling);
- psychosocial (lying to family and friends); and
- social consequences (seeking financial help from family and friends).

The PGSI classifies respondents into five levels of gambling, including distinguishing between low risk, moderate risk and problem gambling. When used in combination, these two screening instruments allow problem gamblers to be identified. Additionally, the Finances and Psychosocial History components of the existing LS-CMI schedule (described above) should be modified to cover the impact of problem gambling on the offender and his or her family. These modifications should include:

- the impact of problem gambling on finances (LS-CMI proforma p. 16); and
- the impact of problem gambling on the offender's relationships with parents and partner (LS-CMI proforma p. 18).

5.7 Sentencing practice and treatment and support services

At present, offenders with problem gambling can receive treatment and support for this condition in three ways:

- in the course of a term of imprisonment or as part of a post-release program;
- treatment under the terms of a Community Corrections order; and
- as part of a bail order.

The first two of these options are discussed below. With respect to the last option, although the Magistrates Court notes the possibility of defendants' problem gambling being a bail consideration, there is no evidence that this happens with any frequency and consequently this option is not further discussed.

Treatment and support in prison and post-prison

The majority of serious frauds arising from problem gambling result in a prison sentence. As noted above, there are also prisoners sentenced for non-gambling-related crimes who are problem gamblers. Rehabilitative programs in prison are run through an Integrated Offender Management Unit with 32 staff providing assessment, prisoner education, and case coordination. There is no regular program structure for problem gambling and program access is essentially voluntary.

Consultations undertaken during this project indicated that counselling within this program is provided by Anglicare and Relationships Australia, and consists of one-on-one counselling (often in combination with general financial counselling) which is offered on an on-call basis. Counselling is not intended to target criminogenic issues or to address offending behaviour, although these may be outcomes of counselling. The current level of activity is two to three participants per month who are seen by Anglicare, with a similar level of provision by Relationships Australia. Most prisoners engage in this form of counselling for three to four sessions, so estimated annual throughput is 10 to 20 persons in a total prisoner population of around 500. This suggests a high level of unmet need in the custodial population.

The most important harms associated with problem gambling in imprisoned offenders may arise when the offenders are released. Post-release support in Tasmania is provided through the Post Release Options Program run by the Bethlehem House service. The program targets high-risk releases serving a sentence of two years or more, and who are referred by the Integrated Offender Assessment Unit. This program advises that problem gambling is not a priority issue for their clients. One possibility is that offenders imprisoned for problem gambling offences are assessed as low risk (because they typically have no history of offending) and are therefore ineligible for this post-release program.

Treatment under a Community Corrections Order

Tasmanian courts can sentence offenders to a community service order or a probation order, both of which can include a rehabilitative component. The 2008 review of sentencing notes that the majority of probation orders are combined with more serious penalties (TLRI 2008). Courts can direct offenders on a community corrections order to undertake a gambling counselling program, but referral numbers are low and offenders are generally integrated into the normal program structure of the service agency, or they are offered one-on-one counselling.

There are important constraints on the delivery of rehabilitative programs under a community corrections order. There is a need to provide access to offenders living across the state. However, Tasmania's population is highly dispersed, with about 55 per cent of the state population living in the two largest cities (Hobart and Launceston) and more than 30 per cent living in towns of less than 2000. This means programs either must be delivered at a large number of sites or made available only to a proportion of suitable offenders.

One response to this is to deliver programs through community agencies. However, this in turn means that community agencies must be involved in compliance monitoring — a role they are often uncomfortable with. The Court Mandated Drug Diversion program originally used a community-based treatment model. However, compliance monitoring was a serious problem, in part because offenders were often high-risk and high-need, and agencies found them difficult to cope with.

Chapter 6

Evaluation of sentencing options

This chapter evaluates a range of programmatic and sentencing options through which the court and corrections systems can respond to gambling-related crime. The various options are presented and assessed against a range of criteria, and recommendations are made regarding the appropriateness of these options. The chapter concludes by discussing the need to measure the outputs and outcomes of responses.

6.1 Evaluation criteria for sentencing options

There are four possible sentencing approaches that can be applied to address problem gambling. These are:

1. pre-trial or diversionary options — strictly speaking, these do not constitute a sentence of the court, but their operation requires that the court make a decision to divert or refer to the program, and it is therefore reasonable to assess it on the same basis as sentencing orders of the court;
2. treatment and supervision under a community corrections order;
3. treatment and supervision under a specialised order or therapeutic jurisprudence program; and
4. treatment in prison or post-custody.

Before proceeding to examine each of these options, it is useful to set out the criteria against which these approaches should be evaluated. These criteria are:

- *Consistency with general sentencing principles* — any sentencing reform must be consistent with the general sentencing principles applying to that jurisdiction. In particular, a sentencing option directed at rehabilitative outcomes for problem gamblers must conform to the rehabilitative framework within which other such sentencing options operate.
- *Capacity to address the future harm* — the purpose of rehabilitative sentencing is to prevent future harm to the community, the offender's family, and the offender arising from further offending and/or problem gambling. Effective sentences should have access to appropriate treatment resources and ensure that offenders are managed and supported in a manner consistent with high rates of compliance and treatment completion. A key issue is the extent to which problem gambling occurs in combination with problems of alcohol and drug abuse, and mental disorder.
- *Implementability* — effective sentencing options to address offending related to problem gambling must be available to a wide range of eligible offenders, and must be possible to readily incorporate such options into the existing offender management framework. If possible, sentencing options should be made available within the existing framework of sentencing legislation.

6.2 Application of evaluation criteria

Pre-trial or diversionary options

There is growing national and international interest in pre-trial and diversionary options in cases where offending is caused or exacerbated by treatable conditions like mental or physical disability, drug and alcohol abuse, and homelessness. This interest arises partly because such offending is often frequent but of relatively low seriousness, and partly because offenders are often highly motivated to address these underlying issues in the pre-trial stage. Diversionary programs allow offenders fitting this profile to be diverted from the criminal justice process at an early stage while securing community protection. More serious offenders may be directed into pre-trial programs (sometimes referred to as bail diversion) where treatment and support is combined with intensive case management.

Pre-trial programs are helpful to a court when an offender is subsequently convicted. The court is assisted in decision making about a sentence because it has information about their compliance with, and progress on, the pre-trial program. Examples of these programs include the Victorian Court Referral and Intervention for Drug Intervention and Treatment (CREDIT) and Court Integrated Services Program (CISP) programs. Community court models (of which the Victorian Neighbourhood Justice Centre is the best known Australian example) offer both diversionary and pre-trial programs, delivered by multi-disciplinary clinical and case management teams.

The proposal to establish a Collaborative Court Support model in the Magistrates Court provides an opportunity to identify and respond to less serious offences in which problem gambling is a factor. The estimated low prevalence of problem gambling as a cause of offending means that, in a court support approach, this issue is likely to be secondary to drug and alcohol abuse and mental disorder. However, if (as proposed) the collaborative court model is also concerned with offenders' general social and material needs, it seems likely that responses to problem gambling will become a more common element of case management plans. The availability of a deferred sentencing option will give courts greater capacity to refer and supervise offenders directed to such a program, and any such arrangements will necessarily cover a broader range of offences than those concerned with problem gambling.

Recommendation 3

If established, any Collaborative Court Support model should include assessment for, and treatment and support responses to, problem gambling in the case management model.

Treatment and supervision under a community corrections order

Community service and probation orders provide a flexible and widely available basis for the delivery of rehabilitative programs. It was noted earlier that the review of sentencing in Tasmania included recommendations for revitalising probation orders, and that the review of community service orders called for further development of these orders as a rehabilitative mechanism. Advice from the Community Correction Service and the Department of Justice indicates that organisational capacity development is taking place, focussed upon delivering rehabilitative programs and improving compliance with order requirements.

Recommendation 4

Community corrections orders should be seen as the primary sentencing response to offences involving problem gambling where the court wishes to respond with some form of rehabilitative sentence.

The most significant limitation of this form of sentencing response will be the ability of the Community Corrections Service to provide a specialist response to the assessment and treatment of problem gambling. Assessment can be addressed through the use of the recommended specialised assessment tools. The Sober Driver Program provides a possible program model for delivering treatment and support to problem gamblers across Tasmania. However, problem gamblers present a number of distinctive challenges and the establishment of an effective treatment program model should be based on established clinical principles and further development of the links between the Community Corrections Service and community based treatment and support services. Both of these issues are discussed in more detail at the end of this section.

Treatment and supervision under a specialised order or therapeutic jurisprudence program

A specialised order or therapeutic jurisprudence response for problem gambling would involve establishing a dedicated jurisprudential and administrative system, and must be justified by the seriousness of the problem it seeks to address.

The two specialised therapeutic responses currently operating in Tasmania are the Court Mandated Drug Diversion program, and the Mental Health Diversion List. The first is justified by the pervasive nature of drug-related offending and the serious nature of the offences involved. A specialised program for problem gambling established on this basis would need to capture between one-quarter and one-half of all problem gambling cases in the state, and this in turn would require the capacity to screen for problem gambling on a state-wide basis. The investment required to establish a program on this basis would not be justified by the scope or seriousness of the problem it seeks to solve. In addition, it is unclear how much additional benefit would be provided over that available from rehabilitative programs delivered via a conventional community corrections order.

In the case of the Mental Health Diversion List, the justification for this approach is that this group of persons suffer from mental illnesses that make incarceration appropriate, and that these persons require a high level of case management in combination with appropriate treatment. While problem gambling poses a significant public health issue, it should not be equated with serious mental illness. More specifically, it is appropriate that the majority of offenders identified as problem gamblers be seen as culpable for their offences, meaning that outright diversion may be inappropriate in many cases.

Recommendation 5

A specialised order or therapeutic jurisprudence program targeting problem gambling should not be established.

Treatment in prison or post-custody

For offenders who commit serious fraud or other serious crimes as a result of problem gambling, the court is likely to have little alternative to a custodial sentence. There is evidence that problem gambling is a serious and prevalent problem for imprisoned offenders, and is not confined to those who commit offences directly arising from problem gambling. Significant issues thus arise on the release of such offenders, because problem gambling may be a contributing factor to reconviction.

Recommendation 6

Treatment of imprisoned offenders' problem gambling should be focused on preventing gambling-related harms from arising after offenders are released.

In-prison treatment should focus on preparing offenders for release and establishing the social, material and treatment support networks appropriate for their needs. Post-prison programs should include provisions to address problem gambling in the context of these overall service needs.

6.3 Establishing a problem gambling treatment program

At present, the primary source of clinical and case management expertise in the treatment of problem gambling resides in the non-government sector. The main gambling program model offered in Tasmania is Gambler's Help (formerly known as 'Break Even'), delivered by a partnership of community-based services comprising Anglicare (personal, family and financial counselling) and Relationships Australia (personal and financial counselling). Gambler's Help is delivered via service agreements administered by the Department of Health and Human Services (DHHS) and funded through the Community Support Levy. A 2005 evaluation shows that the program was widely available and responsive and used a range of strengths and solution-based counselling and support approaches (DHHS 2005).

Providing problem gambling services to offenders involves a number of challenges beyond those involved in responding to problem gamblers in the community. These include:

- treatment and support services delivered to offenders must also satisfy compliance and reporting requirements;
- offenders may present with a variety of anti-social and other offending-related problems, in addition to problematic behaviours and cognitions specific to gambling; and
- offenders may be challenging in one-on-one counselling and difficult to integrate into group-based support activities.

It is notable that the DHHS evaluation found Gambler's Help service providers reported high rates of 'no shows' for clients, and found it difficult to provide the case management required to work effectively with clients with complex needs (DHHS 2005, p. vi).

Thus, the referral of offenders to existing community-based problem gambling programs is unlikely to be an adequate response to this problem. While community based agencies can provide extended support to address the financial and relationship problems experienced by problem gamblers, the delivery of an effective program to offenders will also require the involvement of the Community Corrections Service. This approach should be based on engagement between the Community Corrections Service and community agencies, consistent with the strategies identified in the *Breaking the Cycle* review. In particular, the Community Corrections Service and service provider agencies should jointly develop protocols for case management and information exchange for cases involving offenders with problem gambling, giving equal priority to clinical and compliance management outcomes.

Recommendation 7

Treatment responses to problem gambling should be provided by the Community Corrections Service with support from community agencies.

Problem gambling offender program models

Problem gambling programs may include a wide range of behavioural, cognitive and support interventions for clients with conditions of varying severity. In its most severe form, pathological gambling is a serious psychiatric disorder, equivalent to alcohol and substance dependence. There is now substantial evidence that problem gambling is amenable to psychological intervention, with cognitive-behavioural interventions considered ‘best-practice’ (Dowling, Smith & Thomas 2007). Activity scheduling and desensitisation methods offer promising intervention approaches (Dowling, Jackson & Thomas 2008). In addition, longitudinal surveys have revealed that although the prevalence of problem gambling remains generally consistent across time, there is considerable movement of individuals in and out of problem gambling (LaPlante et al. 2008). This implies that a significant proportion of individuals can recover either naturally or with the assistance of intervention or support.

As far as can be established, there are no problem gambling program models designed specifically for offenders. Experience with drug and alcohol programs indicates that the following considerations may apply to the design and delivery of a program for problem gambling offenders.

- Offenders may be more likely to be ‘treatment resistant’ than voluntary clients. As a result, programs need to place more emphasis on developing treatment motivation.
- Offenders may exhibit more anti-sociality than voluntary clients (for example, aggression, minimisation of culpability, rejection of authority, lack of or rejection of family social supports). This can present challenges for clinicians and may require the capacity to respond to these issues in parallel with the behaviours and cognitions associated with problem gambling.
- Offenders may be disruptive if included in voluntary treatment or support groups and cause distress to other group members.
- In some cases the pathological behaviour exhibited may be very severe and require intensive clinical engagement.

The Sober Driver program has been suggested as a possible model for a problem gambling program in Tasmania. This model provides a basis for delivering treatment interventions to offenders in both metropolitan and regional locations, and would be compatible with a collaborative delivery approach involving both probation officers and community agency staff. The educative and group-based cognitive behaviour elements of this program model would need adaptation to appropriately address problem gambling. In addition, the program would need to be supplemented by intensive clinical case management of offenders with serious behavioural and cognitive issues. Some offenders are also likely to require extensive support on financial and relationship issues.

Recommendation 8

The Sober Driver program provides an appropriate delivery model for offenders with problem gambling. However, this model would require substantial modification through the development of appropriate content and delivery protocols.

Program funding

The development and delivery of effective treatment interventions for problem gambling offenders is likely to require the investment of substantial resources. The Gambler's Help program is currently funded through the Community Support Levy, and these funds could also be used to support treatment programs delivered through the criminal justice system. This application of the Community Support Levy is consistent with the legislative requirements of the *Gaming Control Act 1993*.

Recommendation 9

Funds from the Community Support Levy should be made available to support the development and delivery of programs for problem gambling offenders.

6.4 Measuring and reporting on problem gambling in the justice system

It is essential to evaluate mechanisms used to address problem gambling, which entails measuring outputs and outcomes. It is important to distinguish between output and outcome measures:

- output measures describe activities or decisions; and
- outcome measures describe the products or consequences of those activities or decisions.

Output measures

Commonly used output measures in criminal justice include: charges laid by police; sentencing orders made by the courts (including the type and number of orders, their length and any special conditions imposed); and the administration and supervision of these orders by correctional services (including the number of prisoners and offenders entering and exiting, and the number of supervision or community work sessions).

Output measures relating to problem gambling are the subset of these general outputs that involve this particular group of offenders (for example, the number of sentencing orders made where the court specified that problem gambling was identified in the pre-sentence assessment). In addition, some distinctive output measures apply to treatment or support responses to problem gambling that are delivered via a criminal justice mechanism. These outputs include the number of treatment or counselling sessions provided, material or other support, and other interventions directed at problem gambling, such as banning orders.

Outcome measures

Outcome measures are concerned with levels of performance or achievement in the criminal justice system. Commonly used outcome measures include whether court orders are successfully completed, and whether the offender commits further offences. As with outputs, outcomes for offences relating to problem gambling can be the subsets of these general outcomes involving this group of offenders. There are also more specialised outcomes relating to the impact of treatment or support interventions, such as demonstrated knowledge and skills relating to behaviour management, changes in the severity of the problem gambling, or the achievement of treatment-related goals like stable employment. Another set of problem gambling outcomes may relate to the impact on the community and the offender's family, such as the level of gambling-related fraud, or the family's financial stability.

Chapter 7

Development of criminal justice data collections

This chapter considers the role of criminal justice data collections, and their status within the Tasmanian criminal justice system. Also considered are implications for criminal justice data collections of the recommended sentencing approaches identified in earlier chapters of this report.

7.1 Role of criminal justice data collections

Data collections in the criminal justice system can be undertaken to support a variety of functions and activities, including:

- administrative or judicial actions or decisions;
- recording or tracking of cases or persons;
- monitoring and reporting of justice and treatment outputs or outcomes; and
- research or evaluation.

These measures may be grouped into those that measure outputs from the criminal justice system (activity measures), and those that measure the outcomes of these activities.

In developing criminal justice measures associated with problem gambling, two issues need to be considered:

- problem gambling that meets the definitional requirements outlined in section 2.1 may be present as a prescribed attribute of the output (for example, a community service order with a condition to undertake counselling for problem gambling), or may be discretionary (for example, when counselling for problem gambling is part of a post-release support plan); and
- measures that have problem gambling as a prescribed attribute may be present in association with other outputs that are not associated with problem gambling. For example, an offender may be sentenced to a term of imprisonment for two offences: a fraud offence arising from problem gambling, and an assault unrelated to problem gambling. Note that where a single sentence is passed, it may be impossible to separate these two outputs.

On this basis, criminal justice measures can be classified into a four-level hierarchy based on the nature of their relationship to problem gambling:

1. no relationship to problem gambling;
2. problem gambling is present as a discretionary element;
3. problem gambling is present as a prescribed attribute in combination with other outputs; and
4. problem gambling is present as a sole prescribed attribute.

Where offending related to problem gambling is concerned, there are two primary data constructs or items that are relevant across a range of specific functions and applications. These are:

- a standard definition of problem gambling, and measures of the severity of an individual's problem gambling in relation to this definition; and
- output and outcome measures for any justice or treatment interventions that have been made.

7.2 Data collection in the criminal justice system

The following sections describe: the goals of collecting data on offenders or offences related to problem gambling at each stage of the criminal justice process; the current capacity of systems to meet these goals; and potential enhancements to allow these systems to better meet these goals.

Police

Tasmania Police records a range of information about the prevalence of recorded crimes, and the process of investigating these crimes. Police crime data are the most commonly used information source for measuring the level of crime within a jurisdiction. The classification scheme for recording crimes is primarily based on the legislative basis of offences, although some non-legal distinctions are made for readily identified sub-categories of offences (for example, shop stealing is distinguished from general theft).

However, police crime data in Tasmania are not disaggregated according to offenders' motivation. Moreover, inquiries undertaken as part of this project have not identified any Australian examples of offender motivation being recorded. Accordingly, no direct measure of gambling-related crime is available from this source. While fraud crime is the most common form of gambling-related crime, a wide variety of other offences may also be caused, either directly or indirectly, by problem gambling. In addition, the counting rules around fraud crime are complex. As a result, the use of fraud as a 'blanket' proxy is unsatisfactory.

Although police do collect information relating to the investigation of offences, they generally focus on issues that relate to proving the identity of alleged offenders and their involvement in the offence rather than their needs and circumstances. In the absence of systematic screening of large numbers of offenders, it is difficult to envisage any way for police data to provide an accurate basis for determining the level of problem gambling-related crime. These same issues apply for the use of police data to measure motivation for other offences, such as the role of illegal drugs in the commission of crime.

Recommendation 10

Police records should not be used to systematically identify cases of gambling-related crime, as these data are an unsatisfactory basis for estimating the prevalence of gambling-related offending.

Courts

Information about the role of problem gambling as a motivation for offending can be relevant at the bail and sentencing stages. In the case of bail decisions, information about problem gambling may influence whether the alleged offender is remanded in custody or, if bailed, the conditions placed on the bail order. At the sentencing stage, information about problem gambling may be relevant to a judge's or magistrate's determination of the type of sentencing and, if a community corrections order is made, to the conditions included in that order.

All of these functions require that the presence and severity of problem gambling be identified accurately and reliably. This report recommends the inclusion of screening for problem gambling in the existing pre-sentence assessment process (see section 5.6). Such screening would occur when problem gambling is identified as an issue by police or legal services, and should be ordered by the appropriate judicial officers, counsel or court staff. Alternatively, problem gambling may become apparent in the course of the general LS-CMI assessment process. Assessment information will be transmitted to the court through the normal reporting process and assessment records held as part of the court case file, with copies referred to the Community Corrections Service if such an order is made.

Data on the prevalence and severity of problem gambling can be measured from the results of these assessments (see Table 7.1). However, for these assessment data to be linked to sentencing data, it may be necessary to include a new 'Problem Gambling' data item on the Magistrates Court case file record. This could simply be a record identifier for the relevant assessment, but would allow sentencing and other case characteristics associated with problem gambling to be readily identified. In this way, the relationship can be determined between problem gambling assessment results and the type and details of sentencing orders made. This mechanism could also be used to identify cases where problem gambling is identified, but where the lack of access to treatment and support services prevents the making of an appropriate sentence.

Recommendation 11

Estimates of the prevalence of offending involving problem gambling should be based on assessments of offenders at court. Magistrates' case file records should include a data item on problem gambling that records the identifier for the relevant assessment and the assessment outcomes.

Table 7.1

OUTPUT AND OUTCOME MEASURES: ASSESSMENT RESULTS

Measure	Data items
Output measures	
Persons with problem gambling identified at screening or pre-sentence assessment	<ul style="list-style-type: none"> • Severity of problem gambling • Source of problem gambling (EGM, on-line gaming, etc.) • Relationship between offending and problem gambling
Outcome measures	
Sentences made that address problem gambling	<ul style="list-style-type: none"> • Type and duration of order • Order conditions
Persons with identified problem gambling where no treatment services are available	<ul style="list-style-type: none"> • Location of offender

Source: Allen Consulting Group and the University of Melbourne

Community Corrections

This report recommends that the preferred rehabilitative response to offenders with problem gambling should be via the existing system of Community Corrections orders (see Recommendation 4). When such offenders commence an order, they would take part in an intake assessment. This may build on the results of the court assessment if one has already been conducted, with orders sometimes made in the absence of such an assessment.

The same two-stage screening assessment process for problem gambling as described for the court stage should apply at the intake stage for the Community Corrections service. As with court assessment data, the key requirement is for any specialised problem gambling assessment data to be linked to the offender's general record via an assessment record identifier. In this way, information about problem gambling can be linked to case management data that includes the frequency of supervision, details of any treatment or support plan for problem gambling, and involvement in any other order requirements. The output and outcome measures relevant to the Community Corrections service are shown in Table 7.2.

Table 7.2

OUTPUT AND OUTCOME MEASURES: COMMUNITY CORRECTIONS

Measure	Data items
Output measures	
Persons with problem gambling identified at screening or pre-sentence assessment	<ul style="list-style-type: none"> Severity of problem gambling Source of problem gambling (EGM, on-line gaming, etc.) Relationship between offending and problem gambling
Order provisions that address problem gambling	<ul style="list-style-type: none"> Type and duration of order Order conditions
Treatment involvement	<ul style="list-style-type: none"> Treatment provider Number of treatment sessions
Outcome measures	
Order completion status for orders including a problem gambling condition	<ul style="list-style-type: none"> Breach details
Treatment completion status	<ul style="list-style-type: none"> Change in severity of problem gambling Attendance at treatment sessions

Source: Allen Consulting Group and the University of Melbourne

It is noted that the 2008 KPMG review of the Community Service Order program recommends further development of the current Offender Information System (OIS) ‘to capture and provide required data and information, as outlined by guidelines developed by the Directorate’, and sets out a continuous improvement plan to achieve this (Tasmanian Department of Justice 2008, p. 32). The information system developments detailed above should also form part of the ongoing development of the OIS.

The two-stage screening assessment process described earlier is not intended to substitute for a full clinical assessment that forms the starting point for any program of treatment or support. The data from any clinical assessment is of therapeutic relevance only and should remain confidential. However, data about the offender’s attendance and progress in treatment (as indicated by change in the severity of their problem gambling) are important outcome measures and should form part of the regular communication between treatment agencies and the Community Corrections service.

Recommendation 12

Community corrections offender records should provide for problem gambling assessment data to be linked to offenders’ general records via an assessment record identifier. In addition, information about offenders’ attendance and progress in treatment should be recorded.

Prisons

A substantial level of counselling for problem gambling takes place in prisons. However, it is essentially voluntary and is a relatively low priority as a target for prisoner programs. There is limited evidence to support problem gambling as a post-release program target, but as much post-release program activity takes place in the non-government sector there is little justification for establishing a specific data collection in the prison system on problem gambling issues.

Recommendation 13

Prisoner records should not include any specialised data collection on problem gambling.

7.3 Research and evaluation

Criminal justice policy and program development on problem gambling requires an understanding of the relationship between problem gambling and offending, and the effectiveness of intervention strategies in reducing future harm associated with problem gambling. Many researchers have documented the high prevalence of problem gambling in recidivist offender groups (Abbott & McKenna 2005; McCorkle 2002; Paterson & Garret 2010), although it is noted that recidivist offenders are likely to be ‘criminals first and problem gamblers second’ (Abbott and McKenna 2005, p. 579).

However, the influence of problem gambling on recidivism is not well understood, and few research studies have specifically examined this connection. In particular, it is unclear whether problem gambling constitutes a significant barrier to reintegration after a prison term. Obtaining good quality data on recidivism is a general problem in many jurisdictions. The 2008 sentencing review called for reconviction studies on a range of sentencing orders, including conditional release orders and community sentences. If, at the court stage, reliable data can be extracted (as described above) about the presence of problem gambling as an offence factor, it could serve as the basis for a reconviction study that examines problem gambling as a factor. A reconviction study could then serve as the basis for an evaluation study of the effectiveness of treatment and support interventions in reducing recidivism rates.

While there is substantial research on ‘conventional’ problem gambling (that is, racetrack, casino and EGM-based gambling) and its relationship to offending, a major future challenge is the development of online gaming and its potential to recruit a new or expanded cohort of problem gamblers, some of whom will engage in criminal activity, either to support their online gaming or as a consequence of losses sustained in online gaming. The rapid spread of online child pornography provides an example of how this kind of technological development can create a sizeable group of offenders who were previously not represented in the criminal justice system. The research issue here is primarily to monitor the prevalence of online gaming to elicit early warning of any spread into associated criminality.

*Appendix A***Stakeholder consultations**

Date	Location	Organisation
6 April 2011	Hobart	Senior Practice Consultant, Community Corrections
6 April 2011	Hobart	Adult Parole Board
12 April 2011	Hobart	Financial Policy Branch Department of Treasury and Finance
12 April 2011	Hobart	Liquor and Gaming Branch, Department of Treasury and Finance
12 April 2011	Hobart	Gambling Support Program, Department of Health and Human Services
12 April 2011	Hobart	Tasmanian Gaming Commission
9 May 2011	Hobart	Fraud and e-Crime Investigation Service Tasmania Police
9 May 2011	Hobart	Court Support Program, Magistrates Court of Tasmania
9 May 2011	Sandy Bay	Law School, University of Tasmania
9 May 2011	Hobart	Legal Aid, Tasmania
10 May 2011	Hobart	Legislation Development and Review, Department of Justice
10 May 2011	Hobart	Strategic Policy and Projects Branch, Department of Justice
10 May 2011	Hobart	Reintegration and Transition Service, Tasmanian Prison Service
10 May 2011	Hobart	Strategic Systems, Department of Justice
7 June 2011	Hobart	Director of Public Prosecutions
2 August 2011	Telephone	Post Release Options Project

References

Abbott, M & McKenna, B 2005, 'Gambling and Problem Gambling Among Recently Sentenced Women in New Zealand Prisons', *Journal of Gambling Studies*, vol. 21, no. 4, pp. 559–581.

Allen Consulting Group, Problem Gambling Research and Treatment Centre, and the Social Research Centre 2011, *Social and Economic Impact Study of Gambling in Tasmania, Volume 2: Gambling survey*, Prepared for the Tasmanian Government Department of Treasury and Finance.

American Psychiatric Association 2011, *Diagnostic and Statistical Manual*, <<http://www.psych.org/MainMenu/Research/DSMIV.aspx>>, Accessed 15 August 2011.

Anglicare Tasmania 2010, *Nothing Left to Lose*, Social Action & Research Centre, Anglicare Tasmania, Hobart.

ABS (Australian Bureau of Statistics) 2011, *Corrective Services*, Australia, June Quarter 2011, cat. no. 4512.0, Canberra.

Australian Institute for Gambling Research & the Labour and Industry Research Unit 1996, *Problem Gambling and Criminal Behaviour in Queensland: A Report of the Second Year of the Study into the Social and Economic Impact of the Introduction of Gaming Machines to Queensland Clubs and Hotels*, Department of Families, Youth and Community Care, Brisbane.

Australian Law Reform Commission 2006, *Same Crime, Same Time: Sentencing of Federal Offenders*, Report 103.

Blaszczynski, A & McConaghy, N 1994, 'Criminal offences in Gamblers Anonymous and hospital treated pathological gamblers', *Journal of Gambling Studies* vol. 10, no. 2, pp. 99–127.

Brooks, G & Blaszczynski, A 2011, 'Judicial decisions on cases involving problem gambling and crime in England and Wales', *International Gambling Studies* vol. 11, no. 1, pp. 81–92.

Crofts, P 2002, *Gambling and Criminal Behaviour: An Analysis of Local and District Court Files*, *Casino Community Benefit Fund*, University of Technology Sydney, Sydney.

DHHS (Tasmanian Government Department of Health and Human Services) 2005, *Evaluation of Current Break Even Gambling Support Services and Recommended Future Service Delivery Model*, Gambling Support Bureau, Department of Health and Human Services, Hobart.

Dowling, N, Smith, D & Thomas, T 2007, 'A comparison of individual and group cognitive-behavioral treatment for female pathological gambling', *Behaviour Research and Therapy*, vol. 45, pp. 2192–2202.

Dowling, N, Jackson, A & Thomas, S 2008, 'Behavioural interventions in the treatment of pathological gambling: A review of Activity Scheduling and Desensitisation', *International Journal of Behavioural Consultation and Therapy*, vol. 4, no. 2, pp. 172–187.

Dowling, N, Jackson, A, Thomas S & Frydenberg, E 2010, *Children at risk of developing problem gambling*, Gambling Research Australia, Melbourne.

Ferris, J & Wynne, H 2001, *The Canadian Problem Gambling Index*, Canadian Centre on Substance Abuse.

Findlay, M, Odgers, S & Yeo, S 2005, *Australian Criminal Justice*, 3rd edn, Oxford University Press, Melbourne.

Fox, R, & Freiberg, A 1999, *Sentencing: State & Federal law in Victoria*, 2nd edn, Oxford University Press, Melbourne.

Gebauer, L, LaBrie, R & Shaffer, H 2010, 'Optimizing DSM-IV classification accuracy: A brief bio-social screen for gambling disorders among the general household population', *Canadian Journal of Psychiatry*, vol. 55, no. 2, pp. 82–90.

Hill, M 2010, 'Developing Therapeutic Judging — The Tasmanian Experience'. *Non-Adversarial Justice: Implications for the Legal System and Society Conference*, Melbourne, 4–7 May.

Lahn, J 2005, 'Gambling Among Offenders: Results from an Australian Survey', *International Journal of Offender Therapy and Comparative Criminology*, vol. 49, no. 3, pp. 343–355.

LaPlante, D, Nelson, S & Shaffer, H 2008, 'Stability and progression of disordered gambling: Lessons from longitudinal studies', *Canadian Journal of Psychiatry*, vol. 53, pp. 52–60.

Lorains, F, Cowlishaw, S & Thomas S 2011, 'Prevalence of comorbid disorders in problem and pathological gambling: systematic review and meta-analysis of population surveys', *Addiction*, vol. 106, pp. 490–498.

McCorckle, R 2002, *Pathological Gambling in Arrestee Populations*, report no. NCJ 196677 prepared for the National Institute of Justice, Washington DC.

McCorckle, R 2004, *Gambling and Crime Among Arrestees: Exploring the Link*, report no. NCJ 203197 prepared for the National Institute of Justice, Washington DC.

Miller, G & Holden, C 2010, 'Proposed revisions to psychiatry's canon revealed', *Science*, vol. 327, pp. 770–771.

Mills, K, Hodge, W, Johansson, W & Conigrave, S 2008, 'An outcome evaluation of the New South Wales Sober Driver Programme: a remedial programme for recidivist drink drivers', *Drug and Alcohol Review*, vol. 27, pp. 65–74.

- Minchin, G 2006, 'Sentencing Problem Gamblers in New Zealand', *International Journal of Mental Health Addiction*, vol. 4, pp. 53–64.
- Neal, P, Delfabbro P & O'Neil, M 2005, *Problem Gambling and Harm: Towards a National Definition*, Report prepared for Gambling Research Australia, Melbourne.
- Newitt, E, & Stojcevski V 2009, *Mental Health Diversion List: Evaluation Report*, Magistrates Court of Tasmania, Hobart.
- Nower, L & Blaszczynski, A 2006, 'Impulsivity and pathological gambling: A descriptive model', *International Gambling Studies*, vol. 6, pp. 61–75.
- Paterson, A & Garrett, L 2010, *Report into the possible connection between problem gambling, drug usage and criminal activity among clients of OARS SA*, Offenders Aid and Rehabilitation Services of South Australia, Adelaide.
- Powis, J 2002, *Problem gambling prevalence survey 2002*, Queensland Department of Corrective Services, Brisbane.
- Sakurai, Y & Smith, R 2003, 'Gambling as a Motivation for the Commission of Financial Crime', *Trends and Issues in Crime and Criminal Justice*, No. 256 Australian Institute of Criminology, Canberra.
- Smith, G, Wynn, H, & Hartnagel, T 2003, *Examining Police Records to Assess Gambling Impacts: a Study of Gambling-related Crime in the City of Edmonton*, Prepared for the Alberta Gaming Research Institute.
- South Australian Centre for Economic Studies 2008, *Social and Economic Impact Study into Gambling in Tasmania*, Adelaide & Flinders Universities, Adelaide.
- Success Works 2008, *Tasmania's Court Mandated Drug Diversion Program: Evaluation Report*, report to the Tasmanian Department of Justice, November, Melbourne.
- Tasmanian Department of Justice 2008, *Review of Tasmania Community Corrections: Final Report*, Hobart.
- Tasmanian Department of Justice 2011, *Breaking the Cycle: A Strategic Plan for Tasmanian Corrections 2011–2020*, Hobart.
- Tasmanian Law Reform Institute 2008, *Sentencing: Final Report*, University of Tasmania, Hobart.
- Taylor, G 2002, 'Should Addiction to Drugs be a Mitigating Factor in Sentencing?' *Criminal Law Journal*, vol. 26, pp. 324–343.
- Taylor, G. 2004, 'Is addiction to gambling relevant in sentencing?' *Criminal Law Journal*, vol. 28, pp. 141–159.
- Wheeler, S, Round, D, Sarre, R & O'Neil, M 2008, 'The Influence of Gaming Expenditure on Crime Rates in South Australia: A Local Area Empirical Investigation', *Journal of Gambling Studies*, vol. 24, pp. 1–12.