

Unstacking the odds: Towards positive interventions at the intersection of gambling and crime

Issues Paper

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Preface

The intersection of gambling and criminal justice system contact is increasingly being recognised as a significant social and legal challenge.¹ At both the practitioner and policy level, however, the complexities of this intersection are still not well understood.

In purely medical terms, of course, gambling addiction has been recognised as a ‘disorder’ in various iterations by the Diagnostic and Statistical Manual of Mental Disorders. Specifically, the fifth and most recent edition of this manual (‘DSM-5’) described gambling disorder as ‘a non-substance behavioural addiction characterised by repeated patterns of excessive gambling expenditure’.² Accordingly, this characterisation of ‘gambling disorder’ moved away from conventional community perceptions of problem gambling as an individual’s moral failing and instead recognised it as a clinically diagnosed condition requiring treatment and focused attention.³

Beyond assessments which focus on an individual’s pathology, however, the broader concept of ‘gambling harm’ views the impacts of gambling through a public health lens, including its impacts on families and communities with which an individual gambler is connected.⁴ Construed this way, gambling harm is seen as linked to other co-occurring issues, such as mental health, substance abuse, family violence and, unsurprisingly, socio-economic disadvantage.⁵

Within this expanded concept, the complex connection between gambling and offending has begun to be tracked, with studies suggesting a higher prevalence of gambling amongst prison populations, for example, when compared with the wider community.⁶ Many of these studies, as well as relevant case law, were explored in a 2017 report by the Centre for Innovative Justice (‘the CIJ’), *Compulsion, Convergence or Crime? Contact with the criminal justice system as a form of gambling harm*.⁷ This report concluded that the gambling was a ‘sleepier issue’ and often ‘in the mix’ in the lives of offenders to an extent which had previously not been understood.

The purpose of this Issues Paper is to build on the CIJ’s report by highlighting relevant literature and case law which has emerged since this 2017 work was conducted. Just as importantly, it also seeks to highlight benefits associated with a pilot program conducted by the CIJ since the 2017 report’s release which, with the assistance of the Inside Access program at the Mental Health Legal Centre (MHLIC), delivered financial counselling services to women in Dame Phyllis Frost Centre (DPFC) maximum security women’s prison from August 2019 to June 2020.⁸

¹ Campbell, E. (2017) *Compulsion, convergence or crime? Criminal justice system contact as a form of gambling harm*, Centre for Innovative Justice, RMIT University, Melbourne. At <https://cij.org.au/cms/wp-content/uploads/2018/08/gambling-harm-report.pdf>;
Perrone, S., Jansons, D. and Morrison, L. (2013) *Problem Gambling and the Criminal Justice System*, Victorian Responsible Gambling Foundation, Melbourne. <<https://responsiblegambling.vic.gov.au/documents/131/Problem-Gambling-Criminal-Justice.pdf>>;
Ramanauskas, S., (2020) *Crime and Problem Gambling – A Research Landscape* Commission on Crime and Problem Gambling <<https://howardleague.org/wp-content/uploads/2020/05/Crime-and-problem-gambling-research-landscape.pdf>>.

² American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders V* (5th edition, 2013).

³ *Ibid.*

⁴ Browne, M., Langham, E., Rawat, V., Greer, N., Li, E., Rose, J., Rockloff, M., Donaldson, P., Thorne, H., Goodwin, B., Bryden, G. and Best, T. (2016), *Assessing gambling-related harm in Victoria: a public health perspective* Victorian Responsible Gambling Foundation, Melbourne.

⁵ April, L and Weinstock, J (2018) ‘The Relationship Between Gambling Severity and Risk of Criminal Recidivism’ 63(4) *Journal of Forensic Science* 1201.

⁶ Adolphe, A., Khatib, L., van Folde, C., Gainsbury, S., and Blaszyzyski, A. (2018) ‘Crime and Gambling Disorders: Systematic Review’ 35 *Journal of Gambling Studies* 395 [397].

⁷ Campbell, above n 1.

⁸ Centre for Innovative Justice (2020) *Financial Counselling, gambling harm and criminal justice system contact: Lessons from the Centre for Innovative Justice’s Financial Counselling pilot – the benefits of integrated practice*. Webinar at <https://www.youtube.com/watch?v=CUGKTbMkOjY&list=PL8uYOKwoXWA-Y4F3mhAa79WmSMY01MCUk&index=2&t=12s>

The CIJ's pilot program was funded by the Victorian Responsible Gambling Foundation and demonstrated strong demand for financial counselling services amongst women at DPFC. In particular, it indicated that around 39% of women who sought financial counselling assistance had also experienced some form of gambling harm, with 72% of this sub-group then identifying gambling as having contributed directly to, or being a primary driver of, their offending.

Where gambling was identified, some of the program's clients then accepted referrals to relevant Gambler's Help treatment services, either in DPFC or in the community where they were close to release. This pilot was therefore an example of the way in which earlier identification of gambling harm and associated debt can function as a positive intervention within the context of criminal justice settings. The benefits of the pilot were then acknowledged when MHLC's Inside Access program engaged a financial counsellor as part of its core, multidisciplinary team.

In addition to building on the CIJ's recent work, perhaps more urgently the timing of this Issues Paper coincides with unprecedented economic uncertainty,⁹ the financial downturn triggered by the COVID-19 pandemic already reporting to have had an impact on gambling activity in Australia. Certainly the closure of venues is reported to have resulted in substantial savings from reduced Electronic Gaming Machine (EGM) use.¹⁰ Preliminary findings from an ongoing study by the University of Sydney also indicate that, for the majority of participants surveyed for the study, gambling was occurring less frequently as a result of lack of access to venues. However, the same study also indicated that people at moderate risk of gambling harms were more likely to report increased frequency in gambling activity, while higher problem-gambling severity was associated with increased expenditure.¹¹

Further, while an Australian Institute of Criminology's (AIC) study of online gambling between March and April 2020 showed a decline in overall prevalence, it similarly showed increased spending by those who did engage in this activity.¹² This increased spending on online gambling was associated with being male and being under the age of 40. Living as a couple with children was also found to be associated with increased likelihood of spending on online gambling during April 2020, indicating that online gambling occurred during a period where families were required to stay at home.¹³ Even more concerning are early media reports of people choosing to access superannuation funds early and then spending these funds on gambling,¹⁴ although this is not necessarily reflected in wider surveys of people's spending activities during this period.¹⁵

⁹ Karp, P., 'Australia likely to experience largest economic downturn since the Great Depression', *The Guardian*, 21 April 2020 <<https://www.theguardian.com/australia-news/2020/apr/21/about-800000-australians-lost-their-job-in-the-first-three-weeks-of-coronavirus-restrictions>>.

¹⁰ Alliance for Gambling Reform, 'The \$1.5 billion Covid-19 Silver Lining', 5 May 2020 <https://www.pokiesplayyou.org.au/the_1_5_billion_covid_19_silver_lining>.

¹¹ Gainsbury, S., Blaszczynski, A., (2020) *The impact of the COVID-19 shutdown on gambling in Australia: Preliminary results from the Wave 1 cross-sectional survey*, University of Sydney. <https://www.sydney.edu.au/content/dam/corporate/documents/brain-and-mind-centre/usyd-covid-gambling-research-report-aug-2020.pdf>

¹² Brown, R. and Hickman, A. (2020) 'Changes in online Gambling during Covid-19 Pandemic: April Update' (Statistical Bulletin no.25, Canberra) Australian Institute of Criminology: p.2 - 3.

¹³ Ibid, p. 2 - 3

¹⁴ Roddan, M., 'Early Access Super gambled away online', *Australian Financial Review* (20 May 2020) <<https://www.afr.com/companies/financial-services/early-access-super-gambled-away-online-20200520-p54us7>>. Ryan, P, *Superannuation withdrawals spent on gambling, alcohol, takeaway food; report* ABC News online, (1 June 2020). <https://www.abc.net.au/news/2020-06-01/superannuation-withdrawals-spent-on-gambling-alcohol-takeaway/12306710>

¹⁵ Australian Bureau of Statistics, *Household impacts of COVID-19 survey* Insights into the prevalence and nature of impacts from COVID-19 on households in Australia.

Nevertheless, shifting patterns in behaviour, combined with the impacts of the COVID-19 on the economy, suggest that harm from gambling activity may increase in the months and years ahead. In fact, while certain patterns of gambling activity may have emerged during the short-term during 'lockdown' periods, the real test will be whether increased socio-economic disadvantage arising from the economic impacts of the pandemic will contribute to more widespread and acute gambling harm, including through co-occurrence with other harms, such as mental health issues and family violence. In the CIJ's view, this means that positive interventions at the intersection of gambling and offending may require more urgent attention than ever before.

A note on terminology

In accordance with the VRGF's approach, the CIJ uses the term 'gambling harm' to refer to the complex and wide-ranging impacts which gambling can have on an individual, their family and community. The term 'problem gambler' refers to a clinical condition (gambling disorder) while gambling harm is a broader concept. Given that many studies in this area use the terminology of 'problem gamblers' where this relates to a diagnosis, the CIJ uses the latter term where applicable.

1 Introduction

In 2017, the Centre of Innovative Justice ('the CIJ') released *Compulsion, convergence or crime? Criminal justice system contact as a form of gambling harm*.¹⁶ Funded by the Victorian Responsible Gambling Foundation ('the VRGF'), the research involved a comprehensive literature review; analysis of raw data from relevant agencies; review of sentencing remarks from 100 cases in the Victorian Supreme and County Courts; snapshot data collection in relation to clients of Victoria Legal Aid duty lawyers in five Magistrates' Court locations; and multiple focus groups and targeted consultations.¹⁷

The research had three distinct objectives. First, it sought to improve understanding of the intersection between gambling and offending. Second, it aimed to build a clearer picture of the way in which the justice system responds to this intersection. Third, it offered solutions for how the justice system could respond more effectively in the future. Overall, the CIJ's 2017 report found that gambling - and gambling-related harm - played a much more significant role in the lives of offenders than was being recognised across the criminal justice system at the time.

This finding was perhaps not surprising, as previous studies had similarly found that the presence of gambling problems is often overshadowed by the presence of other co-occurring issues, such as mental illness, acquired brain injury, family violence, childhood trauma, drug and alcohol abuse and homelessness.¹⁸ As a result, gambling harm and even behaviour which may be diagnosed as an addiction, could be overlooked when gamblers come into contact with criminal justice settings.¹⁹ In this way, the CIJ found that gambling may be functioning as a 'sleeper' issue - or as an issue which was often 'in the mix' in the lives of many offenders, yet was going unacknowledged.

In addition to this lack of visibility at a therapeutic level, the CIJ also found that Australian legal discourses had been slow to assimilate evolving medical discourses regarding gambling addiction. As a result, court responses to gambling harm across both criminal and civil spheres had been variable and, in some ways, contradictory. Combined, the CIJ found that this lack of legal acknowledgement about the connection between gambling and crime, as well as the slow identification of gambling within offender populations, had resulted in, amongst other things, a disinclination towards therapeutic approaches by courts; low levels of referrals to Gambler's Help treatment services; as well as a failure to recognise that contact with the criminal justice system can itself generate greater risks of gambling when people are released from custody.²⁰

A few years on from the CIJ's 2017 work, the situation has not significantly improved in terms of recognition across the legal system, while the economy has dramatically deteriorated in a very short period of time. This Issues Paper therefore seeks to update the CIJ's work and draw attention once again to an issue which may be 'in the mix' of those who may be likely to come before Victoria's criminal jurisdictions in the months and years ahead.

¹⁶ Campbell, above n 1.

¹⁷ Ibid p. 8.

¹⁸ Ibid p. 4; Miller, H (2014) *Background Paper – Complex Lives: Co-Occurring Conditions of Problem gambling*, Victorian Responsible Gambling Foundation, Melbourne. p.7 - 8. At <https://responsiblegambling.vic.gov.au/documents/24/complex-lives-co-occurring-conditions-of-problem-gambling.pdf>

¹⁹ Campbell, above n 1.

²⁰ Kinner, S. (2006) 'The Post Release Experience of Prisoners in Queensland', *Trends and issues in crime and criminal justice* no 325, Canberra Australian Institute of Criminology.

2 Prevalence of gambling

Once an activity associated with questionable morality, gambling has now become a mainstream leisure pursuit. In fact, the status of gambling has transformed over the last century, with commercial gambling growing into a multibillion-dollar industry on an international scale.²¹

Arguably a combination of consumer-led demand and increasing endorsement by the state,²² nowhere is the expansion of commercial gambling more evident than in Australia. For example, while on-course betting on dog and horse racing represented the only legal form of gambling in most states in the 1960s,²³ gambling is now legally institutionalised around the nation.

In particular, the proliferation of Electronic Gaming Machines (EGMs) in most states and territories in the 1990s transformed the gambling industry.²⁴ Three decades on from this process of process, Australia is now widely known for having the most EGMs per person of any country in the world, excluding the specific gambling hotspots of Monaco and Macau.²⁵

Australia also has the largest gambling losses per capita anywhere in the world.²⁶ Estimates suggest that the industry generates in excess of \$AU19 billion in losses annually,²⁷ with Australians losing 23 per cent more than Singapore, the second ranked country; and 60 per cent more than the fifth ranked USA. EGMs account for more than half the total losses for all gambling.²⁸

In terms of gambling behaviour, estimates from 2015 indicate that two out of every five Australians gamble in a typical month, amounting to an annual total expenditure of \$AU8.6 billion.²⁹ Most recently, the growth of internet gambling has driven particular concerns about its contribution to gambling and associated harm.³⁰

More specifically, between 2015 - 2016, Victorians spent \$AU5.79 billion on gambling, including \$AU5.02 billion on EGMs; \$AU494 million on race betting; and \$AU281 million on sports betting.³¹ Across the same year, Victorians lost \$AU2.5 billion to EGM gambling, an increase of 1.74 per cent on 2014 - 15.³² The question then becomes to what extent will these losses increase in the coming months and years in the wake of the COVID-19 shutdowns, as well as the longer term economic decline.

²¹ Banks, J. (2017) *Gambling, Crime and Society* (Palgrave Macmillan UK) p.1.

²² Markham, F. and Young, M. (2015) 'Big Gambling': The rise of the global industry-state gambling complex' 23(1) *Addiction Research and Theory* 1; Banks, above n 21.

²³ Banks, J., Waters J., Andersson C., and Olive, V. (2019) 'Prevalence of Gambling Disorder Among Prisoners: A Systematic Review' *International Journal of Offender Therapy and Comparative Criminology* <<https://doi.org/10.1177/0306624X19862430>>.

²⁴ Banks, above n 21 p. 9 -10.

²⁵ Markham, F. and Young, M. "15 Things you should know about Australia's Love affair with pokies" *The Conversation* (20 October 2015). <<https://theconversation.com/15-things-you-should-know-about-australias-love-affair-with-pokies-49230>>.

²⁶ Scott, J. and Heath, M, 'Australia's gambling addiction proving too lucrative to cure' *Australian Financial Review* (28 September 2016) <<https://www.afr.com/technology/australias-gambling-addiction-proving-too-lucrative-to-cure-20160928-grpygn>>.

²⁷ Productivity Commission, (2010) *Gambling: Inquiry, Report No. 50, Volume I*, Commonwealth of Australia, p 2. <<https://www.pc.gov.au/inquiries/completed/gambling-2010/report>>.

²⁸ Markham and Young, above n 22, p.2.

²⁹ Warren, D. and Yu, M. (2019) *LSAC Annual Statistical Report: Gambling Activity Among Teenagers and Their Parents*, Australian Institute of Family Studies, 69; 79 <<https://aifs.gov.au/publications/gambling-activity-among-teenagers-and-their-parents>>

³⁰ Hing, N., Russell, A. and Browne, M. (2017) 'Risk Factors for Gambling Problems on Online Electronic Gambling Machines, Race Betting and Sports Betting' 8 *Front Psychology* 779; 779-780.

³¹ Howe, P., Vargas-Saenz, A., Hulbert, C. and Boldero, J. (2019) 'Predictors of Gambling and Problem Gambling in Victoria, Australia' 14 (1) *PLoS ONE* <doi: 10.1371/journal.pone.0209277>.

³² Brown, H., (2016) *A Review of Gambling-Related Issues*, City of Greater Dandenong, p 4. At <https://d3n8a8pro7vhm.cloudfront.net/gx/pages/2218/attachments/original/1568710146/Gambling_Related_Issues_for_Local_Government_2018_50123_.pdf?1568710146>.

2.1 Changing gambling environment and evidence base

Recent studies of gambling prevalence signal the changing nature of gambling activity in Australia. For example, a 2020 NSW study involving a survey of over 10,000 adults suggests that, while gambling participation was on the decline overall, a higher proportion of those who engaged in gambling experienced some degree of gambling problems or harm.³³ Prevalence studies have also begun to identify gambling participation among specific cohorts as a concern. For example, recent studies suggest that sports betting has increased over the last two decades, with young men's participation growing as a particular cohort, the intangibility of money in this environment potentially leading to a greater inclination to take risks.³⁴

Another study examining gambling activity among teenagers and their parents found that one in six 16 to 17 year olds reported having gambled in the past year.³⁵ A study of gambling in Victorian secondary schools also indicates a small, but significant, minority of gambling among high school students.³⁶ This report found that 6 per cent of students had gambled in the past month, with 13 per cent of this cohort classified as 'problem gamblers'.³⁷ Gambling activity was also found to be linked to tobacco use, illicit drug use and mental health conditions. Further, this study indicated a strong relationship between gambling among young people and household gambling, finding that 18 per cent of participants said that someone in their household had gambled in the past month.³⁸

As indicated in this paper's Preface, early reports also indicate shifting patterns emerging in terms of gambling behaviour during COVID-19 restrictions. As noted above, this includes increases in expenditure on online gambling;³⁹ or increased expenditure on gambling activity by those with high problem gambling severity.⁴⁰ The question remains as to how these early shifts will translate into overall experience of gambling harm as the full economic impacts of the pandemic take hold.

Most relevantly to this Issues Paper, however, a limited number of studies already point to the high levels of gambling problems among populations of Australian prisons and, by implication, in the lives of people in contact with the criminal justice system.⁴¹ In particular, a 2018 study by Riley and colleagues found a high lifetime prevalence of problem gambling behaviours amongst men in custodial settings in South Australia.⁴²

³³ Browne, M., Rockloff, M., Hing, N., Russell, A., Murray Boyle, C. and Rawat, V. (2020) NSW Gambling Survey 2019, NSW Responsible Gambling Fund. <https://www.responsiblegambling.nsw.gov.au/data/assets/pdf_file/0007/280537/NSW-Gambling-Survey-2019-report-FINAL-AMENDED-Mar-2020.pdf>

³⁴ Jenkinson, R., de Lacy-Vawdon, C., Carroll, M. (2018), *Weighing up the odds: young men, sports and betting*, Victorian Responsible Gambling Foundation, Melbourne. p 10 <<https://responsiblegambling.vic.gov.au/resources/publications/weighing-up-the-odds-young-men-sports-and-betting-394/>>

³⁵ Warren and Yu, above n 29, p 79.

³⁶ Freund, M., Noble, N., Hill, D., White, V., Evans, T., Oldmeadow, C. and Sanson-Fisher, R. (2019) *The prevalence and correlates of gambling in secondary school students in Victoria, Australia, 2017*, Victorian Responsible Gambling Foundation, Melbourne. <<https://responsiblegambling.vic.gov.au/resources/publications/the-prevalence-and-correlates-of-gambling-in-secondary-school-students-in-victoria-australia-2017-680/>>

³⁷ Ibid, p 19.

³⁸ Ibid, p 2.

³⁹ Brown and Hickman, above n 12, p.2 - 3.

⁴⁰ Gainsbury et al, above n 11.

⁴¹ Riley B. and Oakes, J. (2014) 'Problem Gambling among a Group of Male Prisoners: Lifetime prevalence and Association with Incarceration' 48 (1) *Australian and New Zealand Journal of Criminology* <<https://doi.org/10.1177/0004865814538037>>.

⁴² Riley, B. Larsen, A., Battersby M. and Harvey, P. (2018) 'Problem Gambling Among Australian Male Prisoners: Lifetime Prevalence, Help-seeking association with Incarceration and Aboriginality' 62(11) *International Journal Offenders Therapy and Comparative Criminology*, 3447.

Survey results from this 2018 study also indicated that the majority of male prison populations, up to 84 per cent, would benefit from health promotion and earlier interventions concerning gambling. This included culturally appropriate evidence-based supports for Aboriginal and Torres Strait Islander people in prison who had experienced a higher level of problem gambling than non-Indigenous people in prison. Here we note the relative absence of peer-reviewed literature about the adaption of gambling treatment for Aboriginal and Torres Strait Islander people.⁴³

Research also suggests that, since the preponderance of EGMs, the number of women reporting problem gambling to relevant counselling services has significantly increased. For example, in 1999, women represented 10 per cent of clients attending problem gambling counselling services in Australia.⁴⁴ By 2010, however, this had increased to between 40 - 60 per cent. Around 90 per cent of these women identified EGMs as the main source of gambling issues.⁴⁵ Increases like these suggest that previous findings - which record a higher incidence of problem gambling amongst men - should be revisited, given that this disparity may have substantially reduced over the last two decades. An Australian study of 127 women in prison also found that 64 per cent exhibited lifetime prevalence of problem gambling. EGMs were reported as the most frequently used form of gambling.⁴⁶ This study similarly suggests that rates of gambling problems may be higher among female prison populations than their male counterparts.⁴⁷

In addition to tracking gambling activity amongst certain cohorts, recent studies have improved understanding about the nature and levels of *risk* inherent in these activities. For example, studies indicate that EGMs, the second most prevalent form of gambling, present the greatest concern, with participation predictive of highest risk.⁴⁸ Other forms, such as online gambling, also have strong associations with problem gambling, but appear to have much lower participation rates.⁴⁹

Understanding about the kinds of risk associated with different degrees of participation in, as well as types of, gambling activity, has also evolved. For example, while previous studies had identified risk as being associated with the more narrow 'problem gambling' band, more recent research found that the burden of 85 per cent of all gambling harm is carried by those participating in low and moderate gambling.⁵⁰ Importantly, this research also illustrated that current measurements of 'problem gambling' pose difficulties because they do not distinguish between different forms of gambling.⁵¹ As a result, accurate identification of the actual cause of gambling problems, as well as any associated demographic and behavioural factors, are difficult to determine with accuracy, in turn making it more difficult to help people to avoid further gambling harm.⁵²

⁴³ Ibid.

⁴⁴ Productivity Commission, above n 27.

⁴⁵ Ibid

⁴⁶ Riley, B., Larsen, A., Battersby, M. and Harvey, P. (2017) 'Problem Gambling and Female Prisoners Lifetime Prevalence' 17(3) *International Gambling Studies* 401.

⁴⁷ Ibid

⁴⁸ Hing et al, above n 30.

⁴⁹ Ibid

⁵⁰ Browne et al, above n 4. Problem gambling is the form expressed by the Problem Gambling Severity Index.

⁵¹ Ibid. This includes the Problem Gambling Severity Index, Diagnostic and Statistical Manual, and South Oaks Gambling Screening tools.

⁵² Ibid. See also Hing, N., Browne, M., Russell, A.M.T., Rockloff, M., Rawat, V., Nicholl, F. et al, 'Avoiding gambling harm: An evidence-based set of safe gambling practices for consumers, *PLoS ONE*:14 (10) e0224083 <https://doi.org/10.1371/journal.pone.0224083>

Combined, these more recent studies indicate that interventions should not simply be focused on people characterised as ‘problem gamblers’ and should instead widen their gaze to look at the broader impacts of gambling harm. This may be particularly the case if patterns and prevalence of gambling activity continue to shift in the wake of COVID-19, with the University of Sydney study referred to above suggesting that higher psychological distress and COVID-19 related financial difficulties were associated with increases in gambling expenditure.⁵³ With the majority of participants in this study expecting to return to their previous gambling activity and many fearful of the consequences as a result,⁵⁴ the potential is there for gambling harm to become even more widely felt across the Victorian community in the medium to longer term.

3 Gambling-related harms and co-morbidities

As a concept, the negative impacts of gambling, or ‘gambling harm’, has increasingly come to be recognised as a public health issue. In essence, a public health approach focusses on responding to an issue in the context of the health of populations, or sub-groups of populations, rather than focusing on individuals in isolation from their wider context.⁵⁵ This next section briefly highlights some of the ways in which this wider conceptualisation of gambling harm is shown to be associated with other co-occurring issues and vulnerabilities.

3.1 Entrenching disadvantage

Financial loss is clearly a major form of gambling harm. In particular, analysis of self-reported expenses on EGMs suggest that higher losses are associated with EGMs than with other gambling products and that, unsurprisingly, the longer gamblers spend on a machine, the more money they lose.⁵⁶ Most relevantly to criminal justice system contexts, however, international literature indicates that EGMs tend to be concentrated in socio-economically disadvantaged areas, where financial losses are, in turn, likely to have the greatest impact.⁵⁷

This aligns with Australian studies which point to a concentration of EGM venues in disadvantaged regions,⁵⁸ with the most disadvantaged communities more likely in turn to incur the highest gambling losses.⁵⁹ In 2015 – 2016, for example, gambling losses among EGMs situated in Greater Dandenong amounted to \$975.60 per adult, over six times higher than the corresponding rate of \$141.90 per adult in Boroondara.⁶⁰ In other words, communities living in some of the more socio-economically disadvantaged areas of Victoria appear to be experiencing much greater losses than those communities which are more likely to be able to *afford* these kinds of losses.

⁵³ Gainsbury et al, above n 11.

⁵⁴ Ibid

⁵⁵ Victorian Responsible Gambling Foundation, (2015) *Background Paper: Using A Public Health Approach in The Prevention of Gambling-Related Harm*, Victorian Responsible Gambling Foundation, Melbourne. At <https://responsiblegambling.vic.gov.au/documents/21/using-a-public-health-approach-in-the-prevention-of-gambling-related-harm.pdf>

⁵⁶ Rintoul A and Deblaquiere J (2019) *Gambling in Suburban Australia* (Research Report), Melbourne, Australian Institute of Family Studies) <<https://aifs.gov.au/agrc/publications/gambling-suburban-australia>>.

⁵⁷ Raisamo, S., Toikka, A., Selin, J. and Heiskanen, M. (2019) ‘The density of electronic gambling machines and the area-level socioeconomic status in Finland: a country with a legal monopoly on gambling and a decentralised system of EGMs’ 19 *BMC Public Health* 1198.

⁵⁸ Office of Gaming and Racing, Department of Justice. (2011) *Socioeconomic impacts of access to electronic gaming machines in Victoria: Effects on demand and communities*, Queensland University of Technology; Banks, above n 21.

⁵⁹ Brown, H. (2016) *A Review of Gambling-Related Issues For Local Government*, City of Greater Dandenong, p.4. At https://d3n8a8pro7vymx.cloudfront.net/gx/pages/2218/attachments/original/1568710146/Gambling_Related_Issues_for_Local_Government_2018_50123_.pdf?1568710146

⁶⁰ Ibid.

If socio-economic disadvantage is then further entrenched – or expanded – in the wake of the recent pandemic, as is likely to occur, this signals that financial loss as a form of gambling harm is likely to compound this disadvantage. This may in turn increase the risk that people will come into contact with the criminal justice system as a result.

3.2 Mental Health

While financial loss is the most obvious form of gambling harm, a broader array of gambling-related harms is increasingly being documented across a range of studies. For example, evidence indicates that gambling problems and mental health issues frequently co-occur, with rates of problem gambling tending to be elevated in people with diagnosed mental health conditions.⁶¹

Evidence further suggests that people with mental health issues may be particularly vulnerable to developing gambling problems in the first place. One study indicates that, while 59 per cent of those accessing mental health services did not gamble at all, 6 per cent experienced problem gambling and spent a monthly average of \$439.79 on gambling. Another 8 per cent were classified as moderate risk gamblers, who may experience a moderate level of problems and spend an average monthly amount of \$123.84 on gambling. Low risk gamblers made up 7 per cent of those accessing mental health services and spent a monthly average of \$50.32.⁶²

Evidence also points to the compounding impact of gambling on mental health issues and psychosocial disability. Practitioners report that many people experiencing mental health problems gravitate towards gambling as a way of managing their symptoms.⁶³ Rather than assisting, however, gambling can instead exacerbate poor mental health, as well as produce other gambling harms, such as financial loss and strained family relationships, which then compound poor mental health outcomes further.⁶⁴

Research also indicates that, while 90 per cent of mental health clinicians agree about the need to identify if a client has gambling problems, screening of clients for gambling remains a challenge. For example, studies have found that 33 per cent of clinicians ‘rarely’ screen clients for problem gambling; 29 per cent ‘sometimes’; and 23 per cent ‘never’ – suggesting that people with mental health and gambling issues are missing out on opportunities for positive interventions.⁶⁵ Given the likely impacts of the COVID-19 pandemic on mental health across the community – both in terms of exacerbating existing issues and triggering new ones – the relationship between mental health and associated gambling harm will need to be increasingly monitored.

⁶¹ Lubman, D., Manning V., Dowling N., Rodda, S., Lee, S., Garde, E., Merkouris, S. and Volberg, R. (2017) *Problem Gambling in People Seeking Treatment for Mental Illness* Victorian Responsible Gambling Foundation, Melbourne, p 17.. At <https://responsiblegambling.vic.gov.au/documents/61/research-report-problem-gambling-in-people-seeking-treatment-for-mental-illnes_XkVmN62.pdf >

⁶² Ibid, p 157.

⁶³ Rintoul and Deblaquiere, above n 56.

⁶⁴ Ibid.

⁶⁵ Lubman et al, above n 61, p 17 - 19.

3.3 Family violence

Clearly, another issue which will also require significant attention in the wake of the pandemic is recognition of family violence as a form of gambling harm. Resources produced by Women's Health in the North indicate that family violence is three times more likely to occur in families in which there are gambling problems, compared with families without gambling problems.⁶⁶ In some cases, family violence can precede gambling, with practitioners reporting that victim-survivors may turn to gambling as an escape or respite mechanism, while perpetrators may use gambling as a way of furthering their control.⁶⁷ Gambling can also increase both the frequency and severity of family violence, with primary drivers such as gender inequality and violence-supportive attitudes combining with other factors such as alcohol abuse and gambling to contribute to an increase in coercive control from perpetrators.⁶⁸

A systematic review and meta-analysis of multiple studies by Dowling and colleagues found that 38.1 per cent of gamblers reported being victim-survivors of intimate partner violence and 36.5 per cent being perpetrators.⁶⁹ A study in 2016 also found a statistically significant correlation between EGM density and police-recorded family violence rates among postcodes.⁷⁰ Importantly, the CIJ's audit of submissions to the Royal Commission into Family Violence for its 2017 report highlighted that family violence services saw integration between the sectors as vital to improving client outcomes.⁷¹

Further studies will be important to examine any increases in the links between changing patterns of gambling during the COVID-19 lockdown, the ongoing impacts of economic downturns and increases in family violence. This is particularly the case when reports indicate that rates of family violence have increased since the onset of COVID-19 – not only in contexts where family violence was already present, but where it had not been present before.⁷² Combining with financial impacts such as unemployment, increased gambling activity may therefore be a further contributor to what researchers are terming 'the shadow pandemic' in the context of COVID-19.

4 Pathways between gambling and crime

The CIJ's 2017 report explored the myriad pathways between gambling and offending. The most commonly recognised pathway, of course, involves gamblers resorting to offending, such as theft or drug trafficking, in order to recoup financial losses from gambling activity. This road directly from gambling to crime suggests a '**linear pathway**' – one with which the community is more likely to be familiar, but for which courts appear to have relatively little sympathy, as discussed further below.

⁶⁶ Women's Health in the North and Women's Health East (2017) *Increasing the Odds for Safety and Respect: A gambling and family violence issues paper*, Thornbury, Women's Health in the North, p 15, citing Suomi, A., Jackson, A.C., Dowling N.A., Lavis, T., Patford, J., Thomas, S.A., Harvey, P., Abbott, M., Bellringer, M.E., Koziol-McLain, J. and Cockman, S. (2013) Problem gambling and family violence: Family member reports of prevalence, family impacts and family coping, *Asian Journal of Gambling Issues and Public Health* 3 (13), 1-15.

⁶⁷ Ibid p 15; Campbell, above n 1, p 31.

⁶⁸ Women's Health in the North and Women's Health East, above n 36; Campbell, above n 1, p 30.

⁶⁹ Dowling, N., Suomi, A., Jackson, A., Lavis, T., Patford, J. Cockman, S., Thomas, S., Bellringer, M., Kaziol-Mclain, J., Battersy, M., Harvey, P. and Abbott, M. (2014) 'Problem Gambling and Intimate Partner Violence: A Systematic Review and Meta-Analysis' 17(1) *Trauma Violence Abuse* 43.

⁷⁰ Brown, n 59, p 21.

⁷¹ Campbell, above n 1, p 31

⁷² Pfitzner, N. Fitz-Gibbon, K. True, J. (2020) Responding to the 'shadow pandemic': practitioner views on the nature of and responses to violence against women in Victoria, Australia during the COVID-19 restrictions. Monash University. Report.

<https://doi.org/10.26180/5ed9d5198497c>

Beyond the linear pathway, the CIJ's research also highlighted '**dual pathways**' between gambling and contact with the justice system. The concept of a dual pathway derives from the CIJ's findings that, while gambling can lead to interaction with the justice system, concurrent gambling amongst those already in contact with the criminal justice system can in turn increase reoffending rates down the track.⁷³ Just as relevantly, the social isolation experienced by many people in contact with the criminal justice system may make the relative welcome of gaming venues appear especially inviting, in turn making them more vulnerable to experiencing gambling harm.⁷⁴

The CIJ's report also drew attention to the existence of '**convergence pathways**', where gambling problems are exacerbated by other factors, such as mental health issues, family violence or socio-economic disadvantage, and produce an increased likelihood of contact with the criminal justice system overall.⁷⁵ The CIJ also highlighted the need for more research into how gambling interacts with other factors which drive the disproportionate representation of Aboriginal and Torres Strait Islander communities in criminal justice systems.⁷⁶

Finally, the CIJ also identified studies the existence of '**coercive pathways**', involving intersections between family violence, gambling and crime. This can take the form of a gambler coercing their partner to participate in gambling, or using their partners' pay or Centrelink benefits to resource their own gambling, as noted above. It can also involve victim-survivors seeking respite from abuse in gambling venues and developing gambling problems as a result, as also noted above. Both these manifestations may lead victim-survivors of family violence into contact with the criminal justice system - either as a result of developing a gambling addiction themselves, or being left with the debt created by their partner's own gambling activity.

Beyond this, the relationship between particular communities, gambling and the criminal justice system is particularly complex and especially resistant to 'linear' explanations. For example, research by Le and Gilding identified a strong association between 'problem gambling', illicit drug markets (heroin and cannabis) and the experiences of women from Victoria's Vietnamese community. Drawing on a qualitative study with 35 Vietnamese women sentenced to custody as a result of drug related offences, this research found that more than half (18) entered the drug trade to address debts resulting from casino gambling.⁷⁷

Here we note that the authors of this study were careful not to suggest a cultural relationship between gambling and offending and more recent research regarding criminalised Vietnamese women has similarly questioned whether gambling behaviours are the primary cause of their offending. R-Coo Tran's analysis of "diasporic trauma and escape gambling", which involved interviews with Vietnamese community workers, highlighted complex and nuanced reasons for understanding the relationship between gambling and offending.⁷⁸

⁷³ Campbell, above n 1.

⁷⁴ Ibid; Rintoul and Deblaquiere, above n 56.

⁷⁵ Campbell, above n 1, p.49.

⁷⁶ Ibid.

⁷⁷ Le, R. and Gilding, M. (2014) 'Gambling and Drugs: The role of gambling among Vietnamese women incarcerated for drug crimes in Australia' 49 (1) *Australian and New Zealand Journal of Criminology* 134.

⁷⁸ Tran, R-Coo and Spivakovsky, C (2019) 'Criminalised Vietnamese Women, "Problem Gambling" and Experiential Rifts: Towards a Criminology of Diversity' *Theoretical Criminology* <<https://doi.org/10.1177/1362480619869925>>.

This recent study describes Vietnamese women attending casinos to escape family stress, relationship breakdown, and cultural gaps between them and their children. In this context, gambling becomes a “palliative refuge from stress and trauma,”⁷⁹ bound up with histories of trauma, including experiences of immigration.⁸⁰ This is a further and particularly nuanced conceptualisation of gambling as a consequence of other forms of harm, rather than as the driver of offending, or as a behavioural feature of specific communities.

5 Gambling and the justice system

5.1 Gambling and sentencing decisions

The CIJ’s 2017 report noted a disparity between the presence of gambling harm in the lives of many offenders and recognition of this by the legal system. The first way in which this disparity manifests is the absence of substantive legal argument, or evidence led by legal practitioners, about the role or impact of gambling in their client’s offending. The CIJ found that this was partially the result of clients’ reluctance to disclose gambling to their lawyers, as well as the result of lawyers’ reluctance to ask clients about gambling unless there were obvious reasons to do so.

Even where gambling activity has become part of legal arguments by legal advocates, the response from Australian courts across a number of areas of law has failed either to recognise gambling, or to do so in a constructive way. This appears to be the case regardless of the pathway travelled by people between gambling activity and the courts.⁸¹

More specifically, Victorian courts have rarely construed problem gambling as a sufficient reason to reduce or mitigate sentence. For example, in cases brought in the wake of the introduction of EGMs in the early 1990s, judges in the Victorian Supreme Court often expressed concerns about “opening the floodgates” to considerations of mitigation in relation to the emergence of gambling-related crime. Caution continued to be exercised in later years, with some decisions explicitly discounting problem gambling as a significant consideration in sentencing decisions.⁸²

While the acceptance of problem gambling as a factor in mitigation of sentencing was not entirely excluded, it appeared only as a rare exception in judicial decision-making. In the 2002 case of *DPP v Raddino*,⁸³ for example, the Victorian Court of Appeal found that the defendant’s background “constituted a degree of mitigation”. The background concerned a woman who had been the primary carer of her ill mother, who led a lonely life and who was introduced to pokies by her former partner – meaning that these other aspects of vulnerability appeared to attract the sympathy of the court, rather than the gambling activity itself.⁸⁴

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Campbell, above n 1, p 50 - 51.

⁸² Ibid.

⁸³ *Director of Public Prosecutions v Raddino* [2002] VSCA (8 May 2002)

⁸⁴ Campbell, above n 1, p 50 - 63.

The *Verdins* decision of 2007 created further potential for consideration of problem gambling, or gambling disorder. While this particular case did not consider gambling issues, the *Verdins* decision was significant in that it explicitly acknowledged that forms of mental impairment were relevant to sentencing. This could have meant that, when considered as a form of impairment, problem gambling could be relevant to future sentencing considerations - at least in theory.

Justice Redlich's decision in *R v Grossi* in 2008, however – in which the issue of the offender's problem gambling was very clearly raised - made it clear that the *Verdins* decision did not apply and that problem gambling did not generally warrant a reduction in the offender's moral culpability or temper the sentencing principle of deterrence. The *Grossi* decision has had a significant impact on subsequent case law and day to day court practice. As the CIJ heard in its 2017 research, whether intended or not, it led some criminal lawyers to abandon the possibility of raising their client's gambling problems in legal argument at all. This was in addition to reports from some lawyers practising in the Magistrates' Court that their reluctance to raise a client's gambling arose on the basis of a lack of predictability in judicial attitudes they had encountered – something many described as a “judicial lottery” - rather than specifically being mindful of the *Grossi* decision.⁸⁵

As part of the CIJ's 2017 work, the CIJ consulted with Justice Redlich about the implications of his 2008 decision. His Honour indicated that, while his influential statement in *Grossi*⁸⁶ did not close the possibility of raising problem gambling as a mitigating factor during sentencing, such outcomes were contingent on the particular facts of a case, as well as the status of scientific research on gambling disorder presented to the court. At the time of the CIJ's research, His Honour had found both to be wanting.⁸⁷

5.2 Gambling and civil contexts

Beyond the criminal context, the civil case of *Kavakas v Crown*, where the applicant Mr Kavakas raised a claim of unconscionable conduct against Crown Casino, the High Court's decision was influenced by similar factors. The most salient was the class of persons to which this gambler belonged, with Mr Kavakas being a “high roller” in the view of the court, which in turn noted:

Whatever a high roller's motivation may be, members of that class of gambler present themselves to the casino, and are welcomed by it in the ordinary course of business, as persons who can afford to lose and to lose heavily.⁸⁸

The court also added that there was no suggestion that the gambler played while intoxicated, or was an incompetent player, which led the court to rule against a finding of special disadvantage.

[The court] is not concerned here with a casino... preying upon a widowed pensioner who is invited to cash her pension cheque...and to gamble with the proceeds.⁸⁹

⁸⁵ Ibid.

⁸⁶ *R v Grossi* [2008] VSCA (2 April 2008)

⁸⁷ Campbell, above n 1, p.65; 80.

⁸⁸ *Kavakas v Crown* [2013] HCA (5 June 2013) [28]

⁸⁹ Ibid.

While the court seemed open to possibilities of greater flexibility in other cases, the court's emphasis on choice, as opposed to compulsion, suggested otherwise. For example, as noted in the judgement, Mr Kavakas had been diagnosed as a compulsive gambler and, although he sought treatment for gambling addiction, he went on to use his completion of the treatment as a way to negotiate his re-entry to the Casino. Ultimately, the court accepted evidence of these negotiations - including a proposal by Kavakas that he would self-exclude should he suffer a relapse - as proof of his capacity to undertake rational decision making.

The failure by Kavakas to disclose a relapse of his condition, and the fact that he attended events where he did *not* gamble, suggested control and autonomy, rather than compulsion, in the eyes of the court. The court also noted a lack of evidence showing a "continuously operating compulsion", which meant that his ability to self-exclude was intact, but had simply not been exercised.

The *Kavakas* case highlights further challenges in terms of courts employing the evolving science around gambling behaviour. For example, while the DSM-V describes pathological gambling as an "impulse control disorder", it does not distinguish between the inability to self-regulate and an *unwillingness* to self-regulate, or whether this unwillingness or inability manifests as part of any addiction. This distinction between inability and unwillingness, significant in terms of sentencing in criminal contexts,⁹⁰ proved to be just as significant in the civil context of the *Kavakas* decision.

Beyond *Kavakas*, the more recent 2018 Federal Court decision of *Guy v Crown Casino*⁹¹ suggests that other challenges may also impact on the integration of scientific understanding about gambling into legal considerations. A civil case brought against Crown Casino and Aristocrat Technologies for misleading and deceptive conduct⁹² and unconscionability, *Guy v Crown* demonstrates not only the difficulties of meeting legal tests, but the challenges inherent in drawing on expert evidence to incorporate clinical understanding of gambling addiction.

At the time that legal proceedings were on foot, Aristocrat Technologies was considered to be Australia's biggest EGMs manufacturer.⁹³ Unlike *Kavakas v Crown*,⁹⁴ however, which had involved a "high roller" gambler who lost millions of dollars, the applicant in *Guy*⁹⁵ was unemployed and receiving social security payments. Because the applicant's claim centred on arguments that EGMs were specifically designed to contribute to addiction, evidence about gambling addiction from lay and expert witnesses therefore formed a significant part of the applicant's case.⁹⁶ In particular, the applicant relied on three expert witnesses, one of whom was a registered psychologist who gave evidence in relation to gambling habituation or addiction, as well as the psychological impacts of playing EGMs.⁹⁷ Another gave evidence in relation to the psychological and psychosocial effects of problem gambling and treatment for individuals addicted to EGMs.

⁹⁰ Ramanaukas, above n 1.

⁹¹ *Guy v Crown Melbourne Limited (No 2)* [2018] FCA (2 February 2018).

⁹² *Competition and Consumer Act 2010* (Cth) sch 2 ('Australian Consumer Law'), S.18.

⁹³ Toscano, N, 'Former Gambling Addict Loses Landmark Poker Machine Case Against Crown, Aristocrat', 2 February 2018, *Sydney Morning Herald* (<<https://www.smh.com.au/business/companies/former-gambling-addict-loses-landmark-poker-machine-case-against-crown-aristocrat-20180202-p4yz9y.html>>).

⁹⁴ *Kavakas v Crown* [2013] HCA (5 June 2013).

⁹⁵ *Guy v Crown Melbourne Limited (No 2)* [2018] FCA (2 February 2018).

⁹⁶ *Ibid.*

⁹⁷ *Ibid* [23].

This evidence was used to argue that aspects of EGM design contributed, in a causal sense, to gambling addiction. Crown Casino and Aristocrat Technology also adduced opinion evidence from two expert witnesses. The court then proceeded to consider the following questions:

- to what extent is habituation consistent with ‘gambling disorder’ in the DSM-V;
- to what extent is ‘addiction’ consistent with DSM-V;
- to what extent is it possible to say that classic or operant conditioning or dopamine effect play a role in development of habituation, addiction or gambling disorder;
- to what extent is it possible to form conclusions as to the likelihood of a particular person becoming ‘habituated’;
- to what extent is it possible to identify what is or are the causes of a particular person becoming ‘habituated’ or ‘addicted’ or developing a ‘gambling disorder’ in respect of EGMs;
- to what extent is it possible to identify ‘design features’ of an EGM as a cause of a particular person becoming addicted or developing gambling disorder’;
- to what extent is it possible to say that one or more of the features of EGMs are a cause of any person becoming addicted; and, more importantly
- to what extent does a person who is ‘habituated’ or ‘addicted’ or is suffering from a ‘gambling disorder’ (a) perform voluntary acts when playing an EGM and (b) is able to make judgements as to her own best interests...⁹⁸

The presiding judge found that, while it was not necessary to come to a definitive view on these questions, she preferred the respondent’s experts to that of the applicant.⁹⁹ In particular, Her Honour Justice Mortimer found that the evidence of one particular expert witness failed to meet professional academic standards. Nevertheless, Her Honour found that the possibility of proving the relationship between EGM design and compulsive gambling was not closed – indicating that, had the applicant’s expert witnesses been found to be more persuasive, then the relationship between EGM design and gambling addiction may have been more likely to have been accepted.

*The fact that I have found the applicant has not proven her claim should not be seen to diminish the importance of the issues she raises...research into the possible relationship between the design and features of EGMs and the development of addiction to gambling, or the development of problematic attitudes and behaviour to gambling, is a new field, where some researchers...have identified justifications for further work exploring this relationship.*¹⁰⁰

⁹⁸ Ibid [274]

⁹⁹ Ibid [283]

¹⁰⁰ Ibid [302]

Guy therefore highlights the need for all parties to be conscious of the quality of expert evidence. A failure to do so may inadvertently foil opportunities to test the interaction of clinical and legal conceptualisations of gambling. These are opportunities which Justice Redlich suggested in consultations with the CIJ for its 2017 report were essential to seize and which may present themselves with more frequency in the wake of the current economic downturn.

5.3 Gambling programs and treatments inside prison

Beyond the courts, the availability of gambling services and support inside prisons also remains scarce. A 2013 Victorian Responsible Gambling Foundation report noted a range of barriers to identifying gambling harms amongst a prison's population – including that, instead of dedicated, specialist gambling services in correctional settings, service responses and support are weighted towards alcohol and drug use and mental health issues.¹⁰¹ Research in Canada similarly found a lack of system-wide services for gambling, identifying only two peer-reviewed published studies dedicated to evaluating treatment programs within custodial settings.¹⁰² Such findings indicate that, even where programs are operating, there is a lack of information and evaluation about their effectiveness. New research from Finland further notes that, while awareness of gambling problems may be generally well recognised among correctional staff, a lack of a systematic framework for identification of gambling problems hinders treatment, with staff frequently feeling ill-equipped with adequate training and information about gambling harm.¹⁰³

5.4 Help-seeking among gamblers inside and outside prisons

While studies of help-seeking behaviour among people with gambling problems have increased in recent years, to date research has tended to focus on the barriers to help-seeking, such as internal feelings of shame, stigma, fear and ambivalence. Research also suggests that gamblers tend to have a distorted sense of their capacity to manage their challenges on their own, with a 2014 study by Gainsbury and colleagues, which surveyed 730 Australian gamblers, finding that individuals tended to have low awareness about treatment options.¹⁰⁴ Other factors, such as reluctance to discuss gambling problems with doctors; a lack of available local services; and cost of treatment, also posed barriers to help-seeking.¹⁰⁵

Research into help-seeking behaviour among prison populations similarly indicates that most people in custody who have experienced gambling harm are unlikely to self-identify or actively seek help.¹⁰⁶ Some emerging research suggests, however, that help-seeking for gambling among women in prison, in particular, might be slightly higher than help-seeking in the general population. For example, Riley's 2017 study with women in prison found that one in five women with gambling problems had previously sought help for their problem.¹⁰⁷

¹⁰¹ Perrone et al, above n 1, p 106.

¹⁰² Turner, N., McAvoy, S., Ferentzy, P., Matheson, F., Myers, C., Jindani, F., Littman-Sharp, N. and Malat, J. (2017), 'Addressing the Issue of Problem Gambling in the Criminal Justice System: A series of Case Studies' 35 *Journal of Gambling Issues* 74.

¹⁰³ Castren, S., Lind, K., Jarvinen-Tassopoulos, J., Alho, H., and Salonen, A. (2019) 'How to Support Prison Workers' Perceived Readiness to Identify and Respond to Possible Gambling Problems: A Pilot Study from Two Finnish Prisons' 15 (4) *International Journal of Mental Health*, 316.

¹⁰⁴ Gainsbury, S., Hing, N. and Suhonen, N. (2014) 'Professional Help-seeking for Gambling Problems: Awareness, Barriers and Motivators for Treatment' 30 (2) *Journal of Gambling Studies* 503.

¹⁰⁵ Itapuisto, M. (2019) 'Problem Gambler Help-Seeker types: Barriers to Treatment and Help Seeking Processes' 35(3) *Journal of Gambling Studies* 1035.

¹⁰⁶ Banks et al, above n 21; Lahn, J. and Grabosky, P. (2003), *Gambling and clients of ACT' (Australian Capital Territory) Corrections: Final Report* (Canberra, Australia: Centre for Gambling Research, Australian National University)

¹⁰⁷ Riley et al, above n 47.

5.5 Prison and issues of financial debt

Beyond the capacity of people in custody to identify or disclose gambling harm – or to seek help for it – many people enter custody in significant debt, which then accumulates during the time they are incarcerated.¹⁰⁸ The nature of this debt varies, but financial counsellors – who are often a useful entry point not only for assistance with debt, but for identification of gambling harm - indicate that the most stressful debts experienced by those in custody are those owed to government agencies. This includes debts to Centrelink, housing departments, the Child Support Agency, the Tax Office and state agencies for fines and infringements.¹⁰⁹ Other studies have indicated that women going into prison with pre-existing debt had higher rates of recidivism post-release.¹¹⁰

A 2018 Financial Counselling Australia report identified numerous barriers prohibiting people in prison from addressing financial stress. This report found that a combination of low literacy and numeracy with high levels of trauma and mental health issues mean that many do not have the capacity to write letters to creditors; complete appropriate forms; or self-advocate, particularly when issues such as housing or reunification with children may be understandable priorities.¹¹¹ Given that identity documents are usually a first step to addressing debt, this poses a further challenge, given that people in custody generally do not have such documentation with them.¹¹² Further, many understandably assume that having access to cash is the only way to address debts, rather than through steps which could waive the debt or put the debt on hold. This has a stifling impact on motivation and self-advocacy around issues perceived as too hard to address.¹¹³

Financial counsellors also report that the stigma attached to financial stress and debt, including gambling-related debt, is often overwhelming and is particularly reported among Aboriginal and Torres Strait Islander populations.¹¹⁴ This was affirmed in a 2017 study by Ogloff and colleagues involving Aboriginal women in custody who set out the major factors and stressors impacting their own social economic wellbeing. Of the 12 factors identified, 20.3 per cent of participants indicated that gambling problems, in particular, contributed to general stressors over a 12-month period.¹¹⁵

Administrative processes also impede people gaining access to assistance. Financial counsellors must book appointments for in-person or phone meetings, with authorities then signed by clients to allow financial counsellors to advocate on their behalf to creditors.¹¹⁶ Where clients in custodial settings do not have paperwork from a creditor and cannot remember relevant account details, financial counsellors report difficulties negotiating favourable outcomes.¹¹⁷ When people in custody are moved around, sometimes at short notice, documents may also not follow efficiently, resulting in them not being able to meet creditor deadlines.¹¹⁸

¹⁰⁸ Financial Counselling Australia, (2018) *Double Punishment: How People in Prison Pay Twice* p 13
<<https://www.financialcounsellingaustralia.org.au/docs/double-punishment-how-people-in-prison-pay-twice-2018/>>

¹⁰⁹ Ibid.

¹¹⁰ Ibid; Trotter, C. and Flynn, C. (2016) 'Literature Review: Best Practice with Women Offenders' (Monash University Criminal Justice Research Consortium) <<https://research.monash.edu/en/publications/literature-review-best-practice-with-women-offenders>>.

¹¹¹ Financial Counselling Australia, above n 108.

¹¹² Minter, E, 'Debt Trap: People imprisoned for crime are being punished twice', *Sydney Morning Herald* (6 July 2018)
<<https://www.smh.com.au/national/debt-trap-people-imprisoned-for-crime-are-being-punished-twice-20180705-p4zplh.html>>.

¹¹³ Financial Counselling Australia, above n 108, p.18.

¹¹⁴ Ibid

¹¹⁵ Ogloff, J. R. P., Pfeifer, J. E., Shepherd, S. M., and Ciorciari, J. (2017) 'Assessing the Mental Health, Substance Abuse, Cognitive Functioning, and Social/Emotional Well-Being Needs of Aboriginal Prisoners in Australia' 23 (4) *Journal of Correctional Health Care*, 398.

¹¹⁶ Centre for Innovative Justice, above n 8.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

Overall, the general lack of awareness about financial counsellors can also frustrate their role in assisting people in prison with issues of broader debt. As Financial Counselling Australia reports, correctional staff and people in custody are often largely unaware of the work performed by financial counsellors and how their work could assist.¹¹⁹ With issues of debt unlikely to diminish in the economic downturn, it therefore becomes more important than ever for different components of the justice system to identify how and where positive interventions may be required.

6 Improving the Justice System's Response

Despite these multiple challenges across the criminal justice system – challenges which the updated review of the literature and case law conducted for this Issues Paper suggests persist – opportunities for positive intervention can still be seized.

6.1 Police

In its 2017 report, the CIJ highlighted the potential usefulness of addressing gambling problems at the point at which gamblers come into contact with police. Although police are not currently obliged to ask an alleged offender about the factors which may have contributed to an offence, greater inquiry or assessment may provide potential for data collection about gambling-related crime; early detection of gambling; and the possibility of referring gamblers to relevant services.

The risks which accompany any increased policing intervention, however, were also stressed in the CIJ's 2017 report. This is because, while contact between gamblers and police may theoretically provide opportunities for positive interventions, arrest for offending which is directly related to gambling is also often associated with suicidal ideation. This signals the need for an abundance of caution when asking police to inquire about gambling behaviour.

Since the CIJ's 2017 report was released, a community collaboration in the UK, including Cheshire Constabulary, implemented a pilot program which screened for problem gambling at the point of arrest.¹²⁰ The program's aim was to refer gamblers to relevant services, divert them from criminal justice settings and reduce recidivism.¹²¹ The screening process involved four questions drawn from the Gambling Aware Screening Tool General and allowed officers to consider whether referrals to a gambling counsellor would be of benefit.¹²² The tool was designed for non-specialised client-facing services to identify whether a person is affected by problematic gambling.¹²³

Key findings from the pilot indicated that 13 per cent of all people arrested and surveyed in Cheshire experienced problem gambling. These findings also suggested that 'problem gambling' levels in the population of people arrested were 13 times higher than that of the general population in England.¹²⁴ The pilot involved over 250 practitioners working in a range of agencies associated with the criminal justice system and incorporated screening of 760 people. Of those screened, however, only 29 elected to receive therapeutic intervention.¹²⁵

¹¹⁹ Financial Counselling Australia, above n 108, p 21.

¹²⁰ Platt, M., Faint, B., Reddy V and Kenward, M (2017) *Arresting Problem Gambling in the UK Criminal Justice System: Raising Awareness and Screening for Problem Gambling at the Point of Arrest* <<https://www.gamcare.org.uk/app/uploads/2017/11/HOWARD-LEAGUE-WINNER-CRIMINAL-JUSTICE-BROCHURE.pdf>>.

¹²¹ Ibid.

¹²² Centre for Justice Innovation (2018) *Gambling Screening Pilot* <<https://justiceinnovation.org/project/gambling-screening-pilot>>

¹²³ Ibid.

¹²⁴ Platt et al, above n 120.

¹²⁵ Ibid

While such findings suggest that screening could be adopted by police in partnership with other organisations in the Victorian context, its usefulness should therefore not be overestimated. As indicated in the above study, only a very small proportion of those screened opted to receive intervention. Further, any potential benefits of screening at the point of arrest should be carefully balanced with the potential risks of stigmatising certain cohorts in the community, particularly those who may already be over-policed or disproportionately criminalised.

6.2 Legal Practitioners

As highlighted in the CIJ's 2017 research, a crucial opportunity for the criminal justice system to function as a positive intervention lies in the hands of legal practitioners. This is because, where lawyers become aware of the role of a client's gambling in their offending, either as a direct or secondary cause, they will be in a better position to make appropriate referrals – to address the gambling, as well as its associated harms.

Similarly noted in the CIJ's report, however, some lawyers have greater levels of awareness of this intersection than others.¹²⁶ Providing information kits tailored for the criminal justice sector is therefore a further way to improve the intervention of the justice system with people experiencing gambling harm. As an example, the NSW Office of Liquor and Gambling developed targeted information for lawyers, including lists of referral links, as well as explanations about the relationship between gambling and contact with the justice system.¹²⁷

Opportunities for positive intervention may also lie in lawyers including gambling and related harms as part of initial client assessments, particularly given that connecting clients to counselling treatment prior to their court appearance may have a positive impact on the outcome of their case. Here we note that the CIJ is currently in discussions about the development of a program of this kind in public legal settings in Victoria. Consultations with Wesley Mission Legal Service in NSW - a service which provided specialised multidisciplinary support for people experiencing gambling harm - highlighted Wesley's preference for clients to be connected with appropriate therapeutic and financial counselling assistance prior to seeing a lawyer.¹²⁸

6.3 Therapeutic Jurisprudence

The willingness of lawyers to identify and raise their client's gambling activity will stay constrained, however, while courts continue to be reluctant to recognise gambling activity as having played a fundamental role in a person's contact with the law. This in turn means that avenues for positive intervention remain limited, despite the fact that, in 2006, the Australian Law Reform Commission called for links to rehabilitation programs for perpetrators of gambling-related crime.¹²⁹

Nevertheless, 2019 research published by Adolphe and colleagues suggests that indirect steps may have begun to be taken towards the adoption of rehabilitative responses. For example, in NSW, Section 44 of the *Crimes (Sentencing Procedure) Act 1999*¹³⁰ requires a court to set a non-parole period, unless there are sufficient reasons not to do so.

¹²⁶ Campbell, above n 1, p.50.

¹²⁷ Ibid, p 66.

¹²⁸ Ibid, p.65; 80.

¹²⁹ Australian Law Reform Commission (2006) *Same Crime, Same Time: Sentencing Federal Offenders*, Final Report, ALRC Report 103.

¹³⁰ *Crimes (Sentencing Procedure) Act 1999* (NSW) S.44.

Where a judge makes a finding of ‘special circumstances’, however, this allows the court to reduce the minimum period which a person must serve in prison and allow them to apply for parole sooner.¹³¹ The research by Adolphe and colleagues identified that, out of 161 gambling-related offences in NSW and SA court records between 1990 and 2019, special circumstances were found in 66 cases. While a custodial sentence was imposed in these cases, the non-parole time was lowered on the basis of the offender’s need and willingness to engage in gambling treatment. The age and/or other psychiatric issues of the individual were also taken into consideration.

Although not counting as explicit mitigation in an offender’s sentencing, the use of ‘special circumstances’ is arguably one example of an indirectly therapeutic approach to gambling-related crime.¹³² As Adolphe explains, judges who make a finding of ‘special circumstances’ can do so without in-depth consideration of the psychological aspects of gambling addiction.¹³³ This enables the offender to access gambling treatment in the community earlier than they would otherwise, meaning that both lawyers and judges can opt for a more rehabilitative approach while scientific understanding of gambling addiction continues to evolve.¹³⁴

South Australia’s dedicated gambling list in its Treatment Intervention Court provides a further example of therapeutic approaches to gambling-related crime. This program involves intake, assessment and multiagency liaison by Courts Administration Authority staff; specialist gambling therapy provided by Statewide Gambling Treatment Services; case management, counselling, court support and restorative justice processes offered by Officer Aid Rehabilitation Services Community Transitions; and bi-monthly court reviews and sentencing.¹³⁵

According to an evaluation of this specialist list, to be eligible for the program offenders must have been charged with a criminal offence; plead guilty to their charges; and have committed an offence related to problem gambling.¹³⁶ Rather than undergo a period of incarceration, however, offenders then receive a suspended (non-custodial) sentence of appropriate length for their offence and a good behaviour bond, as well as being diverted for treatment, case management, counselling, court support and restorative justice programs.¹³⁷

Low referrals in the first six months of this program suggested a low level of awareness among defence lawyers and the legal profession more generally. The simple existence of the dedicated list and its associated recognition of gambling-related crime, however, has begun to raise awareness of the “nexus between gambling behaviour and offending behaviour”.¹³⁸ Given that the eligibility criteria is relatively broad, the program is also capable of servicing a wide range of gambling-related offences. This includes economic crimes and ostensibly un-related crimes, such as driving while disqualified.

¹³¹ Judicial Commission of NSW, *Sentencing Bench Book – Sentencing Procedures for Imprisonment*

<https://www.judcom.nsw.gov.au/publications/benchbks/sentencing/setting_terms_of_imprisonment.html>.

¹³² Adolphe, A, van Golder C. and Blaszyznyski, A (2019), ‘Examining the Potential for Therapeutic Jurisprudence in Cases of Gambling-Related Criminal Offending in Australia’ 31(2) *Current Issues in Criminal Justice* 236, p 240.

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Office of Crime Statistics and Research, Government of South Australia (2017), *Gambling Intervention Program Trial: Evaluation Report* p.8, cited in Adolphe above n 132.

¹³⁶ Ibid

¹³⁷ Ibid, p.21.

¹³⁸ Ibid, p.8.

It also can include violent offences, which recent research suggests is committed by ‘problem gamblers’ at higher than expected rates, but is likely to be subject to under-reporting.¹³⁹ A broadened scope in turn is more likely to facilitate access to treatment, including to wider services which can address the complex issues intersecting with gambling harm.

Although the operation of this specialist court list has been relatively brief, evaluators and the presiding Magistrate have deemed the experience a major success. From July 2015 to April 2017, 27 offenders were referred for the gambling intervention run by the court. Of those referrals, 23 defendants were accepted into the program (96 per cent).¹⁴⁰ In terms of completion rates at the time of the evaluation, 11 had completed therapy and 10 were still in treatment. Only one person had withdrawn and opted to be sentenced without completing the program.¹⁴¹ The evaluation also found that all gamblers who accepted intervention had experienced a reduction of gambling harms across the course of treatment. Ten participants had their matters finalised, 9 of whom received a non-custodial sentence, a further indication of the program’s legal and economic benefits.¹⁴²

6.4 Corrections and post-release

Although the CIJ’s 2017 report did not make specific recommendations for correctional facilities and parole boards, it nevertheless encouraged the continued development of mechanisms to link gamblers more effectively with support across multiple agencies in the criminal justice system. Even where specialist treatment is available in custodial settings, however, studies have found that not all eligible people in prison were being referred to gambling treatment support services or, where they were referred, were finding it useful.¹⁴³ Thorough program evaluation is therefore critical to delivering effective gambling services in the criminal justice system and in custody.

Linking prison populations with gambling support and treatment in custody is also critical for building a bridge beyond custodial settings. Training of prison staff and personnel to identify gambling harm among those in contact with the criminal justice system are similarly key. Given the stigma associated with disclosure of gambling – as well as the potential for people with gambling problems to assume that they may be able to address issues on their own - a further way to improve the response of justice systems to the interrelated issues of gambling and crime is to bolster financial counselling services in prisons.¹⁴⁴

One positive example of this has been the Centre for Innovative Justice’s delivery of financial counselling services for women at Dame Phyllis Frost Centre (DPFC), Victoria’s maximum security women’s prison. In partnership with MHLC’s Inside Access Program, the CIJ’s pilot involved the provision of weekly information sessions on debt management and credit reports; one on one appointments; and casework.

¹³⁹ Adolphe, et al, above n 6, 408.

¹⁴⁰ Adolphe et al, above n 132.

¹⁴¹ Ibid p.15.

¹⁴² Ibid p.24.

¹⁴³ Perrone et al, above n 1.

¹⁴⁴ Financial Counselling Australia, above n 108, p.22.

The CIJ's pilot collaborated with other financial counsellors providing targeted services into DPFC,¹⁴⁵ although it worked primarily with women on remand, as this was identified as a service gap. The CIJ's financial counselling pilot found that building rapport with people in custody, including through continuity of service, was crucial to effective service provision, as well as to the development of trust. The earlier that referrals to the financial counsellor could occur in a person's time in custody, the earlier that work could commence – including through the delivery of 'quick wins' which would contribute to this sense of trust and confidence.

This in turn enabled the disclosure of a spectrum of gambling harms and associated referrals to appropriate services. For example, of the 110 clients seen over a 10 month period by the CIJ's pilot service, 39% disclosed some form of gambling harm, including harm experienced as a result of a family member's gambling. Of that cohort, 72% in turn identified gambling as having a direct relationship with their offending, suggesting a more significant form of problem gambling.¹⁴⁶ Referrals were then able to be made to relevant Gambler's Help support in custody, or in the community where the client were nearing release.

Although provision of financial counselling is not formally linked with other services in custody, including Gambler's Help therapeutic services, this pilot demonstrated the value of greater alignment of financial counselling and therapeutic gambling counselling services to enable more opportunities for positive intervention. Just as importantly, it signalled the value of linking clients with relevant services in the community post-release. Important to note here are findings from a 2020 report by Financial Counselling Australia which suggests that a significant increase in the demand for financial counselling services is resulting in unmanageable caseloads, stress and burnout across the profession. Any introduction of financial counsellors within the criminal justice system should therefore be cognisant of these challenges.¹⁴⁷

7 Conclusion

Given that opportunities for gambling and associated harm may be increasing - especially through the combination of new online gambling platforms, as well as through the impact of a serious economic downturn in the wake of COVID-19 – the need to mitigate the likelihood of further gambling harm is becoming more apparent.

As this Issues Paper aims to highlight, this includes recognising contact with the criminal justice system as a form of gambling harm and, where relevant, using this contact as a form of positive, rather than negative, intervention. Possible windows for intervention at the front end of the justice system include the potential introduction of gambling screening tools at the point of arrest to link people with referrals to treatment services, as well as raising awareness amongst legal practitioners about the intersection of gambling and crime in the lives of their clients to ensure appropriate referrals and support.

¹⁴⁵ At the time these included financial counsellors from Good Shepherd, the Australian Vietnamese Women's Association and Banyule Community Health.

¹⁴⁶ See a discussion of these issues in a recent webinar hosted by the CIJ, Centre for Innovative Justice, above n 8.

¹⁴⁷ Financial Counselling Victoria, (2020) *Counting the Costs: Report on financial counsellor stress and work overload* <<https://fcvic.org.au/publications/counting-the-costs-report-on-financial-counsellor-stress-and-work-overload/>>.

Proposals for addressing gambling harm at the middle stages of a gambler's interaction with the criminal justice system include reduction in the non-parole period by way of 'special circumstances'; the adoption of a specialist gambling streams to divert offenders from custody and facilitate gambling treatment; and, more generally, courts considering the relevance of emerging clinical understanding of gambling to mitigate sentence where appropriate. This includes the imposition of community-based, rather than custodial, sentences as recommended by the Australian Law Reform Commission nearly 15 years ago. Here the CIJ notes that any shift in judicial views from seeing gambling as a 'choice', rather than as a form of compulsion, will depend considerably on an appropriate test case being run before a relevant court.

Measures relevant to the back end of the criminal justice system include increasing access to quality gambling treatments in prison, as well as facilitating awareness of, and access to, financial counsellors at the beginning and towards the conclusion of a person's time in custody, as the CIJ's pilot program so clearly confirmed.

While clinical assessments of gambling harm wait to be fully recognised by Australian courts - including through the appropriate alignment of evidence and legal argument - criminal justice system contact should not see this harm further compounded by the justice system's response. Instead, people at the intersection of gambling and offending need to experience the justice system as a positive intervention – particularly when the current economic climate means that justice-related gambling harm is likely to become more acute in the months, if not years, ahead.

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