

Nothing left to lose

by Margie Law



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not ordinarily do, that is,
committing serious crimes,
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problem that leaves them
with nothing left to lose.*

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Tasmanians are losing more money every year to gambling. In 2007-08, \$294 million was lost and most of this went through poker machines (Tasmanian Gaming Commission 2009); nearly half the money was lost by people with a gambling problem (Productivity Commission 2009). Of the people who gamble regularly one in five are already experiencing or are likely to experience problems with their gambling (Department of Treasury and Finance 2008).

There is a link between problem gambling and crime. In 1999, the Productivity Commission described the path of having a win, playing more regularly, losing more money, 'chasing' losses, and eventually committing a crime. The Commission concluded that 'once a problem gambler has committed a gambling related offence, they generally continue to do so until they are discovered' (Productivity Commission 1999, p. H5). A survey of 400 clients of problem gambling agencies cited by the Productivity Commission in 1999 found that 50% of clients had at some time committed a gambling-related crime. Tasmanian research into the experiences of people on low incomes who have gambling problems uncovered stories of people stealing essentials such as nappies and baby formula because of a partner's gambling problem; of family members paying back stolen money so there were no legal proceedings; and of shoplifting by eating food directly from the shelves in supermarkets because gambling left insufficient money to purchase food (Law 2005).



In common with so many others who have committed like crimes, you deluded yourself that the next gamble would result in a win that would enable you to repay the money that you had taken.'

Supreme Court Judge, Tasmania
(The State of Tasmania v Mitchell,
Underwood J, 26 May 2004 (Sentence))



You had a gambling problem, as a result of which you wasted large amounts of money and gained no benefit from committing this crime.

Supreme Court Judge, Tasmania
(The State of Tasmania v Shearing, Blow J,
14 July 2008 (Sentence))



Methodology

This research looked at all cases on the Tasmanian Supreme Court database for the period January 2004 to December 2009 where the offender had a gambling problem, and reviewed the comments on passing sentence for those cases where the gambling problem was clearly linked to the crime. For the purposes of this research, a 'gambling problem' has been determined to exist where the judge has determined it to be so and made the gambling problem the subject of comments on passing sentence.

The limitations of this research are that it does not include information gained from case files or interviews. This report does not include cases heard in the Magistrates Court as the comments on passing sentence from those cases are not available. This means that of all the crimes relating to gambling which have been before the Tasmanian courts, only the more serious crimes, which are heard in the Supreme Court, are reviewed here.

An overview of the cases

From January 2004 to December 2009, there were 41 cases heard in the Tasmanian Supreme Court where the offender had a gambling problem which was linked to the crime for which they were being tried. In these 41 cases gambling was cited as being the main reason, or in two of these cases one of the reasons, for the crime being committed. (In a further three cases over the same period the judge commented on the presence of a gambling problem in the defendant's life but made no comment on any link between the gambling problem and the crime for which the defendant was being tried. Those three cases are therefore not included in this discussion.)

A profile of the defendants

Of the 41 cases where gambling was cited as a reason for the offence, there were 28 men and 13 women offenders.

Forty immediate family members were adversely affected by the offence (25 dependent children, 14 partners and one dependent mother)¹. In addition, in their comments the judges mentioned that adult children, parents, extended family and work mates had been affected.

Half the offenders were employed at the time of the offence². Most of the cases involved defendants who were people of working age, between 36 and 55 years

1. In 22 cases there was no mention of marital status and in 20 cases there was no mention of whether or not there were dependents.

2. Ten cases did not specify whether or not the person was employed.

old. Some people were in senior management positions or in positions of financial responsibility, including treasurers, lawyers, financial advisors, site managers and security staff.

Thirteen of the offenders were also described by the judges as having a drug and alcohol problem. In one case the judge determined that the gambling problem led to drug and alcohol problems, in one case that a drug problem led to gambling and in four cases the judge noted that the defendant trafficked drugs to raise money for gambling.

In six cases the court documents described the defendants as suffering from depression, schizophrenia, post traumatic stress disorder, anti-social personality disorder and/or bipolar disorder.

Half the cases involved defendants who had no prior convictions but in their determinations the judges stated that it was the defendants' gambling problems that had led them to commit these, their first offences.

Crime and punishment

A total of \$6.8 million was stolen in cash or goods or lost in damages to property, with the largest sum being \$4.5 million and the smallest \$539.

In most cases, the person was imprisoned as punishment for the gambling-related crime. Of the 41 cases, in 35 instances the person received a custodial sentence, with six of these being for violent crimes (armed robbery or arson) to which the gambling was related.

Six of those imprisoned had dependent children. Apart from one mention of a child being put into foster care, no mention was made by the judges of what might happen to dependents. Of the six not imprisoned, five had dependents.

A total of 477 months' incarceration (or 40 years) was handed down to these 41 offenders (before they would be eligible for parole). Twenty three sentences were for less than a year (before the offender would be eligible for parole).

The cost to the state of the minimum 14,600 days of imprisonment (that is, before each person would be eligible for parole) is estimated at \$3.8 million (at \$263 per prisoner per day) (Department of Justice 2009a, p.47). This figure excludes police and court costs and the costs of providing foster care and support to displaced children.

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The increase in crime directly attributable to gambling has been marginal... The view from the Bench is that gambling is a major problem in the community but it is largely hidden from the Courts.

(Jelena Popovic, Deputy Chief Magistrate in Victoria, quoted in Productivity Commission 1999, p. H20).

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***At the time of the crimes he was
wasting his money on alcohol and
gambling.***

Supreme Court Judge, Tasmania
(The State of Tasmania v De Vellis, Crawford
J, 10 May 2007 (Sentence))



Fourteen people received counselling for problem gambling either prior to committing the crime or as a result of being arrested; in one case the judge directed that problem gambling counselling was required as part of the sentence.

In most cases the type of gambling was not mentioned.

Gambling crime

This overview of cases involving gambling-related crime raises several important questions.

It is striking that in the last six years, 21 people who had no prior convictions committed serious crimes because they had a gambling problem. In all 21 cases involving first offenders, the crime was not violent. Prior to their conviction, the majority of these people were employed and often held positions of trust. They were mostly people with families and dependent children. In many cases the judges' comments describe defendants who were under stress from work and family pressures and had turned to gambling to relieve stress; what they got instead was escalating debt and a prison sentence. What went wrong for these people?

In the cases reviewed the defendants were predominately men (28 men compared to 13 women). Why are men more likely to commit a serious crime because of problems with gambling than women?

Nineteen of the cases involved defendants who the judge accepted had a drug or alcohol problem (13 cases) or a mental illness (six cases). Drugs, alcohol and mental illness are all likely to impair the person's decision-making capabilities when gambling and their decision-making at the time of committing a crime. Some forms of gambling, in particular poker machines, are designed to help people 'zone out' so that they can 'escape'. When people seek help for drugs, alcohol or mental health problems are they assessed for possible gambling problems? Are current gambling harm minimisation measures adequate?

Some of the people who found themselves for the first time in front of a judge in the Supreme Court were unemployed or on the Disability Support Pension. The judges' comments describe defendants who had experienced long-term hardship including chronic illness, chronic pain, isolation, disability and long term unemployment. What supports are in place for people experiencing complex problems who use gambling to escape?

This research does not capture all gambling related crimes. Gambling problems do not always come up in court, even when it is a major causal factor in the person's life. This report does not discuss minor crimes, or summary offences, that are heard in the Magistrates Court, nor does it discuss the many crimes that remain undetected, unreported or that are covered up by relatives to protect families.

What is also hidden is the true cost of gambling. We know from these stories that \$6.8 million was stolen or lost in damages. The cost to the state of imprisoning these 35 people was at least \$3.8 million. In addition to these costs are the costs of police, court proceedings and foster care and related costs for dependants. And, significantly, for the offenders and their families there are costs of lost income, loss of assets (in some cases their homes), health costs and for their children, the loss of their parent.

This paper does not argue that crimes should not be punished. But until public policy truly protects people from an activity that can cause such devastating harm, public policy is tricking people into thinking that gambling is a harmless activity. The gambling industry knows how to market its products to encourage people to gamble and to keep on gambling and we know that regular gambling is more likely to lead to gambling problems than occasional recreational gambling. What the review of these cases clearly shows is that ordinary people are doing things they would not ordinarily do, that is, committing serious crimes, because of a gambling problem that leaves them with nothing left to lose.

Unfortunately the cases heard in the Supreme Court in Tasmania are repeated in the stories collected in many other studies.

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The catalyst for your offending was your gambling. You began with having just a social bet... you were feeling pressure at work and became depressed. Your rate of gambling increased. You were using it as a stress relieve... Your gambling spiralled out of control and you began to steal to cover the addiction. The stealing escalated over time. You used significant parts of your income on gambling and additionally borrowed large amounts which were also lost.

Supreme Court Judge, Tasmania
(The State of Tasmania v Shirley, Tennent J,
30 May 2008 (Sentence))

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*All of the money has been spent
or gambled away...there is no
suggestion that he has acquired
or retained any significant assets.*

Supreme Court Judge, Tasmania
(The State of Tasmania v Rothall, Blow J, 10
September 2008 (Sentence))



Recommendations

Tasmania has trialled a therapeutic jurisprudence approach for offenders with mental illness and drug and alcohol problems. This approach promotes the idea that the legal system can be used to help people to address issues and problems that underlie the offending behaviour. A therapeutic jurisprudence approach helps to look for solutions to an individual's problems and recognises that social problems may require social rather than legal solutions.

The goal of the Court Mandated Diversion Program for drug offenders in Tasmania is 'to break the drug-crime cycle by involving offenders in treatment and rehabilitation programs' and to improve relationships with family and friends, to support people to gain and retain employment, and to provide tools to recognise and prevent relapse (Department of Justice 2009b). These goals are relevant also to people with gambling problems who commit crimes.

Recommendation 1: sentencing

Anglicare recommends that there be a range of sentencing options for gambling-related crimes including a trial of a court-mandated diversion scheme. Such a scheme would give judges the option of diverting those eligible away from a prison sentence and into counselling for their gambling problem and community service for their crime. Instead of costing the state \$263 per day to be imprisoned, an eligible person could be working in the community and receiving assistance from counselling while costing the state just \$12 per day for community supervision (Department of Justice 2009a, p.50).

Anglicare also recommends that data collection in courts and in prisons be improved so the size of the problem can be identified and also so that people entering prison can have problems identified and receive assistance. Given the high number of short-term prison sentences handed down for gambling-related crime, this would require an assessment of prisoners soon after admission, for this assessment to include gambling problems, and for gambling help programs to be instigated shortly after admission.

Recommendation 2: consumer protection

Anglicare recommends greater protection for consumers.

We know that about half the people who attend gambling help services are likely to have committed a crime (Productivity Commission 1999, p. H5). This suggests that people seek help for gambling problems as a last resort, when problems

have already got too large. Gambling help services need to be resourced by the government to find ways to reach people long before they are facing such dramatic levels of debt that they contemplate crime. This should include improved advertising and promotion of gambling help services and the inclusion of gambling as an issue that is screened for by health case managers (e.g. social workers, counsellors, GPs) along with professional development for them on problem gambling assessment.

Anglicare also calls on the State Government to fund the Gambling Support Bureau to conduct more extensive community education programmes about gambling which are focussed on early intervention rather than the crisis of problem gambling. As recommended by the Productivity Commission (2009), messages should be conspicuous on machines and elsewhere in venues, use effective imagery, focus on problem behaviours and the benefits of changing these and include contact details for help services. In addition, messages should be changed regularly to ensure ongoing effectiveness. Anglicare recommends that people should understand from the information provided about gambling that regular gambling can lead to problems and they should expect to lose when they gamble.

Current advertising rules allow gambling to sound like a game, promotions provide free gambling tokens, and technological advances are being introduced at a speed far greater than any harm minimisation measure. Anglicare is calling for the advertising, promotion and the development of gambling technology to be reviewed by an independent body with the view to introducing policies to reduce harm. This review could be conducted by the Tasmanian Gaming Commission providing the Commission was given true independence from the Government and then given responsibility for monitoring, enforcement and evaluation of consumer protection measures.

A significant measure recommended in the recent draft Productivity Commission report (2009) was to reduce the betting limit for poker machines to \$1 per spin. This would reduce the amount that could be lost per poker machine per hour to \$120 (Productivity Commission 2009). However, just after the draft report was released, the Bartlett Government decided to reduce the betting limit from \$10 to \$5 but refused to accept opposition parties' amendments to reduce it further to \$1. The government gave no explanation as to why it decided on \$5 rather than \$1. At \$5 per spin, someone with an average household income³ (Australian Bureau of Statistics 2009, p. 31) could lose nearly all their weekly pay in an hour. Anglicare believes the Productivity Commission's position is the correct one and calls on the State Government to implement this important reform.

3. Average household income is calculated as the equivalised disposable household income, which in Tasmania in 2007-08 was \$718. Equivalised income can be viewed as an indicator of the economic resources available to each individual in a household.



***Your gambling increased as you
tried to win back your increasing
losses.***

Supreme Court Judge, Tasmania
(The State of Tasmania v Mason, Tennent J,
6 November 2006 (Sentence))



Social Action and Research Centre (SARC)

Anglicare's SARC team work with low income Tasmanians to identify the structural barriers that impact most severely on their lives. The Centre pursues policy change on these issues at a State and Federal level. www.anglicare-tas.org.au

References

Australian Bureau of Statistics 2009, *Household income and income distribution, Australia, 2007-08*, cat. no. 6523.0, Australian Bureau of Statistics, Canberra.

Cases reviewed from the Tasmanian Supreme Court database, via the Andrew Inglis Clark Law Library, Department of Justice, Hobart: *The State of Tasmania v Bentley*, Porter J, 23 June 2008 (Sentence); *The State of Tasmania v Betts*, Tennent J, 7 July 2008 (Sentence); *The State of Tasmania v Blaschke*, Slicer J, 29 June 2007 (Sentence); *The State of Tasmania v Bowen*, Crawford J, 1 December 2006 (Sentence); *The State of Tasmania v D.M. Bowman*, Crawford J, 7 September 2004 (Sentence); *The State of Tasmania v N.W. Bowman*, Crawford J, 7 September 2004 (Sentence); *The State of Tasmania v Brown*, Underwood J, 4 May 2004 (Sentence); *The State of Tasmania v Burgess*, Tennent J, 26 May 2005 (Sentence); *The State of Tasmania v Clarke*, Underwood CJ, 23 May 2005 (Sentence); *The State of Tasmania v Daly*, Blow J, 28 March 2008 (Sentence); *The State of Tasmania v Dance*, Underwood CJ, 20 December 2007 (Sentence); *The State of Tasmania v De Vellis*, Crawford J, 10 May 2007 (Sentence); *The State of Tasmania v Dennis*, Crawford J, 16 June 2004 (Sentence); *The State of Tasmania v Draper*, Crawford J, 17 February 2004 (Sentence); *The State of Tasmania v Eberhardt*, Porter J, 7 July 2009 (Sentence); *The State of Tasmania v Gould*, Slicer J, 2 November 2006 (Sentence); *The State of Tasmania v Gould*, Blow J, 4 November 2009 (Sentence); *The State of Tasmania v Gray*, Blow J, 16 February 2005 (Sentence); *The State of Tasmania v Green*, Porter J, 15 May 2009 (Sentence); *The State of Tasmania v Harwood*, Evans J, 9 July 2004 (Sentence); *The State of Tasmania v Hogno*, Blow J, 17 August 2006 (Sentence); *The State of Tasmania v Littlejohn*, Crawford J, 9 September 2005 (Sentence); *The State of Tasmania v Mason*, Tennent J, 6 November 2006 (Sentence); *The State of Tasmania v Matthews*, Evans J, August 2009 (Sentence); *The State of Tasmania v McLean*, Slicer J, 24 February 2005 (Sentence); *The State of Tasmania v McLennan*, Evans J, 6 September 2006 (Sentence); *The State of Tasmania v McWilliams*, Slicer J, 27 September 2004 (Sentence); *The State of Tasmania v Mitchell*, Underwood J, 26 May 2004 (Sentence); *The State of Tasmania v Newall*, Blow J, 22 June 2009 (Sentence); *The State of Tasmania v Owen*, Blow J, 31 July 2007 (Sentence); *The State of Tasmania v Pearce*, Blow J, 7 October 2009 (Sentence); *The State of Tasmania v Pennicott*, Tennent J, 5 July 2006 (Sentence); *The State of Tasmania v Quigley*, Evans J, 17 October 2007 (Sentence); *The State of Tasmania v Rothall*, Blow J, 10 September 2008 (Sentence); *The State of Tasmania v Shearing*, Blow J, 14 July 2008 (Sentence); *The State of Tasmania v Shirley*, Tennent J, 30 May 2008 (Sentence); *The State of Tasmania v Smith*, Blow J, 1 October 2007 (Sentence); *The State of Tasmania v Sullivan*, Crawford J, 26 July 2007 (Sentence); *The State of Tasmania v Vanveen*, Tennent J, 20 February 2006 (Sentence); *The State of Tasmania v West*, Crawford J, 17 April 2008 (Sentence); *The State of Tasmania v Zeitzen*, Underwood CJ, 25 July 2007 (Sentence).

Department of Justice 2009a, *Annual Report 2008-2009*, Department of Justice, Hobart.

Department of Justice 2009b, *Court Mandated Diversion Intention of the CMD Program*, viewed 13 November 2009, <http://www.justice.tas.gov.au/corporateinfo/projects/court_mandated_diversion>.

Department of Treasury and Finance 2008, *Social and economic impact study into gambling in Tasmania: volume 2: the prevalence study*, final report prepared by the South Australian Centre for Economic Studies, University of Adelaide School of Psychology and Harrison Health Research, Department of Treasury and Finance, Hobart.

Law, M 2005, *House of Cards: problem gambling and low income earners in Tasmania*, Anglicare Tasmania, Hobart.

Productivity Commission 1999, *Australia's gambling industries*, report no. 10, Ausinfo, Canberra.

Productivity Commission 2009, *Gambling*, draft report, Productivity Commission, Canberra.

Tasmanian Gaming Commission 2009, *Annual report 2008-09*, Department of Treasury and Finance, Hobart.



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